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ORIGINAL

Matthew M. Childs, P.A.

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October 21, 1999

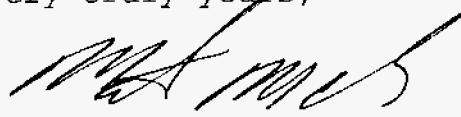
Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
4750 Esplanade Way, Room 110  
Tallahassee, FL 32399

RE: DOCKET NO. 991462-EU

Dear Ms. Bayó:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Motion for Leave to File Memorandum in Reply to Okeechobee Generating Company's Memorandum of Law in Opposition to FPL's Motion to Dismiss Petition in the above-referenced docket.

Very truly yours,



Matthew M. Childs, P.A.

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG 2 \_\_\_\_\_
- LEG 2 \_\_\_\_\_
- MAS 3 \_\_\_\_\_
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination )  
of Need for Electric Power Plant ) DOCKET NO. 991462-EU  
in Okeechobee County by Okeechobee ) FILED: OCTOBER 21, 1999  
Generating Company, L.L.C. )  
\_\_\_\_\_ )

Florida Power & Light Company's Motion for Leave to File  
Memorandum in Reply to OGC's Memorandum of Law  
in Opposition to FPL's Motion to Dismiss Petition

Proposed intervenor, Florida Power & Light Company ("FPL") hereby requests leave to file its Memorandum in Reply to petitioner, Okeechobee Generating Company, L.L.C.'s ("OGC") Memorandum of Law in Opposition to FPL's Motion to Dismiss Petition pursuant to Uniform Rule 28-106.204, a copy of which is attached hereto. FPL states as grounds for this motion:

1. FPL filed its motion to dismiss the petition on or about October 8, 1999.
2. On or about October 15, 1999 OGC filed and served its memorandum of law in opposition to FPL's motion to dismiss.
3. Uniform Rule 28-106.204 permits the filing of a response to a motion, but does not address the filing of a reply.

4. FPL believes that a reply to OGC's memorandum is necessary because OGC's memorandum goes beyond responding to FPL's motion to dismiss and asks for affirmative relief and presents new allegations. It therefore exceeds the appropriate bounds of a response to a motion. Uniform Rule 28-106.204(1) provides that "All requests for relief shall be by motion." Rule 28-106.204 does not permit a request for affirmative relief through a response to a motion.

5. The affirmative relief sought by OGC is in the nature of a waiver of rules 25-22.082 and 25-22.081. Moreover, OGC's memorandum seeks a rule waiver outside the applicable waiver and variance provisions. It is the position of the Commission Staff that the provisions of the Administrative Procedure Act and the Uniform Rules are exclusive. See Fla. Stat. § 120.542 and Uniform Rule Ch. 28-104.

#### CONCLUSION

Because OGC's "memorandum" inappropriately seeks affirmative relief outside of a motion in violation of Uniform Rule 28-106.204 and because OGC's "memorandum" inappropriately seeks rule waivers outside of a waiver and variance proceeding in violation of Fla. Stat. § 120.542 and Uniform Rule Ch. 28-104, FPL requests leave to file a memorandum in reply to OGC's response to FPL's motion to dismiss.

Counsel for FPL hereby certifies that he contacted counsel for petitioner and that petitioner opposes this motion.

Respectfully submitted,

Steel Hector & Davis LLP  
215 South Monroe Street  
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(850) 222-2300

Attorneys for Florida Power  
& Light Company

By: 

Matthew M. Childs, P.A.  
Charles A. Guyton  
Jonathan Sjostrom

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 991462-EU**

I **HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Motion for Leave to File Memorandum in Reply to OGC's Memorandum of Law in Opposition to FPL's Motion to Dismiss Petition has been furnished by Hand Delivery\* this 21st day of October, 1999 to the following:

William Cochran Keating IV, Esq.\*  
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310 West College Avenue  
Post Office Box 271  
Tallahassee, FL 32302

By: 

Matthew M. Childs, P.A.

**PART II HEARINGS INVOLVING  
DISPUTED ISSUES OF MATERIAL FACT**

**28-106.201 Initiation of Proceedings.**

(1) Unless otherwise provided by statute, initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8½ by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

(4) A petition shall be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

*Specific Authority 120.54(3), (5) FS. Law Implemented 120.54(5), 120.569, 120.57 FS. History—New 4-1-97, Amended 9-17-98.*

**28-106.202 Amendment of Petitions.** The petitioner may amend the petition prior to the designation of the presiding officer by filing and serving an amended petition in the manner prescribed for filing and serving an original petition. The petitioner may amend the petition after the designation of the presiding officer only upon order of the presiding officer.

*Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.*

**28-106.203 Answer.** A respondent may file an answer to the petition.

*Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.*

**28-106.204 Motions.**

(1) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. The original written motion shall be filed with the presiding officer. When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The presiding officer shall conduct such proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion.

(2) Unless otherwise provided by law, motions to dismiss the petition shall be filed no later than 20 days after service of the petition on the party.

(3) Motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion.

(4) Any party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits. A party moving for summary final order later than twelve days before the final hearing waives any objection to the continuance of the final hearing.

(5) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request. *Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.*

**28-106.205 Intervention.** Persons other than the original parties to a pending proceeding whose substantial interest may be determined in the proceeding and who desire to become parties may petition the presiding officer for leave to intervene. Except for good cause shown, petitions for leave to intervene must be filed at least 20 days before the final hearing. The petition shall conform to Rule 28-106.201(2), and shall include allegations

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**DOCKET NO. 991462-EU**

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Robert Scheffel Wright, Esq.\*  
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By: \_\_\_\_\_  
Matthew M. Childs, P.A.