

Ruth Nettles

From: Cano, Jessica [Jessica.Cano@fpl.com]
Sent: Friday, March 27, 2009 4:14 PM
To: Filings@psc.state.fl.us
Cc: Lisa Bennett; Anna Williams; Martha Brown; Jean Hartman; Kelly.jr@leg.state.fl.us; Mcglothlin.joseph@leg.state.fl.us; marksundback@andrewskurth.com; kennethwiseman@andrewskurth.com; jenniferspina@andrewskurth.com; lisapurdy@andrewskurth.com
Subject: Docket No. 080677-EI / FPL's Response in Opposition to SFHHA's Motion for Order Establishing Discovery Procedures
Attachments: FPL's Response in Opposition to SFHHA's Motion.doc; FPL's Response in Opposition to SFHHA's Motion.pdf

a. Person responsible for this electronic filing:

Jessica A. Cano, Esq.
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5226
Jessica.Cano@fpl.com

b. Docket No. 080677-EI; In re: Petition for Increase in Rates by Florida Power & Light Company

c. Documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to SFHHA's Motion for Order Establishing Discovery Procedures.

Sincerely,

Jessica A. Cano
Attorney

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5226

DOCUMENT NUMBER-DATE

02763 MAR 27 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by)
Florida Power & Light Company)
_____)

Docket No. 080677-EI

Filed: March 27, 2009

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE IN OPPOSITION TO SFHHA'S MOTION
FOR ORDER ESTABLISHING DISCOVERY PROCEDURES**

Florida Power & Light Company ("FPL" or the "Company"), by its undersigned counsel, files this Response to the South Florida Hospital and Healthcare Association's ("SFHHA") Motion for Order Establishing Discovery Procedures (the "Motion"), filed on March 20, 2009, in the above-referenced proceeding, and in support thereof states:

1. On March 18, 2009, FPL filed with the Florida Public Service Commission (the "Commission") a Petition for Rate Increase. FPL's Petition was accompanied by the direct testimony of 19 witnesses and the Commission's Minimum Filing Requirements. On March 20, 2009, the Commission issued an Order Establishing Procedure ("OEP") in this docket. *See* Order No. PSC-09-0159-PCO-EI. That order established that discovery responses shall be served within 30 calendar days of receipt of the request and objections shall be made within 20 days of receipt of the request, for those requests made prior to the filing of the Company's rebuttal testimony. SFHHA also filed its Motion on March 20, 2009. SFHHA's Motion apparently seeks to deviate from the terms of the OEP as issued.

2. SFHHA's Motion requests that the discovery procedures established by the prehearing officer be altered to require service of discovery responses within 20 days of a request and objections no later than five days from the date of the request. Additionally, SFHHA requests that the Commission require FPL to send SFHHA hard copies or electronic copies of documents provided in response to requests for production of documents, via electronic or express mail, as opposed to the

DOCUMENT NUMBER-DATE

02763 MAR 27 8

FPSC-COMMISSION CLERK

standard practice of FPL making them available for inspection at various FPL locations. Each of these requests should be denied, for the reasons set forth below.

3. Rules 1.340 and 1.350 of the Florida Rules of Civil Procedure, which apply to this proceeding, provide timeframes and rules for discovery. The timeframe established by these rules for responding to interrogatories and requests for production of documents is within 30 days of service on the responding party. The OEP in this docket adopted this 30-day timeframe, for those requests made prior to the filing of FPL's rebuttal testimony. The timeframe utilized in FPL's last rate case and the timeframe utilized in Tampa Electric Company's recent rate case were also consistent with the Florida Rules of Civil Procedure. *See* Order No. PSC-08-0557-PCO-EI. Discovery was effectively propounded and responded to in those proceedings. SFHHA has not provided any compelling reason to deviate from these rate case discovery parameters, and accordingly, the timeframe established in the OEP should be maintained.

4. As SFHHA notes, the volume of discovery expected to be produced in this proceeding is substantial. A 30 day period, consistent with the Florida Rules of Civil Procedure, is particularly appropriate in this case, where each party is allowed to serve up to 500 interrogatories and 500 requests for production on FPL. *See* Order No. PSC-09-01590PCO-EI. In FPL's last rate case, there were nine intervenors who combined served more than 1,846 discovery requests with 3,859 subparts. Already in this rate case, FPL has been served with a total of 376 interrogatories and requests for production of documents with 602 subparts outstanding, from only two parties. FPL expects that more parties will intervene and that as the case proceeds there will continue to be multiple, overlapping discovery requests outstanding at any given time. In light of the broad scope of this proceeding, particularly during the pre-rebuttal phase, and the time and resource-intensive effort required to respond to multiple sets of outstanding discovery, a compressed 20-day timeframe for

responding to discovery and five-day timeframe for objecting to discovery as requested by SFHHA would be unreasonable.

5. SFHHA also requests a significant change in the manner in which FPL provides documents responsive to a request for production of documents. FPL intends to make responsive documents available for inspection and copying at FPL premises. Production in this manner is consistent with the express language of Rule 1.350 of the Florida Rules of Civil Procedure, which permits a requesting party to “inspect and copy” documents in the responding party’s possession, and which calls for a reasonable time, place, and manner “of performing the inspection or performing the related acts.” Fla. R. Civ. P. 1.350. As SFHHA correctly notes, this rule does not require FPL to send copies of the responsive documents to the requesting party.

6. Although a responding party in any given litigated case may choose to send documents responsive to discovery directly to the requesting party, such a practice cannot be expected and should not be required in a case where dozens of boxes of documents are anticipated to be produced. Indeed, in the order SFHHA cites for the assertion that sending copies is “customary,” the Commission made clear that it only applies when the documents requested are not voluminous. The order SFHHA cites requested the parties to mail each other documents “to the extent feasible,” but it did not order the parties to do so. To the contrary, the order made clear that sending documents to the requesting party “is not required by law and is not always followed, particularly when the documents requested are voluminous.” *In Re Application for Certificate to Provide Wastewater Service In Charlotte County by Island Environmental Utility, Inc.*, 2003 WL 23095744 (Dec. 15, 2003).

7. Such a requirement would impose significant costs on FPL – costs which, pursuant to Florida law, FPL is not obligated to incur. *See, e.g., Evangelos v. Dachiel*, 553 So. 2d 245 (Fla. 3d

DCA 1989) (holding that the expense associated with transporting records from the responding party's location to the requesting party's preferred location should have been borne by the requesting party). Although SFHHA's Motion provides several alternatives for production (i.e., hard copies, compact discs, etc.), each would place an unwarranted and uncompensated burden on FPL, both financially and in terms of manpower, resources and effort, and would constrain FPL's ability to diligently search and respond to document requests within the applicable 30 day period.¹

8. Notwithstanding the foregoing, FPL shares SFHHA's interest in an efficient discovery process and recognizes intervenors' need to access materials that FPL produces in discovery. Accordingly, FPL will not oppose an intervenor's access to electronic copies of non-confidential documents in the manner described herein. FPL has contracted with a third-party vendor, IKON, to perform electronic scanning of FPL's documents after they have been gathered for production. SFHHA, as well as other intervenors, may request that IKON send it a compact disc containing FPL's non-confidential documents responsive to each request. IKON can then send the requesting intervenor the compact disc, along with an invoice for the compact disc, the scanning, and the shipping (dependent upon whatever mode of shipping the intervenor chooses), pursuant to IKON's schedule of fees. Attached hereto as Attachment A are IKON's applicable fees. As previously discussed, Florida law makes clear that the producing party – in this case FPL – is not required to assume the cost of producing documents at the requesting party's location. Hard copies will continue to be available for inspection within 30 days after receipt of the discovery request.²

¹ Because such an expense was not contemplated for compliance with the Florida Rules of Civil Procedure, FPL did not forecast and include as part of its rate case expense the costs that would be required to comply with SFHHA's request.

² Confidential documents will be available only in hard copy form for inspection and copying. FPL will not make electronic copies of confidential documents available because of access control concerns.

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that SFHHA's Motion be denied and proposes that SFHHA and others be permitted to obtain electronic copies of non-confidential documents responsive to requests for production of documents in the manner described above.

Respectfully submitted this 27th day of March, 2009.

R. Wade Litchfield, Vice President of Regulatory
Affairs and Chief Regulatory Counsel
John T. Butler, Managing Attorney
Jessica A. Cano, Attorney
Attorneys for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: (561) 691-7101
Facsimile: (561) 691-7135

By: s/ Jessica A. Cano
Jessica A. Cano, Esquire
Florida Bar No. 0037372

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing (without attachments) has been furnished by electronic delivery this 27th day of March, 2009, to the following:

Lisa Bennett, Esq.,
Anna Williams, Esq.,
Martha Brown, Esq.,
Jean Hartman, Esq.,
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-1400
LBENNETT@PSC.STATE.FL.US
anwillia@psc.state.fl.us
mbrown@psc.state.fl.us
jhartman@psc.state.fl.us

J.R. Kelly, Esq.,
Joseph A. McGlothlin, Esq.
Office of Public Counsel
e/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Attorneys for the Citizens of the State
of Florida
Kelly.jr@leg.state.fl.us
Mcglathlin.joseph@leg.state.fl.us

Mark F. Sunback, Esq.,
Kenneth L. Wiseman, Esq.,
Jennifer L. Spina, Esq.,
Lisa M. Purdy, Esq.,
Andrews Kurth LLP
1350 I Street, NW, Suite 1100
Washington, DC 20005
Attorneys for South Florida Hospital and
Healthcare Association ("SFHHA")
marksundback@andrewskurth.com
kennethwiseman@andrewskurth.com
jenniferspina@andrewskurth.com
lisapurdy@andrewskurth.com

By: s/ Jessica A. Cano
Jessica A. Cano
Fla. Bar No. 0037372

ATTACHMENT A

Current IKON fees:

Copying	\$0.12 to \$0.15 per page
Scanning	\$0.12 to \$0.15 per page
Color Copying/Scanning	\$1.00 per page
CD Masters	\$30.00 per CD