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August 29, 2002

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VIA HAND DELIVERY

Blanca S. Bayó, Director
Division of the Commission Clerk &
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
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COMMISSION
CLERK

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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 ("FPL") are the original and seven (7) copies of FPL's Response to FACT's Motion for Protective Order, Motion for Order Limiting Discovery, and Motion for Stay, 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
Elizabeth C. Daley

Enclosure
Copy to: Counsel for All Parties of Record

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need for)
an Electrical Power Plant in Martin County) Docket No. 020262-EI
by Florida Power & Light Company)

In re: Petition to Determine Need for)
an Electrical Power Plant in Manatee County) Docket No. 020263-EI
by Florida Power & Light Company)

Dated: August 29, 2002

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE
TO FACT'S MOTION FOR PROTECTIVE ORDER, MOTION
FOR ORDER LIMITING DISCOVERY, AND MOTION FOR STAY**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code, responds as follows to the Florida Action Coalition Team's ("FACT") Motion for Protective Order, Motion For Order Limiting Discovery, And Motion For Stay.

The following is a list of relevant dates provided to demonstrate the pattern of delay and avoidance of discovery in this proceeding on the part of FACT and FACT's counsel:

- June 26, 2002: FACT filed its Amended Petition to Intervene in this proceeding. FPL responded that FACT had no standing as an organization to participate as an intervenor party.
- July 11, 2002: The Public Service Commission ("the Commission) granted FACT's Amended Petition to Intervene. Order No. PSC-02-0934-PCO-EI.
- July 23, 2002: The Commission entered its Order Consolidating Need Determination Proceedings, Approving Proposal for Handling Confidential Bid Information & Establishing Procedure. Order No. PSC-02-0992-PCO-EI ("Scheduling Order"). The Scheduling Order required that "all parties shall respond to discovery requests within 20 days of service of the discovery request" and that any "objection or request for clarification shall be made within ten days of service of the discovery request." Scheduling Order at 4.
- August 1, 2002: FPL served its First Set of Interrogatories and First Request for Production of Documents ("FPL Discovery") on FACT.
- August 5, 2002: FPL served a Notice of Deposition of Mr. Ernie Bach, executive director of FACT, set for August 13, 2002, a date suggested by FACT's counsel.

- August 8, 2002: At the request of FACT's counsel, FPL filed an Amended Notice of Taking Deposition set for August 28, in order to accommodate Mr. Bach's vacation schedule. FACT's counsel told the undersigned counsel on at least two occasions that he intended to object to FPL Discovery and to FPL's deposition of Mr. Bach and that FACT would file a motion for protective order seeking to avoid the discovery and deposition.
- August 12, 2002: FACT served general, blanket objections to FPL's Discovery.
- August 19, 2002: FACT electronically served general objections, by email after normal business hours on the last day for service, to FPL's Amended Notice of Taking Deposition. FACT indicated that specific objections would be provided in a motion for protective order to be filed August 23.
- August 21, 2002: FPL filed a Motion to Compel Intervenor's Deposition and a Motion to Compel FACT to Respond to FPL's Discovery.
- August 21, 2002: FACT filed timely, but limited and incomplete, responses to FPL's Discovery. However, FACT provided either general objections or no answer at all for 12 of FPL's 15 requests for documents. For Request No. 1, seeking "a charter or statement of purpose for FACT," FACT objected but provided a "Mission Statement." For Request No. 2, seeking "a list of the exact current membership of FACT," FACT objected but provided names and addresses of just 12 FACT members, despite the fact that FACT had alleged in its original papers that the organization had "thousands" of members. See Fact's Petition to Intervene and Suggestion for Delay, at 8. For Request No. 3, seeking "the name and address of each FACT member who is a retail residential customer of FPL," FACT objected but referred to the list provided for Request No. 2. For Request No. 12, seeking all documents relating to the history of FACT's involvement in Florida Public Service Commission proceedings and in other types of regulatory proceedings" FACT objected but provided a brief news release with a timeline listing three regulatory proceedings in which FACT claimed to have represented consumers. In response to FPL's First Set of Interrogatories, FACT objected to and/or refused to answer five of the 13 interrogatories. For the remaining interrogatories, FACT provided either one-word or incomplete answers.
- August 26, 2002: FACT filed the present Motion for Protective Order, Motion For Order Limiting Discovery, And Motion For Stay ("FACT's Motions") (Not filed on August 23, as represented by FACT).
- August 26, 2002: FPL agreed to a request by FACT's counsel to defer the scheduled deposition of Mr. Bach pending a ruling by the Prehearing Officer on FPL's pending Motions to Compel and FACT's Motions.

August 28, 2002: FACT filed its Response to FPL's Motions to Compel Intervenor's Deposition and Respond to First Set of Interrogatories and First Request for Production of Documents. In its Response, FACT again sought to avoid FPL's Discovery.

In FACT's Motions, FACT asks the Commission to grant a protective order that "the discovery not be had" and that FACT does not have to provide Mr. Bach for deposition. Alternatively, FACT asks the Commission to order that FPL limit its discovery to the issue of associational standing and any other issues related to the core purpose of these hearings under Section 403.519, Florida Statutes. FACT also seeks an immediate stay of discovery pending the Commission's final resolution of FACT's instant order.

FPL has done nothing to warrant the Commission's granting any of these requests. FPL has already limited its discovery as to the issues that FACT delineates. Further, FACT has demonstrated no reason that it should be granted any exception to this Commission's scheduling order, which is directed to all the parties, including any intervenor that might eventually be found to have no standing to participate as a party.

As the above list of relevant dates demonstrates, FACT has repeatedly forced delay and sought to frustrate FPL's attempts to discover information that FPL needs as soon as possible for its trial preparations and to further contest FACT's standing to intervene. FACT's present motions and all of its previous responses contain little more than baseless allegations that FPL is harassing FACT by seeking information through discovery and that FPL has no basis for challenging FACT's standing.

However, FPL continues to contest FACT's standing to intervene in this proceeding. In granting intervenor status for FACT, the Prehearing Officer found only 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's Motions devote three pages to arguing that FACT has no burden of proof as to its allegations of standing. However, the law is clear that FACT does have the burden of proving, not merely alleging, standing. Agrico Chemical Co. v. Dep't of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), *rev. denied*, 415 So. 2d 1359, 1361 (Fla. 1982)(requiring proof, not mere allegation, of standing). FPL intends to hold FACT to that burden.

As FPL stated in its Motion to Compel, FPL's only purpose in this proceeding is to demonstrate under Florida law that the Commission should grant FPL's Petitions for Determination of Need. FPL cannot and does not waste time on harassment of FACT or any other party. FPL is entitled to discovery from FACT and every other intervenor in order to seek proof of allegations of standing and to decide how to respond to potential challenges to FPL's Petitions for Determination of Need.

CONCLUSION

FACT's Motions contain nothing more than baseless allegations and should be disregarded. FACT should not be allowed to avoid the discovery process that is the obligation of every party in this proceeding. If FACT indeed is a legitimate party, as it contends but FPL disputes, then FACT should not be allowed to continue to force delay and seek to avoid legitimate discovery. FACT must produce discovery along with every other party bound by this Commission's Scheduling Order, the Florida Administrative Code, and the Florida Rules of Civil Procedure. If FACT will not do so, then FACT should be excluded from further participation in this proceeding.

[SIGNATURES ON NEXT PAGE]

Respectfully submitted,

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

I HEREBY CERTIFY that a true and correct copy or courtesy copy (*) of Florida Power & Light Company's Response to FACT's Motion for Protective Order, Motion for Order Limiting Discovery, and Motion for Stay has been furnished electronically (**) and by United States Mail this 29th day of August 2002, to the following:

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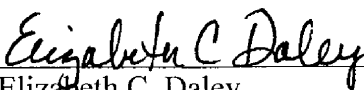
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