

ORIGINAL

STEEL ■  
HECTOR  
& DAVIS™

Steel Hector & Davis LLP  
215 South Monroe, Suite 601  
Tallahassee, Florida 32301-1804  
850.222.2300  
850.222.8410 Fax  
www.steelhector.com

August 21, 2002

Elizabeth C. Daley  
850.222.2300  
edaley@steelhector.com

**VIA HAND DELIVERY**

Blanca S. Bayó, Director  
Division of the Commission Clerk &  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RECEIVED-FPSC  
02 AUG 21 PM 4:21  
COMMISSION  
CLERK

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

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and seven (7) copies of FPL's Motion to Compel Intervenor's Deposition, 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,



Elizabeth C. Daley

AUS  
CAF  
CMP  
COM  
CTR  
ECR  
GCL  
OPC  
MMS  
SEC  
OTH

— ECD:gc  
— Enclosure  
— Copy to: Counsel for All Parties of Record  
— TAL\_1998 43488v1

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE  
08844 AUG 21 02

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Determination of Need )  
for Proposed Electrical Power Plant in )  
Martin County of Florida Power and )  
Light Company )  
\_\_\_\_\_ )

DOCKET NO. 020262-EI

In re: Petition for Determination of Need )  
For Proposed Electrical Power Plant in )  
Manatee County of Florida Power and )  
Light Company )  
\_\_\_\_\_ )

DOCKET NO. 020263-EI

Filed: August 21, 2002

**FLORIDA POWER & LIGHT COMPANY'S  
MOTION TO COMPEL INTERVENOR'S DEPOSITION**

Florida Power & Light Company ("FPL"), pursuant to Rules 28-106.206 and 28-106.303, Florida Administrative Code, hereby moves to compel the deposition of Ernie Bach, representative of the Florida Action Coalition Team ("FACT"), an intervenor in this proceeding, and in support thereof states:

1. FPL seeks to take Mr. Bach's deposition as to FACT's intervention and positions in the present docket concerning FPL's Petitions for Determination of Need for Proposed Electric Power Plant.

2. On August 5, 2002, FPL issued a Notice of Deposition of Mr. Bach, who is executive director of FACT, for August 13, 2002. Upon receipt of the August 5 notice, Michael Twomey, counsel for FACT, indicated to undersigned counsel that he intended to object to FPL's Notice of Deposition of Mr. Bach.

3. On August 8, 2002, FPL issued an Amended Notice of Deposition to change the date of the deposition to August 28, 2002, in order to accommodate Mr. Bach's vacation

schedule as requested by Mr. Twomey. A copy of the Amended Notice of Deposition is attached hereto as Exhibit 1.

4. On August 8 and again on August 16, FACT's counsel indicated to undersigned counsel that he intended to object to the Amended Notice of Deposition. FACT's counsel indicated that he would serve the objection on August 19, which was ten days after service of FPL's Amended Notice of Deposition. After the close of business on August 19, 2002 (7:30 p.m.) FACT's counsel faxed objections arguing that FPL alone carries a burden of proof, that FACT will offer no witness, that FACT has no burden to meet in this case, that FPL's discovery request is an effort to harass and punish FACT for intervening and that FACT will set forth more specific objections in a motion for protective order to be filed on August 23, 2002. FACT's objections to the deposition are attached as Exhibit 2.

5. FACT's objections are untimely. They were not served within ten days, as required by Order No. PSC-02-0992-PCO-EI. A motion for protective order filed after the specified time for raising objections is not a proper means of raising objections and should not be allowed as a means of raising belated and untimely objections.

6. FPL has worked with FACT's counsel to avoid this dispute and this motion to compel. Each time FPL's counsel has spoken with FACT's counsel, FACT's counsel has stated an intent to object without stating specific grounds and has attempted to drag out FACT's time for stating specific objections. Even FACT's untimely objections fail to state specific objections and seek to drag out further the time to file objections.

7. Time for discovery is running out. FPL needs the discovery requested from FACT for its trial preparations and to contest FACT's standing. The deposition of Mr. Bach was scheduled at FACT's convenience to accommodate Mr. Bach's vacation schedule and should

occur as noticed on August 28, 2002. To preserve that date and to protect against FACT's repeated attempts to defer this matter, FPL has been forced to move to compel Mr. Bach's deposition.

8. FPL is entitled to take the deposition of Mr. Bach, or another representative of FACT, for discovery purposes in order to determine as soon as possible (i) who are the members of FACT and whether FACT has standing as it has pled; (ii) FACT's positions on the issues in this case, (iii) FACT's witnesses, if any; and (iv) the materials FACT intends to rely upon in support of its positions. Receiving responses to basic questions from FACT and other intervenors is essential to FPL's ability to participate effectively in this proceeding.

9. FPL contests FACT's standing to intervene in this proceeding. Notwithstanding the Prehearing Officer's finding that FACT has "adequately alleged that the substantial interests of a substantial number of its members may be affected by the Commission's decision in these dockets," Order No. PSC-02-0934-PCO-EI (emphasis added), FACT still must "prove up" its allegations of standing in order to retain party status as an intervenor. See Edgewater Beach Owners Ass'n, Inc. v. Bd of County Commissioners of Walton Co., 1995 WL 1052993 (DOAH Case No. 95-0437DRI), *on remand from Edgewater Beach Owners Ass'n, Inc. v. Bd of County Commissioners of Walton Co.*, 645 So. 2d 541, 543 (Fla. 1<sup>st</sup> DCA 1994). In Edgewater Beach, an administrative law judge found, on remand from the First District Court of Appeal, that a petitioner lacked standing to appeal a development order because "the greater weight of the evidence" showed the petitioner had failed to present facts necessary to "prove up" the petitioner's allegations of standing that the appellate court initially found to be sufficient. Edgewater Beach (DOAH case), *supra*. See also Ocala/Silver Springs Hilton v. Ocala Park Centre Maintenance Assoc., 1997 WL 1052617 (DOAH Case No. 96-3848, April 24,

1997)(Petitioner to intervene was required to prove up its allegations of standing in the course of a formal administrative hearing.)

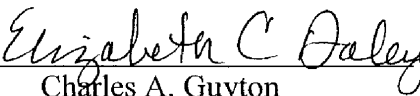
10. FPL seeks to learn whether FACT is acting to protect the interests of individual customers or to protect the economic interests of one or more independent power producers. FPL needs to take Mr. Bach's deposition and receive other discovery to gain further understanding of FACT's proof of standing, if any, in order to contest FACT's standing as an intervenor. FPL also needs to more fully understand FACT's position and the basis for its position since FACT is not offering testimony. Consequently, FPL's motion to compel should be granted.

WHEREFORE undersigned counsel respectfully requests that this Commission compel Mr. Bach's attendance at a deposition as previously noticed by FPL to be held in Clearwater, Florida, at 10 a.m. on August 28, 2002.

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  
215 South Monroe Street  
Suite 601  
Tallahassee, Florida 32301  
Telephone: 850-222-2300

By   
Charles A. Guyton  
Elizabeth C. Daley

**CERTIFICATE OF SERVICE**  
**Docket Nos. 020262-EI and 020263-EI**

I HEREBY CERTIFY, that on this 21<sup>st</sup> day of August, 2002, a copy of Florida Power & Light Company's Motion To Compel the Deposition of Ernie Bach was served electronically (\*) and by U.S. Mail to the following:

Martha Carter Brown, Esq.\*  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, Florida 32399-0850  
mbrown@psc.state.fl.us

D. Bruce May, Jr., Esq.\*  
Karen D. Walker  
Holland & Knight LLP  
315 S Calhoun Street  
Suite 600  
Tallahassee, Florida 32301  
dbmay@hkllaw.com

Michael B. Twomey, Esq.\*  
P.O. Box 5256  
Tallahassee, Florida 32314-5256  
miketwomey@talstar.com

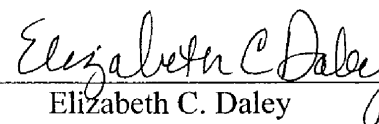
R. L. Wolfinger  
South Pond Energy Park, LLC  
c/o Constellation Power Source  
111 Market Place, Suite 500  
Baltimore, MD 21202-7110

Jon C. Moyle, Jr., Esq.\*  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz  
Raymond & Sheehan, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301  
jmoylej@moylelaw.com

Ernie Bach, Executive Director\*  
Florida Action Coalition Team  
P.O. Box 100  
Largo, Florida 33779-0100  
ernieb@gte.net

John W. McWhirter\*  
McWhirter Reeves, McGlothlin,  
Davidson, Decker, Kaufman, & Arnold, P.A.  
400 North Tampa Street, Suite 3350  
Tampa, Florida 33602  
Telephone: (813) 224-0866  
Facsimile: (813) 221-1854

Vicki Gordon Kaufman\*  
Timothy J. Perry  
McWhirter Reeves, McGlothlin,  
Davidson, Decker, Kaufman, &  
Arnold, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
Telephone: (850) 222-2525  
Facsimile: (850) 222-5606

By:   
Elizabeth C. Daley

# **EXHIBIT 1**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of Need )  
for Proposed Electrical Power Plant in )  
Martin County of Florida Power and )  
Light Company )  
\_\_\_\_\_ )

DOCKET NO. 020262-EI

In re: Petition for Determination of Need )  
For Proposed Electrical Power Plant in )  
Manatee County of Florida Power and )  
Light Company )  
\_\_\_\_\_ )

DOCKET NO. 020263-EI

Filed: August 8, 2002

COMMISSION  
CLERK

AUG - 8 PM 4:07

RECEIVED FPSC

**FLORIDA POWER & LIGHT COMPANY'S  
AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM**

TO: Michael B. Twomey, Esq.  
P.O. Box 5256  
Tallahassee, Florida 32314  
Telephone: 850-421-9530  
FAX: 850-421-8543

PLEASE TAKE NOTE THAT, PURSUANT TO Florida Rule of Civil Procedure 1.310, Florida Power & Light Company ("FPL") will take the deposition upon oral examination of Ernie Bach, Executive Director of the Florida Action Coalition Team ("FACT"). The foregoing deposition will take place on **August 28, 2002, beginning at 10 a.m.**, before a representative of Esquire Deposition Services, a Notary Public or some other officer authorized by law to take depositions. The deposition will take place at the following location:

**Airport Business Center  
4500 140th Avenue North, Suite 101  
Clearwater, FL 33762  
(Telephone: 727-539-7002)**

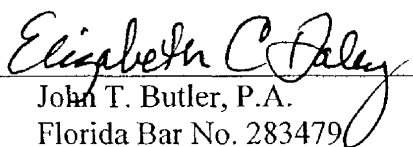


The deponent shall bring to his deposition copies of documents concerning the organization, officers, and membership of the Florida Action Coalition Team ("FACT") and copies of documents concerning the decision by FACT members or representatives to intervene in FPL's Determination of Need proceeding.

Said deposition is to be used for discovery purposes, for use at trial, or both, and will continue from day to day until complete. Individuals with disabilities needing a reasonable accommodation to participate in this proceeding should contact John T. Butler, Esq., at (305) 577-2939. If hearing impaired, call 1-800-955-8771 (TDD) or 1-800-955-8770 (V) via Florida Relay Service for assistance.

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: 305-577-2872  
Facsimile: 305-577-7001

By:   
John T. Butler, P.A.  
Florida Bar No. 283479  
Elizabeth C. Daley  
Florida Bar No. 0104507

**CERTIFICATE OF SERVICE**  
**Docket Nos. 020262-EI and 020263-EI**

I HEREBY CERTIFY, that on this 8<sup>th</sup> day of August, 2002, a copy or courtesy copy (\*) of Florida Power & Light Company's Amended Notice of Taking Deposition of FACT representative was served electronically (\*\*) and by U.S. Mail to the following:

Martha Carter Brown, Esq.\*\*  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, Florida 32399-0850  
mbrown@psc.state.fl.us

D. Bruce May, Jr., Esq.\*\*  
Karen D. Walker  
Holland & Knight LLP  
315 S Calhoun Street  
Suite 600  
Tallahassee, Florida 32301  
dbmay@hkklaw.com

Robert Scheffel Wright, Esq.\*\*  
Diane K. Kiesling, Esq.  
John T. LaVia, III, Esq.  
Landers & Parsons, P.A.  
310 W. College Avenue  
Tallahassee, Florida 32301  
schef@landersandparsons.com

R. L. Wolfinger  
South Pond Energy Park, LLC  
c/o Constellation Power Source  
111 Market Place, Suite 500  
Baltimore, MD 21202-7110

Joseph A. Regnery, Esq.  
Timothy R. Eves  
Calpine Eastern Corporation  
2701 North Rocky Point Drive  
Suite 1200  
Tampa, Florida 33607

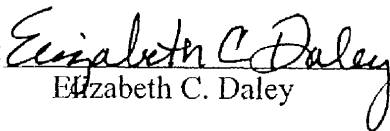
Michael B. Twomey, Esq.\*\*  
P.O. Box 5256  
Tallahassee, Florida 32314-5256  
miketwomey@talstar.com

Jon C. Moyle, Jr., Esq.\*\*  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz  
Raymond & Sheehan, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301  
jmoylejr@moylelaw.com

Ernie Bach, Executive Director\*\*  
Florida Action Coalition Team  
P.O. Box 100  
Largo, Florida 33779-0100  
ernieb@gte.net

John W. McWhirter\*  
McWhirter Reeves, McGlothlin,  
Davidson, Decker, Kaufman, & Arnold, P.A.  
400 North Tampa Street, Suite 3350  
Tampa, Florida 33602  
Telephone: (813) 224-0866  
Facsimile: (813) 221-1854

Vicki Gordon Kaufman\*  
Timothy J. Perry  
McWhirter Reeves, McGlothlin,  
Davidson, Decker, Kaufman, &  
Arnold, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
Telephone: (850) 222-2525  
Facsimile: (850) 222-5606

By:   
Elizabeth C. Daley

# **EXHIBIT 2**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

<b>In re: Petition To Determine Need For an Electrical Power Plant in Martin County by Florida Power &amp; Light Company.</b>	)	<b>Docket No. 020262-EI</b>
	)	
	)	
	)	
<b>In re: Petition To Determine Need For an Electrical Power Plant in Manatee County by Florida Power &amp; Light Company.</b>	)	<b>Docket No. 020263-EI</b>
	)	
	)	
	)	<b>Served: August 19, 2002</b>

**FACT'S OBJECTIONS TO FLORIDA POWER & LIGHT COMPANY'S  
AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM**

The Florida Action Coalition Team ("FACT") hereby submits the following objections to Florida Power & Light Company's ("FPL") Amended Notice of Taking Deposition Duces Tecum, served August 8, 2002.

**I. Preliminary Nature of These Objections**

The objections stated herein are preliminary in nature and are made at this time consistent with procedural Order PSC-02-0992-PCO-EI of the Florida Public Service Commission ("Commission"), which requires a respondent to raise objections or requests for clarification within ten days of receipt of discovery requests. Should additional grounds for objection be discovered as FACT develops its response, FACT reserves the right to supplement or modify its objections up to and through the course of any deposition taken pursuant to this Notice. FACT has determined that a protective order is necessary to protect against unauthorized discovery, and FACT will file a motion for protective order with the Commission seeking such an order prior to the close of business Friday, August 23, 2002.

## II. General Objections

These consolidated dockets involve the question whether the Commission should approve FPL's petitions for "need determinations" for new generation at its Martin and Manatee plant sites. As the petitioner in these need determination proceedings, FPL alone carries the affirmative burden of demonstrating that its proposed projects will satisfy the statutory need criteria set forth in Section 403.519, Florida Statutes.

FACT is an approved intervenor in these consolidated dockets. FACT will not support a witness in these consolidated dockets. FACT, consequently, has no affirmative burden to meet in these proceedings. Nonetheless, FPL has now served an Amended Notice of Taking Deposition Duces Tecum on FACT seeking to depose its Executive Director, Ernie Bach, and requiring him to bring to the deposition "documents concerning the organization, officers, and membership of the Florida Action Coalition Team ("FACT") and copies of documents concerning the decision by FACT members or representatives to intervene in FPL's Determination of Need proceeding."


Given FACT's assertion that it will file no testimony in these proceedings, FPL's discovery request, as represented by this notice of deposition, is nothing more than a thinly-veiled effort to harass and punish FACT for intervening in these proceedings. FPL is clearly attempting to deflect the focus of these need determinations from the requisite review of FPL's projects to a wholly irrelevant review of FACT. FACT's membership, organization, officers and the constitution of its membership, as well as its decision to seek party status in these dockets, have no relation or relevance to the Commission's statutory duty to determine, among other things, whether FPL's proposed plant additions are the "least-cost," as required by Section 403.519, Florida Statutes. FACT objects to this deposition because FPL's goal is clearly to discover information that is

irrelevant, immaterial, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

### III. Specific Objection

As stated previously, FACT will file its motion for protective order by the close of business Friday, August 23, 2002 setting forth its more specific legal objections to the deposition on the grounds that the deposition clearly seeks information not relevant to this proceeding and not reasonably calculated to lead to evidence admissible in this proceeding.

Respectfully submitted this 19<sup>th</sup> day of August, 2002.



Michael B. Twomey  
Attorney for Florida Action Coalition Team  
Post Office Box 5256  
Tallahassee, Florida 32314-5256  
Phone: 850-421-9530  
FAX: 850-421-8543  
miketwomey@talstar.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing has been transmitted electronically

and/or by U.S. Mail this 19<sup>th</sup> day of August, 2002:

Martha Carter Brown, Esq.  
Lawrence Harris, Esq.  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Mbrown@psc.state.fl.us

Joseph A. McGlothlin, Esq.  
Vicki Gordon Kaufman, Esq.  
Timothy J. Perry, Esq.  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, & Arnold, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
Jmcglothlin@mac-law.com

Jon C. Moyle, Jr., Esq.  
Cathy M. Sellers, Esq.  
Moyle Flanigan Katz Raymond &  
Sheehan, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301  
Jmoylejr@moylelaw.com

D. Bruce May, Jr., Esq.  
Karen D. Walker, Esq.  
Holland & Knight LLP  
315 S. Calhoun Street, Suite 600  
Tallahassee, Florida 32301  
Dbmay@hklaw.com

Robert Scheffel Wright, Esq.  
Diane K. Kiesling, Esq.  
John T. LaVia, III  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, Florida 32301  
Schef@landersandparsons.com

Charles A. Guyton, Esq.  
Steel, Hector & Davis, LLP  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301

R.L. Wolfinger  
South Pond Energy Park, LLC  
c/o Constellation Power Source  
111 Market Place, Suite 500  
Baltimore, Maryland 21202-7110

Joseph A. Regnery, Esq.  
Timothy R. Eves  
Calpine Eastern Corporation  
2701 North Rocky Point Drive  
Suite 1200  
Tampa, Florida 33607



John W. McWhirter  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, & Arnold, P.A.  
400 North Tampa Street, Suite 3350  
Tampa, Florida 33602

Mr. William G. Walker, III  
Vice President  
Florida Power & Light Company  
215 S. Monroe Street, Suite 810  
Tallahassee, FL 32301-1859

John T. Butler, Esq.  
Steel Hector & Davis, LLP  
200 S. Biscayne Blvd., Suite 4000  
Miami, FL 33131-2398

R. Wade Litchfield, Esq.  
Jay Molyneaux, Esq.  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420



Attorney