

June 14, 2002

Charles A. Guyton  
850.222.3423

**-VIA HAND DELIVERY-**

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

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**Re: Docket Nos. 020262-EI and 020263-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company are the original and seven (7) copies of Florida Power & Light Company's Motion to Strike FACT Reply to Florida Power & Light Company's Response to Petition for Leave to Intervene, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 2000, and the word processing software in which the document appears is Word 2000.

If there are any questions regarding this transmittal, please contact me at 222-2300.

Very truly yours,



Charles A. Guyton

- AUS \_\_\_\_\_
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1 Enclosure

1 cc: All Parties of Record

*to each file*

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Petition To Determine Need For** ) **Docket No. 020262-EI**  
**an Electrical Power Plant in Martin County** )  
**by Florida Power & Light Company.** )  
\_\_\_\_\_ )

**In re: Petition To Determine Need For** ) **Docket No. 020263-EI**  
**an Electrical Power Plant in Manatee County** )  
**by Florida Power & Light Company.** )  
\_\_\_\_\_ ) **Dated: June 14, 2002**

**FLORIDA POWER AND LIGHT COMPANY’S MOTION TO STRIKE FACT  
REPLY TO FLORIDA POWER AND LIGHT COMPANY’S RESPONSE TO  
PETITION FOR LEAVE TO INTERVENE**

Florida Power & Light Company (“FPL”), pursuant to Rule 28-106.204, Florida Administrative Code (“F.A.C.”), hereby moves to strike the Florida Action Coalition Team’s (“FACT”) Reply to FPL’s Response to Petition for Leave to Intervene and Suggestion for Delay (“FACT’s Reply”), and states as follows:

**THE UNIFORM RULES PROHIBIT REPLIES, AND  
THEREFORE FACT’S REPLY MUST BE STRICKEN**

On May 20, 2002, FACT filed a Petition for Leave to Intervene and Suggestion for Delay (“FACT’s Petition”). FPL filed its Response to FACT’s Petition (“FPL’s Response”) on May 30. At that point the briefing closed. There is simply no place under the applicable procedural rules for further reargument by the moving party.

Rule 28-106.204(1) authorizes the filing of a single response to a motion. The movant is allowed no right of reply.<sup>1</sup> In ruling upon motions, agencies have repeatedly refused to consider

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<sup>1</sup> Similarly, Rule 25-22.037(2), which applied prior to the adoption of the Uniform Rules did not allow a reply to a response to a motion.

papers other than the motion and the response thereto. *See e.g., Harden v. DEP*, 1998 Fla. Div. Adm. Hear. LEXIS 6069 (DEP 1998); *in Re: Application for a Rate Increase in Brevard County by General Development Utilities Inc. (Port Malabar Division)*, 92 FPSC 4:306; *In Re: Application for amendment of Certificate No. 247-S by North Fort Myers Utility, Inc.*, 96 FPSC 3:120; *see also, In re: Petition of Gainesville Gas Company for Authority to Increase and Restructure Rates and Charges*, 88-9 FPSC 202 (denying leave to file reply memorandum).

Consistent with this line of authority, the Public Service Commission (“Commission”) has routinely refused to allow attempts by a movant to have the last word in contravention of the rules. For example, in *In re: Adoption of Numeric Conservation Goals by Florida Power & Light Company*, 98 FPSC 10:419, the Commission struck a reply to a response to a motion for a procedural order, holding that “the pleading cycle must stop at a reasonable point” and “unequivocal precedent” prohibited such replies. *Id.*; *see also* Order No. PSC-01-0099-PCO-EI (January 12, 2001) (refusing to consider Colonial Pipeline Company’s “comments” on FPL’s Response to its Petition to Intervene); *see also In re: Petition by ITCDeltaCom Communications, Inc. d/b/a ITCDeltaCom for Arbitration of Certain Unresolved Issues*, 01 FPSC 2:350 (2000) (the Commission refused a request to file a reply in support of a motion for reconsideration); *In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc.*, Order No. PSC-00-1777-PCO-TP, 00 FPSC 9:541 (striking reply in support of motion for rehearing; “neither the Uniform Rules nor our rules contemplate a reply to a response to a Motion”).

The cases cited above establish conclusively that the Uniform Rules do not contemplate reply briefs. Based the clear intent of Rule 28-106.204, and the long line of cases that interpret it

to bar any response to a motion other than a single response in opposition, FACT's Reply must be given no consideration.

Because the Uniform Rules establish clearly that FACT's Reply is improper and must be stricken, FPL will not address the points raised therein at this time. In the event that the Commission denies this motion, and decides to consider FACT's Reply, FPL would respectfully request leave to file a brief response to FACT's Reply.

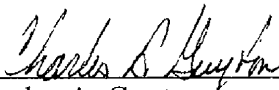
**CONCLUSION**

For the foregoing reasons, FPL requests that the Florida Action Coalition Team's Reply to FPL's Response to Petition for Leave to Intervene and Suggestion for Delay be stricken.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Florida Power and Light Company's Motion To Strike FACT Reply To Florida Power and Light Company's Response To Petition For Leave To Intervene has been served by email and U.S. mail this 14<sup>th</sup> day of June, 2002 to the following:

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