

ORIGINAL

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Sent: Monday, April 11, 2005 3:36 PM
To: Filings@psc.state.fl.us
Cc: Charles Beck
Subject: e-filing
Attachments: 050045 Motion to Modify Order Establishing Procedure e-filed version.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 050045-EI

In re: Petition for rate increase by Florida Power & Light Company

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 6 pages.

e. The document attached for electronic filing is the Motion to Modify Order Establishing Procedure.
(See attached file: 050045 Motion to Modify Order Establishing Procedure e-filed version.doc)

CMP Thank you for your attention and cooperation to this request.

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CTR Brenda S. Roberts
Secretary to Charles J. Beck, Deputy Public Counsel.

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OPC _____

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OTH Kim P.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for a Rate Increase)
EI)
By Florida Power & Light)
Company)
2005)
_____)

Docket 050045-

Filed April 11,

MOTION TO MODIFY ORDER ESTABLISHING PROCEDURE

Intervenors Citizens of Florida (Citizens), the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), the Federal Executive Agencies (FEA), and the AARP¹ (collectively "Intervenors") file this motion requesting the Prehearing Officer to modify the Order Establishing Procedure (order no. PSC-05-0347-PCO-EI issued March 31, 2005) and in support state the following:

1. On March 22, 2005, Florida Power & Light Company (FPL) filed a full general rate case. The filing included testimony by sixteen witnesses, as well as the

¹ The Florida Retail Federation and the Commercial Group joins this Motion subject to its pending petitions to intervene. As the representative of more than 10,000 members in Florida, many of whom are retail customers of Progress, the FRF is entirely confident that its petition to intervene will be granted. The Commercial Group, an ad hoc association of significant customers of FPL such as BJ's, Lowe's, JC Penney and Wal-Mart, also is confident that its petition to intervene will be granted. The Federal Executive Agencies (FEA) join this motion subject to their pending motion to intervene. AARP also joins this motion subject to their motion to intervene. AARP is a nonprofit membership organization dedicated to addressing the needs and interests of persons 50 and older. AARP represents more than 35 million members in total, approximately 2.7 million of whom reside in the State of Florida. AARP's Florida members reside throughout the state and a significant number of them are retail residential customers of FPL.

minimum filing requirements (MFR) schedules. Including the step increase requested for 2007, FPL's petition requests the Commission to approve rate increases of more than one half billion dollars per year.

2. Extensive discovery will be necessary to flesh out the details behind FPL's filing. An example about the necessity for discovery can be provided by the company's request for rate case expense. FPL's case includes a request to approve \$8,950,000 of rate case expense amortized over two years, but the company's prefiled testimony does nothing more than mention that they are requesting recovery of rate case expense over a two year period without even stating the amount of rate case expense they are seeking to recover. Prefiled testimony of K. Michael Davis at page 13. MFR Schedule C-10 is supposed to provide detail of rate case expenses for outside consultants, but the detail provided is merely a line item of \$4,000,000 for outside consultants and a line item of \$2,450,000 for various outside legal firms. This miniscule amount of information hardly justifies the expense, yet the burden of going forward to contest this expense is in many ways shifted to intervenors who must use discovery to glean additional information about the request.

3. This same process must be followed time after time on many issues that are considerably more complex than rate case expense. The entire filing must be reviewed; discovery drafted and served; discovery responses examined (and any disputes resolved), and then additional discovery served to follow up on the previous responses. Then, after examination and analysis of additional discovery responses and

once again resolving any discovery disputes that might arise, intervenors must prepare detailed testimony to file in the case.

4. Although new rates cannot go into effect before January 1, 2006, the order establishing procedure requires intervenors to file their complete direct case, including testimony and exhibits, by June 13, 2005 -- two months and twenty-two days after FPL filed their case, and six and a half months before new rates can go into effect. This time schedule creates an *onerous burden on intervenors*. FPL decided what it would file and when it would file it. Providing intervenors such a short period to prepare a complete case contesting the filing severely disadvantages intervenors.

5. Intervenors request the Prehearing Officer to modify the schedule to provide intervenors at least three additional weeks to file their direct case.

6. In addition, the order establishing procedure limits requests for production of documents and interrogatories to 500 each, including subparts. Considering the huge amount of money at stake, as well as the request by FPL of \$8,950,000 for rate case expense, intervenors believe that these limits on discovery can and should be increased to 1000 including subparts without unfairly burdening FPL. The Commission and the public will benefit by allowing intervenors to seek additional discovery because it will assist intervenors in presenting a more complete case to the Commission.

7. Counsel for the Office of Public Counsel has communicated with FPL and believes that FPL opposes this motion.

WHEREFORE, Intervenors request the Prehearing Officer to modify the Order Establishing Procedure by (1) allowing intervenors an additional three weeks to file testimony, and (2) increasing the limits on interrogatories and requests for production of documents from 500 to 1000, including subparts.

Respectfully submitted,

s/ Charles J. Beck
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DOCKET NO. 050045-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

Mail or hand-delivery to the following parties on this 11th day of April, 2005.

s/ Charles J. Beck

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