

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail rates of) Docket No. 001148-EI
Florida Power & Light) Dated: March 1, 2002
Company.)
_____)

**FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR RECONSIDERATION
OF ORDER NO. PSC-02-0254-PCO-EI,
GRANTING MOTION TO COMPEL**

Florida Power & Light Company ("FPL"), pursuant to Rule 25-22.0376, F.A.C., hereby moves for reconsideration of Order No. PSC-02-0254-PCO-EI, which grants the Motion of South Florida Hospital and Healthcare Association ("SFHHA") to Compel Discovery Responses (the "Motion to Compel") and asks that the Order be vacated. The grounds for FPL's motion are as follows:

INTRODUCTION

The Motion to Compel, a copy of which is attached hereto as Exhibit 1, seeks to require FPL to provide information in response to the SFHHA's Interrogatory Nos. 32 and 33 concerning transactions between certain unregulated affiliates of FPL (or entities in which those unregulated affiliates have financial interests) and outside third parties. FPL answered these two interrogatories by providing information regarding the transfer of assets from FPL to FPL FiberNet, LLC, ("FiberNet") and confirming that neither of the other two FPL Group, Inc. ("FPL Group") interests referenced in the interrogatories involved assets or consideration furnished by FPL. Having confirmed through attested responses the absence of any relationship or interest on the part of the utility, FPL objected to providing additional information on dispositions by FPL

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Group of independent interests wholly unrelated to the utility. FPL's objections are well founded, in that the information sought by SFHHA beyond what FPL already has provided is not "information which affects a utility's rates or cost of service," the proper scope of discovery in Commission proceedings according to section 366.093(2) of the Florida Statutes. The SFHHA has offered nothing to contradict FPL's discovery responses. Nonetheless, Order No. PSC-02-0254-PCO-EI (the "Order") grants the Motion to Compel.

The Order is fatally flawed in at least two respects, both of which require the Commission to reconsider and reverse it. First, the Order is premised upon the Prehearing Officer's conclusion that the information sought in the Motion to Compel "relates to the question of whether FPL shifted value away from ratepayers to investors in unregulated affiliates" Order at 4. This conclusion is simply insupportable. As noted above, FPL has confirmed in its discovery responses that the information on unregulated affiliates that the SFHHA seeks does *not* affect FPL's rates or cost of service. To the limited extent that Interrogatory Nos. 32 and 33 do relate to transfers involving FPL assets or interests, the requested information on those transfers has already been provided to the SFHHA. Second, the Order fundamentally misapprehends the applicable law on discovery. As support for the proposition that FPL is obligated to produce in discovery information on an unregulated affiliate, the Order cites a case holding that a subsidiary must produce information in the possession of the parent company that was directly related to the subsidiary's business and was directly the subject of the lawsuit in question. Such a holding is inapposite to the facts before the Prehearing Officer. FPL has not argued, nor would it, that information relevant to this proceeding is off limits merely because it is in the files of FPL Group rather than FPL. Rather, the point of FPL's opposition to the Motion to Compel is that the

information on unregulated affiliates that is sought in Interrogatory Nos. 32 and 33 is not within the proper scope of discovery in Commission proceedings, given that the two interests in question involve no assets or other consideration furnished by FPL. As evidenced by the case law he has cited, the Prehearing Officer either misapprehended or ignored FPL's argument.

BACKGROUND

Interrogatory Nos. 32 and 33 read as follows:

Interrogatory No. 32

Please identify the entities receiving gains on the sales of interests in FiberNet, Adlephia 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 timely objected to Interrogatory Nos. 32 and 33, as follows:

Interrogatory Nos. 32 and 33. These interrogatories relate at least in part to transactions between FPL's unregulated affiliates, or between an unregulated FPL affiliate and an unaffiliated entity. To the extent that they relate to such transactions, FPL objects to these interrogatories as beyond the proper scope of discovery (see objection to definition of "FPL" above). FPL will respond to these interrogatories with respect to transactions involving FPL.

“FPL” This definition purports to include FPL’s parent and its affiliates. The jurisdiction of the Florida Public Service Commission -- and hence the permissible scope of inquiry in this proceeding -- concerning the parent and affiliates of a utility is limited. See §§366.05(9) and 366.093(1), Fla. Stat. (2000). Moreover, the scope of discovery from a party is limited to documents within the possession, custody or control of that party. See, e.g., *Southern Bell Telephone and Telegraph Co. v. Deason*, 632 So.2d 1377 (Fla. 1994). FPL objects to the inclusion of FPL’s parent and affiliates within the definition of “FPL” to the extent that it expands the scope of the SFHHA Third Request beyond the bounds of the Commission’s jurisdiction and/or the permissible scope of discovery.

Florida Power & Light Company’s Objections to and Request for Clarification of the South Florida Hospital and Healthcare Association’s Third Set of Interrogatories and Request to Produce, dated January 3, 2002, at 6 and 10.

Consistent with those objections, FPL responded to Interrogatory Nos. 32 and 33 on January 23, 2002, as follows:

(Interrogatory No. 32) 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.

(Interrogatory No. 33) 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 objections, FPL is not required to respond.

Moreover, counsel for FPL responded as follows to an inquiry from counsel for the SFHHA about dispositions of FPL property to FPL affiliates or other entities in which an FPL affiliate has a financial interest:

all dispositions of FPL property to affiliates, as well as to partnerships, joint ventures or other entities in which affiliates have a financial interest (including minority interests), are described in FPL’s diversification reports. Copies of FPL’s diversification reports for the years 1985 to present were made available to the

SFHHA on November 9, 2001, in response to the SFHHA's Request No. 1.

Letter from John Butler to Mark Sundback, dated January 29, 2002, a copy of which is attached hereto as Exhibit 2.

Finally, in its response to the Motion to Compel, FPL clarified its answer to Interrogatory No. 33, specifically confirming that "FPL did not participate in the referenced cable limited partnership, whether through the contribution of assets or any other consideration." Florida Power & Light Company ("FPL") Response in Opposition to Motion of South Florida Hospital and Healthcare Association ("SFHHA") to Compel Discovery Responses ("FPL Response") at 4, n.1. A copy of the FPL Response is attached hereto as Exhibit 3. This clarified answer was provided to the SFHHA, along with an attesting affidavit, the day after the FPL Response was filed. *See* Letter from John Butler to Mark Sundback, dated February 7, 2002, a copy of which is attached hereto as Exhibit 4.

Thus, by the time the Order was issued, the SFHHA had been provided the following information relevant to its inquiry about "shifting value away from the ratepayers to investors," which the Order characterizes as a proper the subject of discovery: (1) detail on every disposition of FPL property to any FPL affiliate (or entity in which such an affiliate has a financial interest), (2) specific confirmation of the basis upon which fiber-optic lines were transferred from FPL to FiberNet, (3) specific confirmation that FPL was not involved in any of the other transactions referenced in Interrogatory No. 32, and (4) specific confirmation that FPL has not participated in any fashion, whether through the contribution of assets or otherwise, in the limited partnership that was the focus of Interrogatory No. 33. The information provided in

Item 1 came directly from FPL's Diversification Reports that are filed with the Commission, while the remaining information has been attested to by sworn affiants.

The Motion to Compel offers nothing but unsupported, inaccurate, and inflammatory speculation to the contrary. The best the SFHHA could do is statements such as the following: "[a]t 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." Motion to Compel at 2-3. The Motion to Compel does not provide a single basis for contradicting the information that FPL provided in its answers to Interrogatory Nos. 32 and 33 and other discovery showing that FPL had made no transfers of assets, held no interests, and furnished no consideration that would "[transfer] substantial value from ratepayers to investors" as the SFHHA speculates.

Against this backdrop, the Order ignores fact and implicitly endorses the rank speculation of the SFHHA. The Order recites without critical comment the SFHHA's speculation that there is a valid "question of whether FPL shifted value away from ratepayers to investors." Order at 4. The Order acknowledges in its section entitled "Argument of the Parties" that FPL made available the information referenced above; however, the Order does not even mention that information in the section entitled "Decision," in which the basis for granting the Motion to Compel is explained, let alone discuss how the information provided by FPL somehow fails as an adequate answer to legitimate discovery. Order at 3-4.

ARGUMENT

1. The Standard for Reconsideration.

The Commission recently recited the following standard for review on reconsideration:

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light. Docket No. 000824-EI; Order No. PSC-01-2313-PCO-EI, November 26, 2001.

As will be shown below, the Prehearing Officer overlooked or failed to consider important points of fact and law in ruling on the Motion to Compel.

2. The Proper Scope of Discovery Concerning Unregulated Affiliates.

The Legislature has given the Commission specific direction as to the proper scope of discovery in Commission proceedings. Section 366.093(2) of the Florida Statutes provides that discovery is to be conducted in the *manner* provided in Rule 1.280 of the Florida Rules of Civil Procedure. However, the section then goes on to define specifically the *subject matter* that such discovery may properly cover: "Information which affects a utility's rates or cost of services

shall be considered relevant for purposes of discovery in any docket or proceeding where the utility's rates or cost of service are at issue. The commission *shall* determine whether information requested in discovery affects a utility's rates or cost of service." (Emphasis added). Thus, in ruling upon the relevance of the Motion to Compel, the Commission is statutorily obligated to determine whether or not the information that the SFHHA seeks on unregulated affiliates affects FPL's rates or cost of service. As shown above, however, the Prehearing Officer failed to make this determination; instead he has relied upon the SFHHA's unsupported speculation that there might be transactions involving unregulated affiliates that "[transfer] substantial value from ratepayers to investors," and he has done so in spite of the uncontradicted information in FPL's discovery responses that this is not the case.

Nor do the Florida Rules of Civil Procedure permit discovery to become a "fishing expedition" on issues that are not before the court or agency for adjudication, merely on the chance that such discovery might lead to justiciable issues. In *State Farm Mut. Automobile Ins. Co. v. Parrish*, 800 So.2d 706 (Fla. 5th DCA 2001), the plaintiff claimed that two of the defendant's insurance policies could be "stacked" for purposes of coverage. State Farm defendant defended against this claim on the basis that the plaintiff had selected the "nonstacking" option when it purchased the policies. The plaintiff then sought discovery broadly into the background of State Farm's process for policyholders to choose between "stacking" or "nonstacking" options. While acknowledging that this discovery did not relate to the plaintiff's "stacking" cause of action or State Farm's defense, the trial court ordered State Farm to respond to the discovery because it "related to issues that might give rise to a cause of action." 800 So.2d at 707. State Farm sought review of that order. The appellate court overturned the trial court's

discovery order, because the Florida Rules of Civil Procedure do not authorize “a fishing expedition which ‘might give rise to a potential cause of action.’” *Id.* The Order would improperly authorize just such a fishing expedition by the SFHHA.

3. The Commission May Not Base a Determination of Relevance Upon Mere Speculation.

Courts and agencies following the Florida Rules of Civil Procedure concerning discovery may not arbitrarily or speculatively conclude that information which is tangential to a proceeding’s purpose is nonetheless relevant and discoverable. This is illustrated in *Bassette v. Health Management Resources Corp.*, 661 So.2d 317 (Fla. 2nd DCA 1995). In that case, the trial court had compelled production of the medical records of the plaintiff’s nonparty father. The trial court concluded that medical records were relevant based upon the potential that the daughter’s medical condition at issue in the litigation was an inherited one. However, the only basis that the trial court had for assuming that the daughter could have inherited the medical condition was the unsworn statements of the defendant’s attorney. There was no record evidence supporting those statements, and no stipulation as to their veracity. The appellate court reversed and vacated the order compelling discovery, holding that the trial court could not properly base its relevance finding upon the attorney’s unsworn statements.

The facts of *Bassette* are strikingly similar to those at issue here. As the trial court did in *Bessette*, the Prehearing Officer has compelled discovery based upon unsupported speculation by the SFHHA’s counsel that there might be transactions involving unregulated affiliates which “[transfer] substantial value from ratepayers to investors.” The Prehearing Officer did so in the face of uncontradicted information in FPL’s discovery responses that the SFHHA counsel’s

speculation is inaccurate. As the appellate court did to the trial court's order compelling discovery in *Bessette*, the Commission should vacate the Prehearing Officer's decision.

4. The *Afros S.P.A.* Decision Cited in the Order Provides no Support for Compelling Production of the Unregulated Affiliate Information Sought by the SFHHA.

The Order cites a single case for the proposition that discovery requests for "information concerning transactions that, in some cases, are one step removed from FPL does not make them improper": *Afros S.P.A. v. Krauss-Maffei Corp.*, 113 F.R.D. 127 (D. Del. 1986). Order at 4. However, while the Order correctly recites the three factors that *Afros S.P.A.* held should determine whether discovery may be had of information in the possession of a parent or affiliate, the Order completely missed the point of that decision.

In *Afros S.P.A.*, the plaintiff Afros S.P.A. had brought suit against Krauss-Maffei Corporation ("KMC") for patent infringement. KMC denied the infringement and counterclaimed that Afros S.P.A. had infringed *its* patents on the same technology. Afros S.P.A. sought to discover information about KMC's patents. KMC resisted that discovery because the information was in the physical possession of KMC's nonparty parent company, Krauss-Maffei A.G. ("KMAG"), which had originally developed the product in question and then assigned the patents to KMC. Because the requested information was in KMAG's physical possession, KMC claimed that it did not possess or control the information. The court held that KMC had sufficient control over the information in KMAG's possession to require KMC to produce it.

As one can readily see, *Agros S.P.A.* did not even reach, let alone resolve, the question of whether discovery concerning a nonparty affiliate's information is proper when there is no direct connection between the affiliate information and the issues involved in the proceeding where discovery is sought. The patent information sought by Agros S.P.A. was directly relevant to the

lawsuit in question, because the patents were the specific basis of KMC's counterclaim. All the court decided in *Agros S.P.A.* was that KMC could not rely upon the fact that the requested information was in the possession of its parent KMAG to refuse to produce that information.

FPL does not contend that information relevant to its rates or cost of service would not be discoverable simply because that information happens to be in the possession of its parent or affiliates. In fact, FPL has produced information in this proceeding fitting just that fact pattern. Rather, FPL objects to providing the information on unregulated affiliates' transactions with third parties that the SFHHA seeks, because there is no basis to bring that information within the proper scope of relevance for Commission proceedings. On that point, *Agros S.P.A.* provides no guidance.¹

Moreover, even if the *Agros S.P.A.* test were relevant here, there is nothing in the Order to suggest that the SFHHA's discovery into unregulated affiliates' transactions meets the criteria of that test. The Order merely recites the three factors from *Agros S.P.A.* It does not even state that -- much less explain how -- the SFHHA's discovery would meet the *Agros S.P.A.* test under those factors.

In fact, a quick review of the factors suggests that the SFHHA's discovery request would not meet the test. In particular, the SFHHA discovery request completely fails the second and third factors. The second factor is "the non-party's connection to the transaction at issue." Order at 4. In this proceeding, the "transaction at issue" is FPL's rates and cost of service under its

¹ The Commission order cited by the Prehearing Officer is likewise inapposite. It involves a motion to compel by the Office of Public Counsel ("OPC") concerning discovery requests to Gulf Power Company ("GPC") that OPC claims were designed to test the testimony of a GPC witness on the role that the 2020 Study Commission played in the decision to transfer Smith Unit 3 from GPC to an affiliate, Southern Power Company ("SPC"). The express purpose of the docket in question was to decide whether to approve a power purchase arrangement for Smith Unit 3 after transfer of that unit to SPC. The relevant analogy in this proceeding would be FPL's decision to transfer fiber-optic facilities to FiberNet. As discussed above, FPL has no objection to discovery concerning the basis for that

2002 test year. As discussed previously, the SFHHA has merely speculated that the entities referenced in Interrogatory Nos. 32 and 33 have *any* connection to FPL's rates or cost of service whatsoever, and FPL has provided sworn information that those entities have no such connection. Certainly, the Prehearing Officer had no basis to conclude that there is the sort of substantial connection that would support discovery under the *Agros S.P.A.* test. The third factor is "the degree to which the non-party will benefit from an outcome favorable to the corporate party to the litigation." *Id.* As the court noted in *Agros S.P.A.*, "[i]f a non-party will *directly receive the benefit of an award*, then it is unjust that it can frustrate the discovery process" 113 F.R.D. at 131 (emphasis added). The SFHHA has offered nothing (not even speculation) to suggest that the entities referenced in Interrogatory Nos. 32 and 33 would benefit at all from a favorable outcome in this proceeding, much less that they would "directly receive the benefit" of such an outcome. In short, even if the *Agros S.P.A.* test were applicable here, the SFHHA's discovery requests would fail it.

CONCLUSION

For reasons discussed above, the Order must be vacated. It is founded on unsupported speculation about the impact on FPL's regulated business of transactions between FPL's unregulated affiliates and third parties, speculation which FPL has specifically and expressly refuted in its answers to Interrogatory Nos. 32 and 33 and other discovery. The Order likewise fundamentally misapprehends and misapplies the law applicable to determining the scope of relevant discovery, and ignores the limitations on discovery that the Legislature has imposed on Commission proceedings.

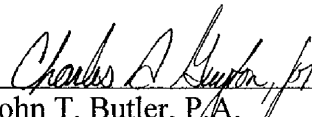
transfer and, in fact, has already answered questions about it.

WHEREFORE, FPL respectfully moves for reconsideration of Order No. PSC-02-0254-PCO-EI and asks that the order be vacated.

Respectfully submitted,

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By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 1st day of March, 2002, to the following:

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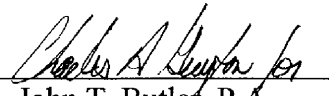
By: 
John T. Butler, P.A.

EXHIBIT 1

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 provide 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, Adelpia 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 Adelpia 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 Adelpia 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.

Adelpia 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 Adelpia, 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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail rates of)
Florida Power & Light Company.)

Docket No. 001148-EI
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.

**Florida Power & Light Company
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Page 1 of 1**

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.

Robert V. Elias, Esquire Division of Legal Services Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850	David L. Cruthirds, Esquire Attorney for Dynegy, Inc. 1000 Louisiana Street, Suite 5800 Houston, TX 77002-5050
John T. Butler, P.A. Steel Hector & Davis, LLP 215 S. Monroe Street, Suite 601 Tallahassee, Florida 32301	William G Walker, III Vice President Florida Power & Light Company 215 South Monroe Street, Suite 810 Tallahassee, FL 32301-1859
R. Wade Litchfield Attorney Florida Power & Light Company 700 Universe Boulevard Juno Beach, Florida 33408-0420	Michael B. Twomey, Esquire Post Office Box 5256 Tallahassee, Florida 32314-5256
Thomas A. Cloud/W. Christopher Browder Gray, Harris & Robinson, P.A. Post Office Box 3068 Orlando, Florida 32802-3068	Joseph A. McGlothlin, Esquire Vicki Gordon Kaufman, Esquire Attorneys for FIPUG McWhirter Reeves 117 S. Gadsden Street Tallahassee, Florida 32301
John W. McWhirter, Jr., Esquire Attorney for FIPUG McWhirter Reeves 400 North Tampa Street, Suite 2450 Tampa, Florida 33601-3350	Mr. Jack Shreve John Roger Howe Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, Florida 32399-1400

INTERESTED PARTIES:

Lee E. Barrett Duke Energy North America 5400 Westheimer Court Houston, Texas 77056-5310	Melissa Lavinson PG&E National Energy Group Company 7500 Old Georgetown Road Bethesda, Maryland 20814
Mr. Paul Lewis, Jr. Florida Power Corporation 106 East College Avenue, Suite 800 Tallahassee, Florida 32301-7740	Jon C. Moyle, Esquire Cathy M. Sellers, Esquire 118 North Gadsden Street Tallahassee, FL 32301

<p>CPV Atlantic, Ltd 145 NW Central Park Plaza, Suite 101 Port Saint Lucie, FL 34986</p>	<p>Frederick M. Bryant Florida Municipal Power Agency 2061-2 Delta Way Tallahassee, FL 32303</p>
<p>Steven H. McElhaney 2448 Tommy's Turn Oviedo, FL 32766</p>	<p>Homer O. Bryant 3740 Ocean Beach Blvd., Unit 704 Cocoa Beach, FL 32931</p>
<p>Richard Zambo, Esq. Florida Industrial Cogeneration Assoc. 598 SW Hidden River Ave. Palm City, FL 34990</p>	<p>Beth Bradley Director of Market Affairs Mirant Americas Development, Inc. 1155 Perimeter Center West Atlanta, GA 30338-5416</p>
<p>Linda Quick South Florida Hospital and Healthcare 6363 Taft Street Hollywood, FL 33024</p>	<p>Diane K. Kiesling, Esquire Landers Law Firm P.O. Box 271 Tallahassee, FL 32303-6290</p>
<p>Harry W. Long, Jr. Tampa Electric Company Post Office Box 111 Tampa, Florida 33601</p>	<p>Lee L. Willis James D. Beasley Ausley & McMullen Law Firm 227 South Calhoun Street Tallahassee, Florida 32301</p>
<p>Leslie J. Paugh, Esquire Landers & Parsons, P.A. 310 West College Avenue Tallahassee, Florida 32301</p>	<p>Ms. Angela Llewellyn Tampa Electric Company Post Office Box 111 Tampa, Florida 33601</p>
<p>Myron Rollins Black & Veatch Post Office Box 8405 Kansas City, MO 64114</p>	<p>Jennifer May-Brust, Esq. Colonial Pipeline Company 945 East Paces Ferry Road Atlanta, GA 30326</p>
<p>G. Garfield/R. Knickerbocker/S. Myers Day, Berry Law Firm CityPlace 1 Hartford, CT 06103-3499</p>	<p>Michelle Hershel Florida Electric Cooperatives Association, Inc. 2916 Apalachee Parkway Tallahassee, FL 32301</p>
<p>Thomas J. Maida/N. Wes Strickland Foley & Lardner Law Firm 300 East Park Avenue Tallahassee, FL 32301</p>	<p>Bruce May, Esquire Holland Law Firm Post Office Drawer 810 Tallahassee, FL 32302-0810</p>
<p>James J. Presswood, Jr. Legal Environmental Assistance Foundation 1114 Thomasville Road Tallahassee, FL 32303-6290</p>	<p>Michael Briggs Reliant Energy Power Generation, Inc. 801 Pennsylvania Avenue, Suite 620 Washington, DC20004</p>

<p>Sofia Solemou 526 15 Street, Apt. 14 Miami Beach, FL 33139</p>	<p>Thomas W. Kaslow Calpine Eastern The Pilot House, 2nd Floor Boston, Massachusetts 02110</p>
<p>Bill L. Bryant, Jr., Esquire Natalie B. Futch Katz, Kutter, Haigler, Alderman, Bryant & Yon, P.A. 106 East College Avenue, 12th Floor Tallahassee, Florida 32301</p>	<p>Marchris Robinson Manager, State Government Affairs Enron Corporation 1400 Smith Street Houston, Texas 77002-7361</p>
<p>Thomas J. Maida, Esquire Foley & Lardner 106 East College Avenue, Suite 900 Tallahassee, FL 32301</p>	<p>Timothy S. Woodbury Vice President - Strategic Services Seminole Electric Cooperative, Inc. 16313 North Dale Mabry Highway Tampa, Florida 33688-2000</p>
<p>Daniel Doorakian Moyle, Flanigan, Katz, Raymond & Sheehan, P.A. The Perkins House 118 North Gadsden Street Tallahassee, Florida 32301</p>	

Mark F. Sundback

Mark F. Sundback

EXHIBIT 2

STEEL ■
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John T. Butler, P.A.
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jbutler@steelhector.com

January 29, 2002

-VIA TELECOPY AND U.S. MAIL-

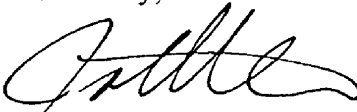
Mark Sundback, Esq.
Andrews & Kurth LLP
1701 Pennsylvania Ave., NW, Suite 300
Washington, DC 20006

Re: Florida Public Service Commission Docket No. 001148-EI

Dear Mr. Sundback:

This is to follow up on our conversation yesterday about FPL's objections to the SFHHA's Interrogatory No. 46. I understand that you are interested in information on disposition of FPL property to affiliates or other entities in which an affiliate has a financial interest. I have discussed your request with FPL and am advised that all dispositions of FPL property to affiliates, as well as to partnerships, joint ventures or other entities in which affiliates have a financial interest (including minority interests), are described in FPL's diversification reports. Copies of FPL's diversification reports for the years 1985 to present were made available to the SFHHA on November 9, 2001, in response to the SFHHA's Request No. 1. Since you have not yet scheduled an inspection of FPL's document productions, I do not believe that the SFHHA has yet reviewed the diversification reports but expect that you will find they contain the information you are seeking.

Sincerely,



John T. Butler, P.A.

EXHIBIT 3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail rates of) Docket No. 001148-EI
Florida Power & Light) Dated: February 6, 2002
Company.)
_____)

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE
IN OPPOSITION TO MOTION OF SOUTH FLORIDA HOSPITAL AND
HEALTHCARE ASSOCIATION TO COMPEL DISCOVERY RESPONSES**

Florida Power & Light Company ("FPL") responds as follows to the Motion of South Florida Hospital and Healthcare Association ("SFHHA") to Compel Discovery Responses (the "Motion to Compel"):

BACKGROUND

The Motion to Compel relates to two SFHHA interrogatories, Nos. 32 and 33, which read as follows:

Interrogatory No. 32

Please identify the entities receiving gains on the sales of interests in FiberNet, Adlephia 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 timely objected to Interrogatory Nos. 32 and 33, as follows:

Interrogatory Nos. 32 and 33. These interrogatories relate at least in part to transactions between FPL's unregulated affiliates, or between an unregulated FPL affiliate and an unaffiliated entity. To the extent that they relate to such transactions, FPL objects to these interrogatories as beyond the proper scope of discovery (see objection to definition of "FPL" above). FPL will respond to these interrogatories with respect to transactions involving FPL.

"FPL" This definition purports to include FPL's parent and its affiliates. The jurisdiction of the Florida Public Service Commission -- and hence the permissible scope of inquiry in this proceeding -- concerning the parent and affiliates of a utility is limited. See §§366.05(9) and 366.093(1), Fla. Stat. (2000). Moreover, the scope of discovery from a party is limited to documents within the possession, custody or control of that party. See, e.g., *Southern Bell Telephone and Telegraph Co. v. Deason*, 632 So.2d 1377 (Fla. 1994). FPL objects to the inclusion of FPL's parent and affiliates within the definition of "FPL" to the extent that it expands the scope of the SFHHA Third Request beyond the bounds of the Commission's jurisdiction and/or the permissible scope of discovery.

Florida Power & Light Company's Objections to and Request for Clarification of the South Florida Hospital and Healthcare Association's Third Set of Interrogatories and Request to Produce, dated January 3, 2002, at 6 and 10.

Consistent with those objections, FPL responded to Interrogatory Nos. 32 and 33 on January 23, 2002, as follows:

(Interrogatory No. 32) 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.

(Interrogatory No. 33) FPL did not participate in the referenced cable limited partnership. Therefore, this interrogatory is beyond the scope or proper discovery and, consistent with FPL's earlier objections, FPL is not required to respond.

THE MOTION TO COMPEL IS FATALY FLAWED

The Motion to Compel appears to be intended to inflame controversy rather than facilitate legitimate discovery. It is fundamentally premised on the SFHHA's expressed concern that "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." Motion to Compel at 2. FPL has no objection to addressing legitimate questions directed to whether "value" has been improperly shifted out of FPL to an affiliate or other third party. However, Interrogatory Nos. 32 and 33 go well beyond that legitimate inquiry, and it is this overbreadth that has occasioned FPL's objections and the limitations on its answers to those interrogatories.

Discovery in Commission rate proceedings must relate to "information which affects a utility's rates or cost of service." §366.093(2), Fla. Stat. (2001). In the present context, this means that discovery seeking to determine whether a utility has improperly transferred property or other valuable assets to an unregulated affiliate may be appropriate. However, Interrogatory Nos. 32 and 33 skip completely past this threshold issue and seek discovery on unregulated activities and dispositions of unregulated interests. The SFHHA would have one assume that there have been improper transfers of valuable assets from the utility to its affiliates and then, based upon this unsupported assumption, require production of information aimed at tracing the use and disposition of those assets by unregulated interests.

FPL's answers to Interrogatory Nos. 32 and 33 provide all the information to which the SFHHA is legitimately entitled. Interrogatory No. 32 asks about the gain on sales of interests in three entities. FPL's answer confirms that there was no gain on the disposition of FPL fiber-optic lines to FiberNet (one of the three entities) and that FPL was not involved in the other transactions. Interrogatory No. 33 asks about partners in a cable limited partnership, and FPL confirmed that it did not participate in that partnership.¹ There is nothing in FPL's responses to suggest that FPL made any improper transfers to any of the unregulated entities referenced in the interrogatories. No predicate has been established for the SFHHA to explore further into the business dealings of those unregulated entities. Permitting the SFHHA to conduct such discovery without a proper predicate clearly would be beyond the legitimate scope of discovery.

Moreover, the Commission should be aware that the SFHHA has had an explicit, direct opportunity to explore the nature of FPL's property dispositions, but so far has not chosen to avail itself of that opportunity. Shortly before filing the Motion to Compel, counsel for the SFHHA contacted counsel for FPL to inquire about Interrogatory No. 41, which relates to dispositions of property by FPL. The SFHHA's counsel indicated that the SFHHA is particularly interested in dispositions of FPL property to affiliates or other entities in which an affiliate has a financial interest. FPL's counsel promptly wrote back to the SFHHA's counsel to advise as follows:

all dispositions of FPL property to affiliates, as well as to partnerships, joint ventures or other entities in which affiliates have a financial interest (including minority interests), are described in

¹ FPL's answer to Interrogatory No. 33 is unambiguous as to the absence of *any* FPL involvement with the referenced "cable limited partnership." However, in order to clarify further that there were no transfers of valuable assets from FPL to that entity, FPL will supplement its answer to read as follows: "See the answer to Interrogatory No. 32. FPL did not participate in the referenced cable limited partnership, whether through the contribution of assets or any other consideration. Therefore, this interrogatory is beyond the scope of proper discovery and, consistent with FPL's earlier objection, FPL is not required to respond."

FPL's diversification reports. Copies of FPL's diversification reports for the years 1985 to present were made available to the SFHHA on November 9, 2001, in response to the SFHHA's Request No. 1.

Letter from John Butler to Mark Sundback, dated January 29, 2002, a copy of which is attached hereto as Exhibit 1. After making those documents available to the SFHHA for inspection on November 9, 2001, as an additional courtesy FPL offered a few days later to copy and send them to the SFHHA. *See* Letter from John Butler to Mark Sundback, dated November 15, 2001, a copy of which is attached hereto as Exhibit 2. To date, the SFHHA has neither inspected the responsive documents nor asked FPL to copy them.²

In sum, the SFHHA seeks through Interrogatory Nos. 32 and 33 to conduct inflammatory discovery into business dealings of FPL's unregulated affiliates and other unregulated entities, without establishing the least predicate for doing so. FPL confirmed in its responses to Interrogatory Nos. 32 and 33 that FPL was not involved in the entities to which those interrogatories refer. FPL further confirmed in its response to Interrogatory No. 32 the legitimate basis upon which the one property transfer from FPL to such an entity (FiberNet) occurred. And the SFHHA has had an open invitation for almost four months to review documents detailing all transfers of FPL property to FPL's affiliates and other entities in which those affiliates have interests. There is simply no excuse, no justification to allow the SFHHA to proceed with its

² At least two other SFHHA Requests for Documents (Nos. 24 and 42) request information that the SFHHA should have reviewed and considered before launching its Motion to Compel. Request No. 24 asks for "a copy of any contract, agreement or undertaking with (a) FiberNet, (b) Adelphia Communications Corporations, or (c) the 'cable limited partnership' referenced at p. 25 of the FPL Group 2000 Annual Report, or successors of any of the foregoing." Request No. 42 asks for copies of "any contracts or other undertakings or agreements involving commercial relations between FPL and Olympus Communications LP (*see* FPL Group Rating Agency Presentation For 1999)." Documents responsive to Request No. 24 have been available since January 23, 2002, and the documents responsive to Request No. 42 will be made available when FPL's response to the discovery set in which Request No. 42 is contained, on February 8, 2002.

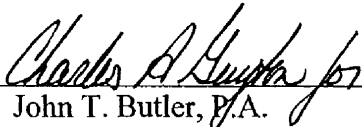
inflammatory discovery where it has failed so utterly to establish -- or even to seek to establish -- a basis for that discovery. The Motion to Compel is groundless.

WHEREFORE, FPL requests that the Motion to Compel be denied.

Respectfully submitted,

R. Wade Litchfield, Esq.
Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: 561-691-7101

Steel Hector & Davis LLP
Attorneys for Florida Power & Light Company
200 South Biscayne Boulevard
Suite 4000
Miami, Florida 33131-2398
Telephone: 305-577-2939

By: 
John T. Butler, P.A.
Fla. Bar No. 283479

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 6th day of February, 2002, to the following:

Robert V. Elias, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Florida Industrial Power Users Group
c/o John McWhirter, Jr., Esq.
McWhirter Reeves
400 North Tampa Street, Suite 2450
Tampa, FL 33601-3350

Thomas A. Cloud, Esq.
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801

J. Roger Howe, Esq.
Office of Public Counsel
c/o Florida Legislature
111 W. Madison Street
Room No. 812
Tallahassee, Florida 32399-1400

Michael B. Twomey, Esq.
Post Office Box 5256
Tallahassee, FL 32314-5256

Andrews & Kurth Law Firm
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Joseph A. McGlothlin, Esq.
Vicki Gordon Kaufman, Esq.
McWhirter Reeves
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Tallahassee, Florida 32301

David Cruthirds, Esq.
Vice President and Regulatory Counsel
Dynege, Inc.
1000 Louisiana Street, Suite 5800
Houston, Texas 77002-5050

Linda Quick, President
South Florida Hospital & Healthcare Assn
6363 Taft Street
Hollywood, FL 33024

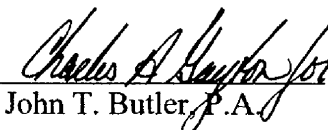
By: 
John T. Butler, P.A.

Exhibit 1

STEEL ■
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■ DAVIS™

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John T. Butler, P.A.
305.577.2939
jbutler@steelhector.com

January 29, 2002

-VIA TELECOPY AND U.S. MAIL-

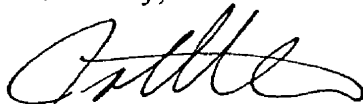
Mark Sundback, Esq.
Andrews & Kurth LLP
1701 Pennsylvania Ave., NW, Suite 300
Washington, DC 20006

Re: Florida Public Service Commission Docket No. 001148-EI

Dear Mr. Sundback:

This is to follow up on our conversation yesterday about FPL's objections to the SFHHA's Interrogatory No. 46. I understand that you are interested in information on disposition of FPL property to affiliates or other entities in which an affiliate has a financial interest. I have discussed your request with FPL and am advised that all dispositions of FPL property to affiliates, as well as to partnerships, joint ventures or other entities in which affiliates have a financial interest (including minority interests), are described in FPL's diversification reports. Copies of FPL's diversification reports for the years 1985 to present were made available to the SFHHA on November 9, 2001, in response to the SFHHA's Request No. 1. Since you have not yet scheduled an inspection of FPL's document productions, I do not believe that the SFHHA has yet reviewed the diversification reports but expect that you will find they contain the information you are seeking.

Sincerely,



John T. Butler, P.A.

Exhibit 2

STEEL ■
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■ DAVIS

Steel Hector & Davis LLP
200 South Biscayne Boulevard
Miami, Florida 33131-2398
305.577.7000
305.577.7001 Fax
www.steelhector.com

November 15, 2001

-VIA FEDERAL EXPRESS-

Mark F. Sundback, Esq.
Andrews & Kurth LLP
1701 Pennsylvania Ave., NW, Suite 300
Washington, DC 20006

Thomas M. Karr, P.A.
305.577.2862
tkarr@steelhector.com

Re: Florida Public Service Commission Docket No. 001148-EI

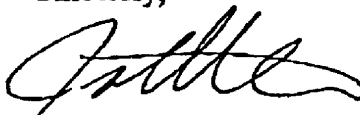
Dear Mr. Sundback:

This is in response to your request today that I send you another copy of the materials that I served on Ken Wiseman by mail last Friday. I am surprised and puzzled that your office has not yet received those materials, as mail usually takes no more than a couple of days. As with the original package, the following materials are enclosed, all of which related to the South Florida Hospital and Healthcare Association's First Set of Interrogatories and Request to Produce ("SFHHA First Request"):

- Florida Power & Light Company's ("FPL") Response;
- FPL's privilege log for the SFHHA First Request; and
- the SFHHA's service copy of FPL's Motion for Protective Order Regarding the South Florida Hospital and Healthcare Association's First Set of Interrogatories and Request to Produce.

Ken mentioned to me that the SFHHA would like to explore the possibility of having all responsive documents copied and sent to you if the volume is not too large. At this time, there are approximately 1,000 pages of responsive documents, most 8½" x 11", but a few 11" x 17". FPL can copy them for you at a cost of \$.08 per page for 8½" x 11" pages and \$.30 per page for 11" x 17" pages. The total cost would be approximately \$115.00. Please let me know if you are interested in having FPL make a complete set of copies for you on that basis.

Sincerely,



John T. Butler, P.A.

Enclosures

EXHIBIT 4

STEEL ■
HECTOR
& DAVISSM

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www.steelhector.com

John T. Butler, P.A.
305.577.2939
jbutler@steelhector.com

February 7, 2002

-VIA FEDERAL EXPRESS-

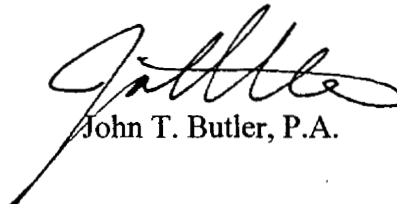
Mark Sundback, Esq.
Andrews & Kurth LLP
1701 Pennsylvania Ave., NW, Suite 300
Washington, DC 20006

Re: Florida Public Service Commission Docket No. 001148-EI

Dear Mr. Sundback:

As discussed in footnote 1 of FPL's response to the Motion of South Florida Hospital and Healthcare Association to Compel Discovery Responses, FPL has supplemented its response to the SFHHA's Interrogatory No. 33. Enclosed is the supplemental response, together with the affidavit of J.E. Leon attesting to same.

Sincerely,



John T. Butler, P.A.

Enclosures

cc: Counsel for Parties of Record (w/encl.
Commissioner Braulio L. Baez, prehearing officer for Docket No. 001148-EI

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.

See the answer to Interrogatory No. 32. FPL did not participate in the referenced cable limited partnership, whether through the contribution of assets or any other consideration. Therefore, this interrogatory is beyond the scope of proper discovery and, consistent with FPL's earlier objection, FPL is not required to respond.

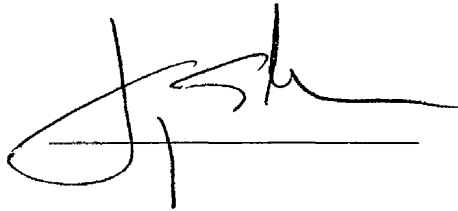
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State of Florida)

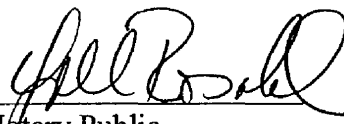
County of Dade)

Before me, the undersigned authority, personally appeared J. E. Leon, who first being duly sworn, deposes and states:

My name is J. E. Leon. I am employed by Florida Power & Light Company (FPL) as Senior Attorney. I prepared or had prepared under my supervision and control FPL's supplemental response to Interrogatory No. 33 to South Florida Hospital Association's Third Set of Interrogatories to Florida Power & Light Company in Docket No. 001148-EI. The supplemental interrogatory response is true and correct to the best of my knowledge and belief.



Sworn to and subscribed before me this 7th day of February, 2002, by J. E. Leon, who is personally known to me.



Notary Public
State of Florida

Notary Stamp:

