

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition To Determine Need For
an Electrical Power Plant in Martin County
by Florida Power & Light Company.

Docket No. 020262-EI

In re: Petition To Determine Need For
an Electrical Power Plant in Manatee County
by Florida Power & Light Company.

Docket No. 020263-EI

Served: August 28, 2002

COMMISSION
CLERK

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**FLORIDA ACTION COALITION TEAM'S RESPONSE TO
FLORIDA POWER & LIGHT COMPANY'S MOTIONS TO COMPEL
INTERVENOR'S DEPOSITION, AND RESPOND TO FIRST SET OF
INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

The Florida Action Coalition Team ("FACT"), pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code, hereby responds in opposition to Florida Power & Light Company's ("FPL's") motions to compel responses to its First Set of Interrogatories, First Request for Production of Documents, and to compel the deposition of Ernie Bach noticed for August 28, 2002 (collectively "FPL's Discovery"), which motions were served on FACT on August 21, 2002 and states as follows:

1. By oral agreement entered into between the undersigned and FPL counsel Charles Guyton, on August 27, 2002, FPL has agreed to not press for the appearance of Mr. Ernie Bach at the noticed deposition until such time as the Prehearing Officer has had time to receive the remaining responsive pleadings addressed to the issue of FPL's discovery directed to FACT and rule upon the same.

2. With respect to FPL's assertion that FACT's objections to the notice of deposition were untimely because "not served within ten days, as required by Order No. PSC-02-0992-PCO-EI," FACT would note that it both mailed the objections to FPL counsel the evening of the tenth

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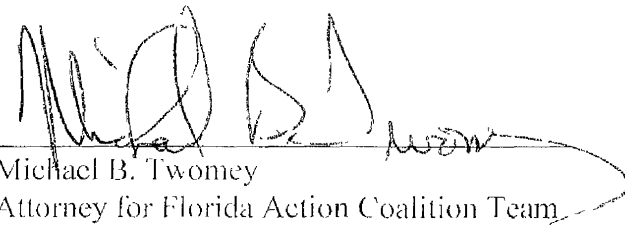
day as well as sent them by facsimile copy to FPL's counsel that evening, although admittedly some two hours or so after the close of business at 5 p.m. While recognizing that the intent of the Order on Procedure, as well as the common agreement of the parties, was to provide as rapid as possible discovery responses due to the time constraints of this docket, it still seems clear to FACT that the Order on Procedure merely required that objections be provided within ten days, not that they be served either by facsimile or email on that day by the close of business. FACT's understanding of the verbal agreement of the parties on the issue of providing facsimile and/or email "service" was that it was as a courtesy, in addition to normal service by mail or otherwise, and not mandatory by Commission order. Accordingly, FACT considered that its U.S. Mail service of its objections on the tenth day met the technical and legal requirements of the Order on Procedure, while the courtesy facsimile service, even though "late," would still be received that evening if FPL's counsel were still working at that hour or the next morning at the latest, either of which likely would still result in faster service than that by mail. In any event, FACT's "late" service was not intentional, is unlikely to have caused FPL actual harm warranting the total rejection of FACT's objections, and should not be a basis for compelling unwarranted discovery even if the objections had clearly been untimely in violation of the Order on Discovery, which they were not.

3. As its response to the rest of FPL's assertions in both motions to compel, FACT would rely on the arguments contained in Fact's Motion for Protective Order; Motion for Order Limiting Discovery; and Motion for Stay in Relation to Florida Power & Light Company's First Request for Production of Documents and First Set of Interrogatories, which was both filed and served on August 26, 2002. Essentially, the relief requested there, which FACT would

renew its request for here, was (1) that FPL missed its legal window within which to challenge FACT's party status granted by Commissioner Deason's order when it failed to seek reconsideration or appellate review of that order in a timely manner; (2) that the scope of permissible discovery relevant to the associational standing issue is extremely limited and that further FPL discovery, if any, related to this question should be strictly limited by order of this Commission; and (3) that the Commission should recognize that FACT is entitled to a stay precluding it from responding to any of FPL's over broad and impermissible discovery pending the final resolution of FACT's motion seeking protection.

WHEREFORE, the Florida Action Coalition Team respectfully requests that the Florida Public Service Commission deny FPL's motions to compel and enter its written order granting FACT a Protective Order protecting it from all pending FPL discovery, or, alternatively, enter its Order strictly limiting FPL's discovery to the core "need determination" issues in this case, as well as those strictly related to the "associational standing" issue. Lastly, FACT requests that the Commission grant it an immediate stay from having to respond to FPL's pending discovery requests pending the Commission's final resolution of FACT's instant motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael B. Twomey", is written over a horizontal line. The signature is stylized and cursive.

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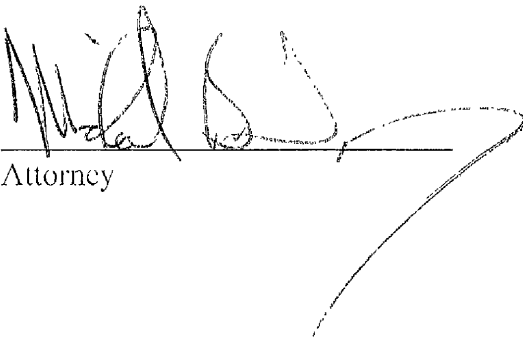
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A handwritten signature in black ink, appearing to read "John T. Butler", is written over a horizontal line. A long, sweeping flourish extends from the end of the signature line.

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