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February 8, 2002

Via Federal Express

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Review of the retail rates of Florida Power & Light Company,
Docket No. 001148-EI

Dear Ms. Bayo:

Enclosed on behalf of South Florida Hospital and Healthcare Association are the original and eight copies of their Objections to Florida Power & Light Company's First Set of Interrogatories (Nos. 1-9) and Request For Production Of Documents (Nos. 1-2) in the above referenced docket.

Please acknowledge receipt and filing of the above by stamping the duplicate copy and returning same in the enclosed self-addressed stamped envelope to the undersigned.

Thank you for your assistance in connection with this matter.

Very truly yours,

Mark F. Sundback

Mark F. Sundback
An Attorney For the Hospitals

AUS _____
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Enclosures

cc: Counsel for Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Review of the retail rates of
Florida Power & Light Company**

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**Docket No. 001148-EI
Dated: February 8, 2002**

**SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION'S
OBJECTIONS TO FLORIDA POWER & LIGHT COMPANY'S
FIRST SET OF INTERROGATORIES (NOS. 1-9) AND
REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-2)**

South Florida Hospital and Healthcare Association ("SFHHA") hereby submits the following objections to Florida Power & Light Company's ("FPL") First Set of Interrogatories and Request For Production of Documents (the "FPL Request").

I. Preliminary Nature of These Objections

The objections stated herein are preliminary in nature and are made at this time in compliance with the requirement of Order No. PSC-01-2111-PCO-EI that objections be served within ten days of receipt of discovery requests. Should additional grounds for objection be discovered as SFHHA develops its response, SFHHA reserves the right to supplement or modify its objections. Should SFHHA determine that a protective order is necessary regarding any of the requested information, SFHHA reserves the right to file a motion with the Commission seeking such an order at the time its response is due.

II. General

A. Incorporation By Reference

SFHHA incorporates by reference each of the general objections asserted by FPL to date in this proceeding to the extent applicable. See "Florida Power & Light Company's Objections to and Request For Clarification of South Florida Hospital and Healthcare Association's First Set

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of Interrogatories and Request For Production of Documents,” Docket No. 001148-EI (October 22, 2001) at pp. 1-2 (hereinafter, “FPL Objections To SFHHA Discovery”).

B. Generic Objections

SFHHA objects to the instructions set forth in the FPL Interrogatories to the extent that they purport to impose upon SFHHA obligations that SFHHA does not have under the law. For instance, SFHHA generally objects to any production obligation in excess of that imposed by Commission regulations, the Florida Administrative Code, or the Florida Rules of Civil Procedure, as applicable.

Without limiting the generality of the foregoing, SFHHA also objects to the following instructions:

1.

FPL seeks to extend the time for filing responses to as long as 45 days. SFHHA does not agree to undertake to attempt to update responses throughout the docket. Notably, FPL itself has objected to any “instruction [that] purports to make [a] Request continuing in nature. [A responding party] is not obligated to supplement its discovery responses with” later-acquired information. *See* FPL Objections to SFHHA Discovery, p. 3 (October 22, 2001). The same policy should hold for other parties absent a change in FPL’s approach in answering discovery requests addressed to it.

2.

Nor is that the only example of FPL’s attempting to impose upon others standards that FPL itself will not observe. SFHHA also objects to Instruction D, which states that

Whenever an interrogatory calls for information which is not available to you in the form requested, but is available in another form, or can be obtained at least in part from other data in your possession, so state and either supply the information

requested in the form in which it is available, or supply data from which the information requested can be obtained.

FPL already has objected to requests seeking to impose production obligations “whenever . . . information is not available in the form . . . requested.” According to FPL, a requesting party “is free to request information in whatever form it wishes, and [the responding party’s] obligation begins and ends with providing the information (subject to objections and claims of privilege) in the requested form or advising the [requesting party] that the information does not exist in that form.” FPL Objections to SFHHA Discovery, p. 3. FPL complained in response to SFHHA’s request that “SFHHA seeks to have FPL provide information in the form closest to that requested by SFHHA, when it is not available in the requested form. Again, FPL’s obligation begins and ends with providing information (subject to objections and claims of privilege) in the requested form or advising the [requestor] that the information does not exist in that form.” *Id.* at p. 3-4.

3.

Additionally, FPL Instruction F to its request for the production of documents specifies:

F. Organization of Documents. With respect to the documents produced, you shall produce them as they are kept in the usual course of business, labeling them to correspond with each numbered paragraph of this request in response to which such documents are produced.

Once again, FPL propounds an instruction to which FPL objects when that instruction is directed to FPL. When FPL was requested to produce documents in the manner they were ordinarily maintained, and to identify the request to which the document related, FPL refused. FPL asserted that

This instruction requests both that documents be produced in the manner in which they are ordinarily maintained and that they be identified to the request to which they respond. FPL is obligated to do one or the other, but not both. FPL objects to this instruction to the extent that it seeks both to have FPL produce documents

in the manner that they are ordinarily maintained and to identify them with respect to which they respond.

See FPL Objections to SFHHA Discovery Requests, p. 4.

Apparently FPL has no interest in consistent, even-handed application of rules. In classic “heads I win, tails you lose” fashion, the utility wants to burden others with rules it refused to accept for itself. FPL cannot have it both ways.

III. Objections Applicable To Specific Numbered Interrogatories And Request For Production of Documents

FPL has propounded a series of discovery requests that are hopelessly premature and can hardly be explained except as an instrument to harass and oppress intervenors participating in this proceeding. SFHHA objects to each FPL discovery request on this basis.

Several notable facts compel this conclusion:

- FPL’s discovery requests, seeking statements of position on every of 150 issues identified to date in the proceeding, were propounded on January 31, 2002, only 2 days following receipt of a dozen FPL witnesses’ testimony, hardly permitting sufficient time in which to review and analyze testimony intended to justify over \$9 billion in rate base and base rates producing annual revenues in excess of \$3 billion;
- as FPL well knows, there are scores of discovery requests propounded on FPL which FPL has not answered, including a number to which it has objected;
- as FPL well knows, by making its document production process expensive, time-consuming and inconvenient for SFHHA, SFHHA cannot make a definitive statement on many issues at this time;
- FPL has declined to make available, for months, documents responsive to discovery requests because of claims that the documents should not be made public, and has made unreasonable demands regarding the terms under which such documents should be made available;
- as FPL well knows, responses by FPL to any meaningful discovery requests propounded by parties concerning FPL’s testimony will not be available for weeks to come;
- participants’ particular positions on issues may change as they learn more and carry on their own analysis; and

- analysis of the issues by intervenors will be delayed and rendered more difficult because an initial review of FPL's direct testimony discloses that it attempts to justify FPL's rates from the top down (by presuming that current rates are appropriate and by comparing FPL's costs to those of other utilities) rather than from the bottom up (i.e., by separately disclosing and discussing the individual costs experienced by FPL in a base year, adjusted for the test year, and aggregating these costs to provide a revenue requirement figure).

FPL's discovery requests here at issue are especially egregious given that the revised procedural schedule negotiated and supported by FPL was adopted very recently. The FPL-Office of Public Counsel agreed-upon procedural schedule has a fixed date for an issues conference and will utilize established procedures for identifying participants' positions on issues; if FPL believed that procedure to be inadequate, then it should have proposed a schedule more to its liking, rather than now impose unproductive discovery burdens on participants. These requests ignore the Commission's established procedures and suggest that FPL's negotiation and presentation of a proposed procedural schedule with OPC was disingenuous. The Commission has established rules for adducing participants' positions, and if FPL was not satisfied with those rules in conjunction with a procedural schedule, it was appropriate for FPL to propose changes before submitting its proposed schedule. Having apparently failed to do so, it is now in no position to punish other participants for its oversight.

Finally, FPL Interrogatory No. 9(h) and Request For Production of Documents No. 2(e) contain approximately the same objectionable request. The request seeks identification or copies of "all documents or other materials reviewed for any purpose, even if not relied upon, by the witness in the course of preparing his . . . testimony in this proceeding."

This request could only be drafted by a utility lawyer not concerned with whether their work product produced any tangible benefit aside from helping to inflate the client's test year expenses. The request is absurdly overbroad. A qualified expert witness in ratemaking will rely upon their experience, often assembled over the course of decades, in formulating opinions and

identifying issues. Thus, in one sense, the witness' preparation to give testimony extends over years. Does FPL expect to have an identification by the witness of trade press materials reviewed over that time or materials reviewed in a 1987 rate case which help shape a witness' opinion concerning how deferred taxes should be treated? What about the daily newspaper? Since the witness is expected to be cognizant of broad social and economic trends, and since the reading of a newspaper means the witness has "reviewed [it] for any purpose," daily review of the newspaper would fall within this absurdly overbroad request, clearly intended to harm rather than produce usable information. FPL's overreaching and its fundamental goals behind its requests are highlighted by these examples. FPL's requests should be denied in their entirety.

Respectfully submitted,

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Review of the retail rates of
Florida Power & Light Company**

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§

**Docket No.: 001148-EI
Dated Filed: February ____, 2002**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of South Florida Hospital and Healthcare Association's Objections to FPL's First Set of Interrogatories have been served by Federal Express to John T. Butler, Esquire, Steel, Hector & Davis, 200 South Biscayne Boulevard, Miami, Florida 33131 on behalf of Florida Power and Light Company and that a true copy thereof has been furnished by U.S. mail this 8th day of February, 2002 to the following:

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A handwritten signature in black ink, reading "Mark F. Sundback". The signature is written in a cursive style with a large, stylized "S" at the end.

Mark F. Sundback