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Florida Power
CORPORATION

James P. Fama
SENIOR COUNSEL

December 7, 1992

Mr. Steven C. Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0870

Re: Docket No. 920949-EU

Dear Mr. Tribble:

Enclosed for filing in the subject docket are fifteen copies of the Supplement to Prehearing Memorandum of Florida Power Corporation.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Thank you for your assistance.

Very truly yours,

Rodney C. Gaddy for

James P. Fama

JPF/ams
Enclosure

cc: Parties of record

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Florida Power Corporation and Sebring Utilities Commission for Approval of Certain Matters in Connection with Sale of Assets by Sebring Utilities Commission to Florida Power Corporation	)	Docket No. 920949-EU Filed: December 7, 1992

SUPPLEMENT TO
PREHEARING MEMORANDUM OF
FLORIDA POWER CORPORATION

Florida Power Corporation (FPC) hereby submits a Supplement to its November 16, 1992 Prehearing Memorandum, in response to the untimely December 2, 1992 Seaman's And Action Group's Prehearing Memorandum. FPC should be allowed this Supplement in order to have an opportunity to respond to arguments which the Action Group failed through lack of diligence to raise at any of the five times provided for such argument by the Commission's schedule in this case: (1) October 20th Prefiled Direct Testimony, (2) October 20th Prehearing Statement, (3) October 30th Prefiled Rebuttal Testimony, (4) November 16th Prehearing Memorandum and (5) November 17th Prehearing Conference.

The Action Group's argument that the Commission lacks jurisdiction over the Sebring Rider should be summarily rejected. In support of rejection, FPC submits the following:

1. FPC's service to Sebring customers can only be rendered upon terms required by the Commission. Fla. Stat. § 366.03. Indeed, FPC is precluded from collecting any rate which is not made subject to Commission review by being placed "on file with the commission for the particular class of service involved...." Fla. Stat. § 366.06(1). By definition, then, this

Commission necessarily has jurisdiction to determine whether the Sebring Rider rate proposed by FPC can be charged to former Sebring customers. The Florida Supreme Court repeatedly has re-affirmed the "exclusive and superior" jurisdiction of the Commission over electric public utility service and rates. City Gas Co. v. Peoples Gas System, Inc., 182 So. 2d 429 (Fla. 1965); Storey v. Mayo, 217 So. 2d 304 (Fla. 1968); Florida Power Corp. v. Seminole County, 579 So. 2d 105, 106-107 (Fla. 1991); City of Homestead v. Beard, 600 So. 2d 450 (Fla. 1992).

2. While the Action Group's memorandum is styled as a challenge to the Commission's jurisdiction, in substance, the memorandum raises nothing more than a cost-of-service rate issue concerning whether the costs of retiring Sebring's debt should be allocated to former Sebring ratepayers as a legitimate cost of serving that class of customers. See, e.g., Action Memorandum at 3 ("The incontrovertible fact is that the only 'service' to be rendered by FPC, for which imposition of the transition rate is sought, has absolutely nothing to do with the furnishing of electric power to a customer base."). The cost- of-service issue raised by Action Group is no different than other cost allocation issues routinely considered by the Commission in the course of carrying out its ratemaking jurisdiction under Chapter 366. See, e.g., Order No. 24817, p. 21 (July 15, 1991), where the Commission considered whether rates were "designed to more accurately reflect the costs associated with each service and to place the burden of payment on the person who causes the cost to be incurred rather than on the entire body of ratepayers."

3. The Action Group ignores the incontestable fact that the only way Sebring can or will grant FPC the right to provide service in its exclusive territory is if Sebring's bond indebtedness is retired. In other words, the cost of retiring the Sebring' debt necessarily is a

cost of doing business as an electric utility in the Sebring area. The evidence supporting the assignment of Sebring debt retirement costs to the Sebring Rider is found in the prefiled direct testimony and in the deposition of FPC witness Mr. Nixon.

4. The Action Group's arguments against allocation of debt costs to Sebring area ratepayers through FPC's Sebring Rider surcharge fall within the scope of the discrimination issue already posed in this case (Issue 1). There is no question that rate discrimination claims such as this fall within the Commission's jurisdiction. Lake Worth Utilities Authority v. Barkett, 433 So. 2d 1278, 1279 (Fla. App. 4 Dist, 1983)("...the Commission has exclusive jurisdiction to determine the reasonableness of an electricity surcharge and whether or not it is discriminatory. This is statutorily provided in Section 366.04(1), Florida Statutes (1981)....the assault upon the surcharge on the basis that it was discriminatory is an issue to be resolved by the Commission....")

5. Contrary to the suggestion at page 5 of the Action Group's memorandum, it is clear that the Commission has complete power to authorize Florida Power to enforce the SR-1 Rider after it purchases the Sebring electric system, including, if necessary, discontinuing customer service for nonpayment. Rule 25-6.105, F.A.C.; see also Mobile America Corp., Inc. v. Southern Bell Tel. & Tel. Co., 282 So. 2d 181, aff'd as modified, 291 So. 2d 199 (Fla. 1974) (propriety of discontinuance of utility services must initially be resolved by the Commission).

6. The Action Group's arguments concerning certain Florida Special Acts, offered at pages 4 to 6 of their memorandum, are inapposite. In no way does Chapter 91-343, Laws of Florida, Special Acts of 1991, adversely affect the Commission's jurisdiction to approve the

SR-1 Rider. Chapter 91-343 merely authorizes Sebring to engage in a particular transaction, under which it would impose each year a "debt repayment surcharge" on its ratepayers until its bonds have been paid in full. But it does not require Sebring to enter into the particular transaction contemplated therein, and the terms of the purchase and sale proposed in this case are substantially different than the transaction authorized by Chapter 91-343. One crucial difference is that, under the pending sale, Sebring's bonds will be satisfied in full at the closing rather than remaining outstanding for many years.

Because Sebring and Florida Power did not pursue the transaction authorized by Chapter 91-343, it was never submitted to a referendum and, accordingly, never became effective. Indeed, the Action Group itself acknowledges that this statute never became effective. Memorandum at 4. Therefore, Sebring's ability to sell its assets is governed by the law which is in effect at the time of the transaction -- Chapter 90-474. Chapter 90-474 does not require that a sale be limited to a particular type of transaction. If the legislature had intended to limit Sebring's authority to sell its assets to a particular type of transaction, it certainly could have done so in Chapter 90-474.

Finally, nowhere in chapter 91-343, much less in Chapter 90-474, does the legislature evince any intention to affect the Commission's jurisdiction with respect to Florida Power's rates or rate structure. Under this proposed sale, the SR-1 Rider will be part of Florida Power's electric rates rather than Sebring's rates. As we have previously stated, the Commission has "exclusive and superior" jurisdiction over public utility service and rates.

WHEREFORE, for all of the reasons discussed above, Florida Power Corporation respectfully requests that the Commission summarily reject the Action Group's argument that the Commission lacks jurisdiction over the Sebring Rider rate.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Supplement to Prehearing Memorandum of Florida Power Corporation has been served by U. S. Mail, postage prepaid to the following parties this 7th day of December, 1992.

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