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January 30, 2002

Via Federal Express

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Review of the retail rates of Florida Power & Light Company, Docket No. 001148-EI

Dear Ms. Bayo:

Enclosed on behalf of South Florida Hospital and Healthcare Association are the original and eight copies of the Motion To Compel Discovery Requests in the above referenced docket.

Please acknowledge receipt and filing of the above by stamping the duplicate copy and returning same in the enclosed self-addressed stamped envelope to the undersigned.

Thank you for your assistance in connection with this matter.

Very truly yours,

Mark F. Sundback

Mark F. Sundback
An Attorney For the Hospitals

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:	)	
Review of the retail rates of	)	**Docket No. 001148-EI**
Florida Power & Light	)	**Date Filed: January 30, 2002**
Company	)	

MOTION OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION TO COMPEL DISCOVERY RESPONSES

To: Honorable Commissioner Braulio L. Baez
Prehearing Officer

Pursuant to Rule 28-106.303 of the Florida Administrative Code ("FAC"), the South Florida Hospital & Healthcare Association ("SFHHA") hereby moves for issuance of an order compelling full responses to two interrogatories to which Florida Power & Light Company ("FPL") has declined to provided complete answers.

I.

SFHHA propounded its third round of discovery requests in the captioned proceeding on December 21, 2001, including SFHHA interrogatories Nos. 32 and 33. Interrogatory Nos. 32 and 33 read as follows:

Interrogatory No. 32

> Please identify the entities receiving gains on the sales of interests in FiberNet, Adelphia Communications Corp. and the one-third ownership interest in the cable limited partnership (referenced in Document Production Request No. 24) all as described in the FPL Group 2000 Annual Report, and the amount of such gain for each entity.

Interrogatory No. 33

> Who were the other partners in the cable limited partnership (referenced in Document Production Request No. 24), and why was an FPL affiliate a partner in the enterprise? Identify the assets contributed, or any other consideration furnished, by FPL or an FPL affiliate as part of the participation in or formation of the partnership or the acquisition of any ownership share in the partnership.

FPL has objected to Interrogatory Nos. 32 and 33. FPL has limited its responses strictly to FPL, without reference to any FPL affiliates. FPL maintains that because the interrogatories relate in part to "transactions between FPL's unregulated affiliates, or between an unregulated affiliate and an unaffiliated entity," there is no reason why the requested information should be produced. Appendix A contains FPL's statements regarding Interrogatory Nos. 32 and 33. As a consequence, FPL avoided responding to the balance of the interrogatories.

II.

FPL's objections are without merit. As FPL well knows, a rate-regulated entity has many opportunities to shift value away from ratepayers to unregulated entities where the value may be realized exclusively for the benefit of investors. SFHHA Interrogatories Nos. 32 and 33 involve precisely that issue, which may explain why FPL is so anxious not to respond.

FPL Group owned an interest in an entity called Adelphia Communications Corp. as well as in a cable limited partnership. According to the FPL Group Annual Report for 2000, the FPL Group sold its common stock in Adelphia Communications for a gain of approximately $150 million. Additionally, FPL Group enjoyed "a $108 million . . . gain . . . on the redemption of its one-third interest in a cable limited partnership . . . ." A copy of the relevant portion of the Annual Report is attached hereto as Appendix B.

Adelphia Communications and, potentially, the cable TV partnership, engaged in business transactions with *inter alia,* FPL. At present, there is no assurance that the unnamed cable TV partnership, or Adelphia, did not receive value, for instance by a transfer of assets owned by, or rights of access to property of, FPL, in manners which transferred substantial value from ratepayers to holders of equity interests in the anonymous cable TV partnership or Adelphia. Certainly the fact that the FPL Group originally was invited or allowed into the cable TV partnership indicates the other partners envisioned that the FPL corporate family had something of value to contribute to the partnership. Indeed, part of Interrogatory No. 33 seeks to understand exactly what was contributed by the FPL corporate family as part of being admitted as a partner in the cable partnership.

Of course, as the owner of an existing network consisting of thousands of miles of right-of-way in Florida's most densely populated areas, FPL has characteristics of very high value to cable TV and telecommunications enterprises. FPL would hardly have been the first utility to have attempted to capitalize on this value.[1] But the right-of-way and other assets have been assembled as part of FPL's electric operations. The sale of interests in Adelphia and the cable TV partnership of course may be the result simply of investing serendipity. Alternatively, if valuable rights or assets at one time held by FPL were conveyed to Adelphia or the cable TV partnership at below market value, that also would tend to increase the value of owning a share of such enterprises.

In order to determine whether these gains came at the expense of ratepayers, it is important to know why an FPL affiliate became involved in the respective enterprises (*e.g.*, Interrogatory No. 33), and what consideration was furnished during formation of and participation in the partnership (Interrogatory No. 33). One way to transfer value from regulated FPL operations to FPL Group shareholders would be a two step process: first, convey rights or assets of FPL to an entity such as Adelphia or the cable TV partnership, its owners or an intermediary (thereby obscuring the transactional trail); and second, have the other owners of Adelphia or the cable TV partnership pay the FPL

---

[1] For instance, AEP and a number of other utilities have announced plans to form a new company which would hold rights to access the utilities' rights of way for telecommunications purposes.

Group compensation, ostensibly for transfer of FPL Group's ownership interest in such entities, which would recognize the market value of the rights or assets conveyed by FPL. In that way, the gain on the sale of the equity interest accrues to FPL shareholders even if the asset originally belonged to FPL. There is nothing particularly novel about this structure; regulated entities attempt from time to time to capture value in this way, although how they attempt to distract attention from such transactions or shield them from full disclosure (*e.g.*, by contending that reports such as the Diversification Report would be sufficient disclosure although transactions through intermediaries may not be adequately reflected in such reports) varies from state to state and utility to utility. But ratepayers and this Commission are entitled to know if such activities have occurred in the FPL corporate family, especially given the dearth of full discovery in rate cases for FPL during the last 18 years.

Therefore, FPL's attempt to avoid furnishing the responsive data is without merit. FPL should not be permitted to deprive ratepayers of value on the basis that its affiliates ultimately profited from a transaction - - indeed, that is exactly the point why such a transaction should be scrutinized, not ignored or shielded from review.

III.

Pursuant to FAC Rule 28-106.303(c), SFHHA has conferred with FPL, the subject of this motion to compel, and SFHHA understands that FPL objects to the motion.

IV.

WHEREFORE, for the foregoing reasons, SFHHA respectfully requests that FPL be compelled to furnish full responses to SFHHA Interrogatories Nos. 32 and 33.

Respectfully submitted,

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ATTORNEYS FOR SFHHA

January 30, 2002

APPENDIX A

SUNDBACK COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail rates of	)	Docket No. 001148-EI
Florida Power & Light Company.	)	Dated: January 23, 2002

FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO SOUTH FLORIDA HOSPITAL ASSOCIATION'S THIRD REQUEST FOR PRODUCTION (NOS. 15-25) AND INTERROGATORIES (NOS. 20-33)

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.206, Florida Administrative Code and Rules 1.340 and 1.350, Florida Rules of Civil Procedure, hereby responds to South Florida Hospital Association's Third Request for Production (Nos. 15-25) and Interrogatories (20-33) as follows:

Introduction

FPL incorporates its prior objections and clarifications, served on January 3, 2002. Its responses included herein are without waiver of those prior objections and clarifications.

All documents marked confidential (identified in the Confidential Documents Log attached hereto) shall be subject to a confidentiality order or agreement to be agreed upon between the parties, and shall be produced subject to such order or agreement.

Response to Request for Production

15. The documents provided in response to this request will be made available for inspection at FPL's General Offices at 9250 West Flagler Street, Miami, Florida 33174 during normal business hours.

16. FPL has no documents responsive to this request.

Q.

Please identify the entities receiving gains on the sales of interests in FiberNet, Adelphia Communications Corp. and the one-third ownership interest in the cable limited partnership (referenced in Document Production Request No. 24) all as described in the FPL Group 2000 Annual Report, and the amount of such gain for each entity.

A.

FPL's fiber-optic lines were sold to FPL FiberNet at net book value and no gain was recorded. The other transactions didn't involve FPL.

Q.

Who were the other partners in the cable limited partnership (referenced in Document Production Request No.24), and why was an FPL affiliate a partner in the enterprise? Identify the assets contributed, or any other consideration furnished, by FPL or an FPL affiliate as part of the participation in or formation of the partnership or the acquisition of any ownership share in the partnership.

A.

FPL did not participate in the referenced cable limited partnership. Therefore, this interrogatory is beyond the scope of proper discovery and, consistent with FPL's earlier objection, FPL is not required to respond.

APPENDIX B

FPL Group

2000 Annual Report

the natural choice

by a December 2000 filing that provided certain operational details of the proposed RTO.

Under the proposed form of RTO, FPL would contribute its transmission assets to an independent transmission company, GridFlorida LLC (GridFlorida) that would own and operate the system. A separate corporation would be formed to own the voting interest in and manage GridFlorida. In return for its transmission assets, FPL would receive a non-voting ownership interest in GridFlorida, which could be exchanged for non-voting stock of the managing corporation. FPL would account for its interest in GridFlorida using the equity method.

FPL Energy — FPL Energy's earnings continue to benefit from the significant expansion of its independent power generation portfolio, which has more than tripled since 1997 to over 4,100 mw at December 31, 2000. In 2000, Lamar Power Partners, a natural gas-fired plant in the Central region became operational and added approximately 1,000 mw to FPL Energy's operating portfolio. In 1999, FPL Energy acquired the Maine assets, which totaled 1,159 mw and in 1998, FPL Energy invested in two natural gas-fired plants in the Northeast, adding 295 mw. In addition, approximately 400 mw of wind projects have been added in the West and Central regions since 1997.

In 2000, FPL Energy's net income also benefited from increased revenues generated by the Maine assets as a result of warmer weather and higher prices in the Northeast during May 2000, and lower O&M expenses at Doswell. In 1999, the effect of a $176 million ($104 million after-tax) impairment loss (see Note 10) and higher administrative expenses to accommodate future growth more than offset the benefits of the growing generation portfolio and improved results from Doswell. FPL Energy's 1998 net income includes the effect of a $35 million ($21 million after-tax) charge for the termination of an interest rate swap agreement, which was partly offset by the receipt of a $31 million ($19 million after-tax) settlement relating to a contract dispute.

Deregulation of the electric utility market presents both opportunities and risks for FPL Energy. Opportunities exist for the selective acquisition of generation assets that are being divested under deregulation plans and for the construction and operation of efficient plants that can sell power in competitive markets. Substantially all of the energy produced in 2000 by FPL Energy's independent power projects was sold through power sales agreements with utilities that expire in 2001-28. As competitive wholesale markets become more accessible to other generators, obtaining power sales agreements will become a progressively more competitive process. FPL Energy expects that as its existing power sales agreements expire, more of the energy produced will be sold through shorter-term contracts and into competitive wholesale markets.

Competitive wholesale markets in the United States continue to evolve and vary by geographic region. Revenues from electricity sales in these markets will vary based on the prices obtainable for energy, capacity and other ancillary services. Some of the factors affecting success in these markets include the ability to operate generating assets efficiently, the price and supply of fuel, transmission constraints, competition from new sources of generation, demand growth and exposure to legal and regulatory changes.

FPL Energy has approximately 540 net mw in California, most of which are wind, solar and geothermal qualifying facilities. The output of these projects is sold predominantly under long-term contracts with California utilities. Increases in natural gas prices and an imbalance between power supply and demand, as well as other factors, have contributed to significant increases in wholesale electricity prices in California. Utilities in California had previously agreed to fixed tariffs to their retail customers, which resulted in significant under-recoveries of wholesale electricity purchase costs. FPL Energy's projects have not received the majority of payments due from California utilities since November 2000. On April 6, 2001, Pacific Gas and Electric Company (PG&E) filed for protection under the U.S. Bankruptcy laws. Earnings from projects that sell to PG&E represent approximately 15% of FPL Energy's earnings from California projects. At December 31, 2000, FPL Energy's net investment in California projects was approximately $250 million. It is impossible to predict what the outcome of the situation in California will be.

Corporate and Other — Beginning in 2000, the corporate and other segment includes FPL FiberNet's operating results. FPL FiberNet was formed in January 2000 to enhance the value of FPL Group's fiber-optic network assets that were originally built to support FPL operations. Accordingly, FPL's existing 1,600 miles of fiber-optic lines were transferred to FPL FiberNet in January 2000. In 1999, net income for the corporate and other segment reflects a $149 million ($96 million after-tax) gain on the sale of an investment in Adelphia Communications Corporation common stock, a $108 million ($66 million after-tax) gain recorded by FPL Group Capital Inc (FPL Group Capital) on the redemption of its one-third interest in a cable limited partnership, costs associated with closing a retail marketing business of $11 million ($7 million after-tax) and the favorable resolution of a prior year state tax matter of $10 million ($7 million after-tax). In 1998, net income for the corporate and other segment reflects a $36 million ($25 million after-tax) loss from the sale of Turner Foods Corporation's assets, the cost of terminating an agreement designed to fix interest rates of $26 million ($16 million after-tax) and adjustments relating to prior years' tax matters, including the resolution of a $30 million audit issue with the Internal Revenue Service.

LIQUIDITY AND CAPITAL RESOURCES

FPL Group's capital requirements consist of expenditures to meet increased electricity usage and customer growth of FPL, investment opportunities at FPL Energy and expansion of FPL FiberNet. Capital expenditures of FPL for the 2001-03 period are expected to be approximately $3.3 billion, including $1.1 billion in 2001. As of December 31, 2000, FPL Energy has commitments totaling approximately $380 million, primarily in connection with the

CERTIFICATE OF SERVICE
DOCKET NO. 001148-EI

I HERBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and U.S. Mail to the following parties, this 29th day of January, 2002.

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