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Sent: Thursday, May 12, 2005 4:51 PM
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Subject: Electronic Filing for Docket No. 050045-EI/ Florida Power & Light Company's Response to the South Florida Hospital and Healthcare Association's Petition to Intervene and First Set of Discovery Requests

Attachments: FPL's Response to SFHHA's Petition to Intervene.doc



FPL's Response
o SFHHA's Peti..

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 Florida Power & Light Company.

d. There are a total of 5 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response to the South Florida Hospital and Healthcare Association's Petition to Intervene and First Set of Discovery Requests

(See attached file: FPL's Response to SFHHA's Petition to Intervene.doc)

Thank you for your attention and cooperation to this request.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No: 050045-EI

In re: 2005 comprehensive depreciation)
study by Florida Power & Light Company.)

Docket No. 050188-EI

Filed: May 12, 2005

FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO THE SOUTH FLORIDA HOSPITAL AND HEALTHCARE
ASSOCIATION'S PETITION TO INTERVENE AND
FIRST SET OF DISCOVERY REQUESTS

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response to the Petition to Intervene filed May 6, 2005 on behalf of the South Florida Hospital and Healthcare Association ("SFHHA"), and in support states:

1. FPL reserves its right to object to any of SFHHA's alleged issues in dispute in this Docket and to raise the issues FPL believes are appropriate for the Commission's consideration in ruling on FPL's Petition.

2. In addition, FPL intends to file a motion to dismiss SFHHA's Petition for the Conduct of a General Rate Case and Request for Hearing. In sum, SFHHA's Petition to Conduct a General Rate Case and Request for a Hearing is "a request for a rate proceeding ... that [has] already begun." See South Florida Hospital & Healthcare Ass'n v. Jaber, 887 So. 2d 1210, 1213-14 (Fla. 2004). FPL has already initiated a general rate case and the Commission has already scheduled a formal hearing in this Docket. Further, SFHHA is unclear about whether or how

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South Florida Hospital & Healthcare Ass'n v. Jaber, 887 So. 2d 1210 (Fla. 2004) applies to its Petition. FPL does not believe that South Florida Hospital & Healthcare Ass'n means that SFHHA's Petition to Conduct a General Rate Case and Request for a Hearing would secure for SFHHA any additional rights in this Docket that SFHHA, otherwise, would not have.

3. In addition, FPL notes that SFHHA served discovery on FPL by U.S. Mail on May 9, 2005. Those discovery requests did not comply with the Order Establishing Procedure and applicable rules of procedure. See Order No. PSC-05-0347-PCO-EI, Docket No. 050045-EI (issued March 31, 2005) ("Order Establishing Procedure"). Apart from other defects, SFHHA's First Set of Discovery Requests did not delineate which requests are interrogatories and which requests are for production of documents. FPL contacted counsel for SFHAA to resolve this issue without bringing it to the Pre-Hearing Officer, and SFHHA served amended discovery requests by electronic mail on May 12, 2005. The amended requests separately identified interrogatories and requests for production of documents. Therefore, the deficient discovery served by U.S. Mail on May 9, 2005 will not be answered.¹ In the event SFHHA is granted party status,² FPL will provide responses to the amended discovery on the 30-day time frame (Monday June 13, 2005).³

¹ As a practical matter, the due date for the discovery served by U.S. Mail and the amended discovery served by e-mail would have been the same since the rules provide an additional five days for service by U.S. Mail, so SFHHA was not prejudiced by serving amended discovery requests. See Fla. R. Civ. P. R. 1.090(e).

² FPL notes that SFHHA served discovery on FPL prior to becoming a party to the case, while the applicable rules of procedure provide that only "parties" to the proceeding may obtain discovery. See Fla. R. Civ. P. R. 1.280; Fla. Admin. Code R. 28-106.206 (2004); Order No. PSC-96-0543-PCO-WS, Docket No. 950495-WS (issued April 22, 1996) (utility not obligated to respond to discovery requests served by a non-party).

³ FPL does not waive its other objections to SFHHA's discovery, which will be made in an objections pleading.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and by United States Mail this 12th day of May, 2005, to the following:

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