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Sent: Monday, April 13, 2009 11:45 AM
To: Filings@psc.state.fl.us
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Subject: e-filing (Dkt. No. 080677-EI)
Attachments: 080677 Motion to Amend Order Establishing Procedure.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 080677-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 4 pages.

e. The document attached for electronic filing is *Citizen's Motion to Modify Limits on Discovery*.

(See attached file: 080677 Motion to Amend Order Establishing Procedure.sversion.doc)

Thank you for your attention and cooperation to this request.

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4/13/2009

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO.: 080677-EI
FILED: April 13, 2009

CITIZENS' MOTION TO MODIFY LIMITS ON DISCOVERY

The Citizens of the State of Florida (Citizens), through the Office of Public Counsel, file this motion requesting the Prehearing Officer to amend section V of Order No. PSC-09-0159-PCO-EI issued March 20, 2009 (Order Establishing Procedure) by increasing the limits on the number of interrogatories and requests for production of documents from 500 to 1000. In support of this motion Citizens state the following:

On March 18, 2009, Florida Power and Light Company (FPL) filed a petition for a number of rate increases. First, the petition requested a base rate increase of \$1.044 billion dollars per year beginning in January, 2010. Second, the petition requested an additional base rate increase of \$247.4 million per year beginning in January, 2011. Third, the petition requested a generation base rate adjustment for new plants coming on line, such as the WCEC #3 during 2011. Taken together, these requested rate increases would far surpass the level of base rate increases ever requested by a company in Florida.

Not only do these consecutive rate increases complicate the case more than a more traditional rate case, but the case is further complicated by the fact that there are in effect two different test years under consideration. In a letter dated December 2, 2008, Citizens urged the Commission to require FPL to use calendar year 2009, which would have a significant amount of actual, historical data by the time of hearing, as the test year rather the completely forecasted test year of 2010 requested by FPL. The Chairman of the Commission provided interim approval of

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2010 as the test year while requiring FPL to provide additional MFR schedules for 2009. The result of this is that Citizens and other intervenors have three different test years to review: the 2009 MFR schedules, the 2010 MFR schedules for the test year approved on an interim basis, and financial schedules for 2011 related to FPL's request for an additional base rate increase of \$247.4 million per year beginning in January, 2011.

Citizens also have a relatively short time frame for the preparation of testimony. The Order on procedure requires intervenors to file direct testimony on July 16, 2009 – 2 days short of four months after FPL filed its petition. In a recent water / wastewater case in which the company sought an \$8.4 million per year increase, intervenors had 4 months and 3 weeks to prepare direct testimony. Although that case was admittedly complicated by the number of systems involved, Citizens had significantly more time to prepare direct testimony in that case than we have been given in this case.

In FPL's last case, intervenors were allowed 700 interrogatories and 700 requests for production of documents. Order No. PSC-05-0518-PCO-EI issued May 11, 2005 (First Order Revising Order Establishing Procedure). In this case, which is considerably more complicated than FPL's last case, Citizens request that intervenors be allowed to serve 1000 interrogatories and 1000 requests for production of documents on FPL.

Citizens are mindful that additional discovery can result in additional rate case expense which will be ultimately borne by customers. However, any additional expense for discovery caused by additional interrogatories and requests for documents is *de minimis* compared to the amount of money at stake in this proceeding. Customers would be ill served by limits on discovery which will not allow Citizens to properly prepare our case. Citizens believe that

revising the limits on discovery to 1000 interrogatories and 1000 requests for documents will best serve the customers of FPL in this precedent setting case.

Citizens contacted the other parties to ascertain their position on this motion. The Florida Retail Federation and the South Florida Hospital and Healthcare Association support the motion. I.B.E.W System Council U-4 takes no position. FPL will provide its position in a written response.

WHEREFORE, Citizens request the Prehearing Officer to modify the limits on discovery contained in the Order Establishing Procedure as more fully set forth in this motion.

Respectfully submitted,

s/ Charlie Beck
Charlie Beck
Deputy Public Counsel

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Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 080677-EI

I HEREBY CERTIFY that a copy of the foregoing CIITIZENS' MOTION TO MODIFY LIMITS ON DISCOVERY has been furnished by electronic mail and U.S. mail to the following parties on this 13th day of April, 2009 to the following:

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