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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Determine Need for an Electrical Power Plant in Martin County by Florida Power & Light Company

Docket No. 020262

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In re: Petition to Determine Need for an Electrical Power Plant in Manatee County by Florida Power & Light Company

Docket No. 020263

Filed October 1, 2002

FACT'S RESPONSE TO FPL'S MOTION FOR SUMMARY FINAL ORDER

The Florida Action Coalition Team (FACT), pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code, hereby responds to Florida Power and Light Company's (FPL) Motion for Summary Final Order Removing FACT as an Intervenor Party and in support thereof states:

I. Motion for Summary Final Order Removing FACT is not warranted.

Fpl argues that FACT should be summarily removed from these dockets as a party because:

A. FACT has refused to meet is burden of proving standing; and

B. FACT has refused to cooperate as to its allegations of standing;

FPL's grounds for removal are specious at best because FACT's alleged refusal to meet its burden of proving standing or cooperating as to its allegations of standing are tied, to the

extent any factual basis exists to support FPL's charges, inextricably to its efforts to seek

protection from further discovery and carry the day with its assertion that its status as a party is

beyond further interlocutory review. That review, which is pursuant to interlocutory review

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rights made available to it by Commissioner Deason's order denying FACT's motion for protective order, is being heard today, October 1, 2002, by the full Commission at its regularly-scheduled Agenda Conference. FACT has made clear that it will provide its Executive Director, Ernie Bach, available for oral deposition immediately in the event FACT's motion for reconsideration fails. Furthermore, FACT has provided extensive revised answer to interrogatories and submitted extensively revised responses to document requests to FPL with the result that FPL has withdrawn its motions to compel FACT to answer interrogatories and produce documents. FACT has, quite simply, availed itself of the legal opportunities available to it to avoid having to provide privileged or unwarranted discovery, which, once given to FPL, will not be capable of being "unrung."

There is no factual or legal basis to support FPL's motion and, accordingly, it should be denied.

II FACT has not been derelict in its discovery duties and its removal from the case is not warranted.

Like the first issue, there is simply no factual or legal basis for exercising the extreme remedy requested by FPL, namely that of excluding the only party granted intervenor status to date purporting to represent residential customers of FPL. Rather, as was the response to the first charge, FACT takes the position that it has resisted providing discovery, to the limited extent that it has, only while exercising its rights, pursuant to statute and Commission rule, to seek reconsideration of a discovery order FACT thinks was issued in error. Again, FACT has provided substantially all the discovery requested of it, despite retaining the assertion that none of the standing issue discovery remained appropriate. FACT has appropriately and legally exercised its rights in an effort to protect itself from being compelled to provide privileged or

unwarranted discovery responses, which could not be safely returned to it legally intact if it prevails on its pending motion for reconsideration of Commissioner Deason's order.

ACCORDINGLY, for the reasons stated above, FACT would respectfully request that FPL's motion be denied.

Respectfully submitted,



Michael B. Twomey
Attorney for Florida Action Coalition Team

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been transmitted electronically, by hand delivery and/or by U.S. Mail this 1st day of October, 2002 to the following:

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