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July 19, 2002

VIA FEDERAL EXPRESS

001148-EZ

Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399

Re: *South Florida Hospital and Healthcare Association, et al. v.
Lila A. Jaber, et al.*, Case No. SC02-1023

Dear Sir or Madam :

Enclosed for filing are the original and seven (7) copies of the Answer of Appellants To Motion For Extension of Time To Serve Answer Brief in the above-referenced proceeding. Also enclosed is an additional copy to be date-stamped and returned in the enclosed self-addressed envelope.

A copy of this Motion is being served on all parties of record in the referenced proceeding. Do not hesitate to contact the undersigned if you have any questions regarding the above.

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Enclosures

Respectfully submitted,

KL Wiseman
Kenneth L. Wiseman
An Attorney for
South Florida Hospital and Healthcare
Association

cc: Parties of Record

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IN THE SUPREME COURT OF FLORIDA

South Florida Hospital and Healthcare)
Association, et al.,)
)
Appellants,)
)
)
)
)
)
Lila A Jaber, et al.)
)
Appellees)

Case No. SC02-1023

**ANSWER OF APPELLANTS IN OPPOSITION TO
MOTION FOR EXTENSION OF TIME TO SERVE ANSWER BRIEF**

Appellants, South Florida Hospital and Healthcare Association, *et al.*, hereby file their answer in opposition to Appellees' motion for an extension of time to serve their Answer Brief. In support hereof, Appellants state as follows:

1. As support for their claim that they need 32 days, in addition to the 25 days provided by the Court's rules for service of their briefs,¹ Appellees argue that (i) the record is voluminous, consisting of over 13,000 pages, which will entail "a painstaking and time consuming review of the record," and (ii) counsel have other commitments they must honor. Appellees also argue that Appellants will not be prejudiced by the grant of Appellees' motion. To support that claim, Appellees infer that Appellants have delayed matters because Appellants allegedly waited to file their Initial Brief until the end of the 70-day period provided by Fla. R. App. 9.110. Appellees also state that because the order on appeal granted a rate reduction, Appellants will not be adversely affected "in any way" by a delay in Appellees filing of their briefs.

¹ The 25 days consist of 20 days plus five additional days based upon service by mail.

2. Appellees' claims in support of their motion are misleading.

3. First, only a small portion of the 13,000 page record relates to the narrow issues that are before the Court. As a review of Appellants' Initial Brief shows the issues in this case largely are whether Appellee Florida Public Service Commission ("Commission") acted in violation of various provisions of Florida law in approving a non-unanimous settlement without affording Appellants, who opposed the settlement, a statutorily mandated hearing. Another issue is whether the Commission's order must be remanded based upon the Commission's failure to make findings of fact. Appellees are well aware that the vast majority of the 13,000 page record is irrelevant to those issues. Thus, there is no substance to Appellees' claim that the size of the record inhibits their ability to serve their briefs within the 25-day time period afforded by the rules.²

4. Appellees' claim that their counsel have other commitments also raises no valid basis for the requested extension of time. This case is on the current time track because Appellees insisted on having the Commission take up and rule on the non-unanimous settlement within just days of its signing. Thus, Appellees, in the proceedings below, had a need to expedite this proceeding. Now, in contrast, they seek to delay the timely resolution of this case. But the fact is that Appellees have known since April that this case would be on the current time track, and it is on that track because of the haste at which they acted below. Appellants thus should not be prejudiced by Appellees' failure to schedule their other unidentified commitments consistent with the schedule they knew, or should have known, would take place in this case.

² The Commission and Appellee Florida Power & Light Company ("FPL") also omit to tell the Court that as a courtesy, Appellants served them by overnight delivery thereby providing them three to four days additional time to prepare their briefs.

5. And, that brings us to Appellees' last claims, *i.e.*, that Appellants acted in less than expeditious fashion by waiting until the last minute to file their Initial Brief and that Appellants allegedly will not be harmed by the grant of an extension of time. These claims misstate the facts and the effect of the delay that Appellees are seeking.

6. First, with respect to the timing of the filing of Appellants' brief, the brief in fact was ready approximately two weeks in advance of the time it was filed. However, as the Commission is well aware, on the day following receipt of the index of the record from the clerk of the Commission, undersigned counsel called the clerk of the Commission to request that a critical document that was not included in the index be added to it. Undersigned counsel was advised by the Commission's clerk that it took two weeks to reach FPL's counsel to discuss and resolve this error. During that interval, Appellants could not file their brief because of the lack of a record citation to the missing document. Appellants filed their brief as soon as the omission was corrected. Thus, the reason why Appellants' brief was not filed earlier lays at the feet of the Commission and FPL. It is disingenuous for them to now claim that Appellants dragged their feet in filing their Initial Brief.

7. Finally, contrary to Appellees' claim, Appellants will be harmed substantially by a grant of an extension of time. The basis for this appeal is that Appellants evidence shows that even with the rate reduction provided by the settlement that was approved by the Commission, FPL's base rates are still excessive in that they are designed to collect at least \$285 million per year in excess of just and reasonable rates. Every day that goes by during which FPL charge these excessive rates represents a day when all FPL ratepayers are being overcharged. As to Appellants in particular, which are for the most part hospitals serving south Florida, every day that Appellants pay the excessive rates represents a day when dollars are paid out for what

amount to unlawful utility charges that could be used to provide critical medical care to Florida residents. That is a harm that will be exacerbated by any delay in these proceedings.

WHEREFORE, for the foregoing reasons, Appellants request that Appellees motion for an extension of time to file their briefs be denied.

Respectfully submitted,

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July 19, 2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by United States mail this 19th day of July, 2002 to the following parties of record:

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