Peoples Gas System, Inc. ("Peoples"), pursuant to Commission Rule 25-22.037(2)(b), Florida Administrative Code, hereby files this memorandum in opposition to Florida Power & Light Company's Motion in Opposition To Petition on Proposed Agency Action of Peoples Gas System, Inc. ("FPL's Motion").

In summary, the Commission should deny FPL's Motion because, by Commission Order No. PSC-94-1574A-PCO-EG, Peoples has been a full party to this docket since January 13, 1995; Peoples has already established its standing to participate herein as a party, and FPL -- which neither opposed Peoples' petition to intervene, nor moved the Commission to reconsider the order granting Peoples' petition, nor appealed the order once it became final -- is barred by operation of law from contesting Peoples' standing at this late date. Moreover, FPL's attempts to mis-characterize Peoples' intentions in intervening in this docket must likewise be rejected. Peoples is emphatically <u>not</u> attempting to re-litigate issues determined in the Commission's 1994 Conservation Goals dockets; Peoples <u>has</u> protested the Commission's PAA Order for the purpose of protecting its substantial interests and, if necessary to protect

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those interests, litigating appropriate issues relating to the implementation of FPL's (and Florida Power Corporation's and Tampa Electric Company's) proposed DSM programs, including the program participation standards that have not yet been filed and other terms and conditions of those proposed programs. Finally, Peoples is not suggesting that the Commission apply differential standing criteria for gas utilities and electric utilities: pursuant to the Commission's orders in conservation proceedings and in a recent Peoples Gas System non-ECCR tariff filing case, the appropriate, evenhanded application of standing criteria is for both electric and gas utilities to be permitted to intervene in each other's energy conservation proceedings and for neither electric nor gas utilities to be permitted to intervene in each other's non-ECCR tariff filings.

In further opposition to FPL's Motion, Peoples states as follows.

ARGUMENT

I. BY ORDER, THE COMMISSION HAS ALREADY DETERMINED THAT PEOPLES GAS SYSTEM HAS STANDING TO PARTICIPATE IN THIS DOCKET, AND FPL IS BARRED BY OPERATION OF LAW FROM ATTEMPTING TO USE PEOPLES' PROTEST OF THE COMMISSION'S PAA ORDER AS AN ADDITIONAL OPPORTUNITY TO CHALLENGE PEOPLES' STANDING.

This proceeding was opened on November 9, 1994, by the Commission's issuance of a Case Assignment and Scheduling Record ("CASR"). FPL was identified as a party subject to the proceeding both in the title of the docket and in the "Company" block on the CASR. Peoples timely filed an appropriate Petition to Intervene on

November 21, 1994, and served both FPL's counsel and FPL's Tallahassee office representative by hand delivery on that date. The Commission initially granted Peoples' Petition by Commission Order No. PSC-94-1574-PCO-EG on December 19, 1994. Because of a scrivener's error in the preparation of the order, however, the purpose of Peoples' intervention in this proceeding was misstated in that order, and the Commission rectified this scrivener's error by issuing Amendatory Order No. PSC-94-1574A-PCO-EG (the "Order Granting Intervention") on January 13, 1995.

Pursuant to Commission Rule 25-22.037(2)(a), Florida Administrative Code, FPL could have filed a motion in opposition to Peoples' Petition within twenty days following Peoples' filing of its Petition. FPL did not do so. Pursuant to the express terms of the Order Granting Intervention, FPL could have sought reconsideration thereof by January 23, 1995. FPL did not do so. Also pursuant to the express terms of the Order Granting Intervention, and pursuant to the Florida Rules of Appellate Procedure, FPL could have appealed the Order Granting Intervention within thirty days of its rendition. FPL did not do so. The Order Granting Intervention thus became final for all purposes, i.e., passed beyond further Commission or appellate review, on February 12, 1995.

FPL now seeks, via a collateral attack on Peoples' timely filed Petition on Proposed Agency Action, to challenge Peoples' standing as a party in this proceeding. FPL argues that the Commission should ignore its Order Granting Intervention, that

there was no proceeding in which Peoples could intervene and that Peoples' Petition to Intervene was therefore "premature," that Peoples is required to "re-plead" and re-establish its standing via its Petition on Proposed Agency Action, and that for policy reasons, the Commission should not permit early intervention in dockets that are expected to be handled via the PAA process. These arguments are without merit and must be rejected.

A. Peoples' Petition To Intervene Was Timely Filed and Appropriately Granted By The Commission.

FPL asserts that, when Peoples petitioned to intervene and when the Commission granted Peoples' Petition, there was no proceeding in which Peoples could intervene, and therefore, the Commission's Order Granting Intervention is a nullity. This is a vain and misplaced attempt by FPL to excuse its own actions in ignoring a duly rendered and published order of the Commission in this docket, in which FPL was a named party from the outset. FPL cannot claim that it was justified in choosing not to respond to Peoples' Petition to Intervene, and FPL surely cannot claim that it was justified in ignoring the Commission's order, neither seeking reconsideration nor appealing it, thereby allowing it to become final without challenge.

The issuance of the CASR was at least the equivalent of -- and, Peoples submits, in actual fact -- the Commission's initiation of this proceeding on its own motion. The Commission's rules required FPL to file its DSM Plan, and the Commission opened the docket in which it would process that Plan, by issuing its CASR on

November 9, 1994.

Neither Peoples' Petition to Intervene, nor the Commission's Order Granting Intervention, was premature. The Commission's rules contain no restrictions regulating the timing of intervention in the Commission's proceedings, whether PAA or otherwise. Nor do the Commission's rules indicate that dockets can be opened only by the filing of an initial pleading or other case materials by an existing party to the proceeding. The Commission properly opened this docket by issuing its CASR, and the Commission properly granted Peoples' Petition to Intervene.

FPL cites to an environmental permitting case, Manasota-88, Inc. v. Agrico Chemical Co., 576 So.2d 781 (Fla. 2d DCA 1991) (Manasota-88 v. Agrico) for the proposition that one may not intervene in a proceeding until an agency gives notice of its proposed action. In Manasota-88 v. Agrico, the court held that the appellant, an environmental advocacy group, was entitled to intervene after the Department of Environmental Regulation ("DER") gave notice of its intent to issue a default permit. The court cited its agreement with an earlier case, Manasota-88 v. Department of Environmental Regulation, 441 So.2d 1109 (Fla. 3d DCA 1983) (Manasota-88 v. DER), wherein the agency, DER, had denied intervention under the applicable organic statute to intervene "during the free-form, informal process between the time an application is filed and the notice of proposed agency action is issued."

Neither Manasota-88 v. Agrico nor Manasota-88 v. DER is

controlling here. Manasota-88 v. Agrico was an environmental permit case where a default permit was to be issued. Manasota-88 v. DER was a standing case where the agency denied the petitioners' request for intervention and where the court held that the petitioners were not entitled to intervene in the "free-form, informal process" that characterized the matter at the time the petitioners sought to intervene. Distinctly, in the instant case, the agency -- i.e., the Commission -- granted the petitioner's (Peoples') plea for intervenor party status, while the initial party to the case (FPL) did not avail itself of any of its options to oppose the Order Granting Intervention. Moreover, the Commission's docket opened for the purpose of processing an electric utility's DSM Plan cannot legitimately be characterized as a "free-form, informal process" like the initial phases of the environmental permit application process in Manasota-88 v. DER.

B. FPL Is Barred By The Operation Of Law -- I.E., The Finality Of The Commission's Order Granting Intervention -- From Challenging Peoples' Intervention, Already Granted By the Commission In This Docket, Via Its Attempted Collateral Attack On Peoples' Petition On Proposed Agency Action.

As recited above, FPL neither filed any pleading opposing Peoples' intervention in this docket, nor sought reconsideration of the Order Granting Intervention, nor appealed the Order. By operation of law, the Commission's Order thus became final, beyond further Commission or appellate review, and binding on FPL, which was already a party to the case. Moreover, the doctrine of administrative finality confirms that Peoples may rely on the

Commission's Order Granting Intervention and that FPL may not now challenge the Commission's determinations in that Order.[1] Finally, FPL's attempted challenge to Peoples' standing herein via its collateral attack on Peoples' Petition on Proposed Agency Action is inappropriate and barred by operation of the Commission's Order, which is final for all purposes as between FPL and Peoples. The only distinction between this situation, wherein FPL is seeking a second bite at the apple of Peoples' standing herein, and a classic instance where the doctrine of collateral estoppel would bar FPL's attempt, is that here, the order binding FPL was rendered in the same case, rather than in an earlier docket.

C. Once The Commission Establishes A Party's Standing By Granting A Petition To Intervene, There Is No Requirement To Re-Establish Standing In A Petition Protesting A Proposed Agency Action Order, And The Requirement To Include A Statement Of How A Party's Substantial Interests Will Be Affected In A Petition Protesting A PAA Order Does Not Operate To Give Another Party A "Second Bite At The Apple."

FPL's assertion that Peoples was, or is, required to "re-plead" its standing to protest the Commission's PAA Order, and its assumption that FPL's posited "re-pleading" requirement provides FPL with another opportunity to challenge standing already

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[1] See, e.g., In Re: Implementation of Rules 25-17.080 through 25-17.091, F.A.C., Regarding Cogeneration and Small Power Production, 92 FPSC 2:24, 38: "The doctrine of administrative finality is one of fairness. It is based on the premise that the parties, as well as the public, may rely on Commission decisions." The Commission should also note that none of the circumstances warranting revisitation of an earlier Commission order, such as where the order was induced through perjury, fraud, collusion, deceit, mistake, or the intentional withholding of key information, are present in this case. See 92 FPSC 2:37.

established by a Commission order, has no foundation in Commission law or rules. The Commission's procedural rule regarding protests of PAA orders, Rule 25-22.029, simply provides that a petition on proposed agency action "shall be filed in the form provided by Rule 25-22.036." The only special requirement imposed on petitions protesting proposed agency actions is that set forth in Rule 25-22.036(7)(f) that requires a petition on proposed agency action to include a "statement of when and how notice of the Commission's proposed agency action was received." The general provisions of Rule 25-22.036(7) require that a petitioner -- here, Peoples -- provide "an explanation of how [the petitioner's] substantial interests will be or are affected by the Commission determination; . . . ." Peoples provided the required explanation in its Petition to Intervene; the Commission reviewed that Petition, which asked, among other things, that Peoples be permitted "to participate as a full party in this proceeding," and determined that the Petition should be granted.

The Commission's rule on proposed agency actions provides, in pertinent part, as follows:

> One whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a §120.57 hearing in the form provided by Rule 25-22.036.

This rule simply defines who may request a section 120.57 hearing. Peoples had already established its standing for this docket, including its standing to protest the Commission's proposed agency

action herein via explaining, in its Petition to Intervene, how its substantial interests would be affected by the Commission's action in this docket. More importantly, the Commission had already affirmed Peoples' party status herein by issuing its Order Granting Intervention. In compliance with the Commission's rule on petitions, including PAA petitions, Peoples further included a "statement as to how [Peoples'] substantial interests would be affected by" the Commission's proposed action. Peoples did so simply to conform to the Commission's rule.

The Commission's rules do not -- and cannot reasonably be interpreted to -- give an existing party to a Commission docket a de novo opportunity to challenge another existing party's standing where, as here, the existing party (FPL) simply passed up its opportunities to challenge the intervening party's (Peoples') standing via either (1) moving in opposition to the intervenor party's petition to intervene, (2) seeking reconsideration of the Commission's Order Granting Intervention, or (3) appealing that Order.

Nor do the Commission's PAA rules give a party a second bite at a final Commission order. If FPL thought that the Commission erred in issuing the Order Granting Intervention, it should simply have sought reconsideration or appealed; the legal time for both of these appropriate challenges has long since expired, and FPL cannot claim otherwise.

D. The Commission Need Not, And Should Not, Reach An **Agrico** Standing Analysis In This Case. In Any Event, Peoples Has Adequately Plead Both The Injury In Fact And The Protected Interests Requirements Of **Agrico.**

As explained above, Peoples' standing in this proceeding is no longer at issue, Peoples' standing having been established, with finality, when the Commission's Order Granting Intervention passed beyond the time for appeal. Even assuming, for the sake of argument, that Peoples' standing were still at issue, Peoples has adequately plead injury in fact -- that some of FPL's DSM programs would, if implemented, conflict with and undermine Peoples' Commission-approved energy conservation programs -- and that Peoples is entitled to protection under the Florida Energy Efficiency and Conservation Act.

Peoples' intervention and protest of the Commission's proposed action herein is not, as FPL suggests, a disguised attempt to protect Peoples' purely competitive interests. As the Commission itself noted in a case cited by FPL, Peoples has participated in other electric utility conservation proceedings, specifically the 1994 conservation goals docket. The Commission further noted that

> the gas utilities' interests were more directly tied to those proceedings. Also, the proceedings in the conservation goals docket were likely to affect more than just the gas utilities' economic interests. The proceedings in that docket were likely to affect how the gas utilities would implement their own conservation programs.

In Re: Petition of Peoples Gas System, Inc. for Approval of Load Profile Enhancement Rider, 95 FPSC 3:352, 357.

Peoples' same interests are at stake here, with even more immediacy than in the conservation goals dockets, because this is the proceeding in which FPL's (and the other electric utilities') DSM programs will be approved for implementation, and because this is Peoples' only known opportunity to protect its interests. Thus, following the Commission's reasoning in the earlier cases, Peoples' interests asserted herein are **not** merely its pure competitive interests, and Peoples is entitled to standing in this docket.

E. FPL's "Timing Policy" Argument Is Without Foundation In Commission Law Or Rules And Must, Accordingly, Be Rejected.

FPL asserts that a party to a Commission proceeding should not have to consider responding to petitions to intervene while it is in the process of preparing its own initial case filings. This argument has no basis in Commission law or rules, and indeed, there is practical precedent to the contrary in a recent proceeding involving Peoples Gas System and the investor-owned electric utilities.

First, the Commission's rules contain no provision indicating that potential parties may only petition to intervene in Commission dockets after an existing party files its initial case filings. Neither do the Commission's rules provide that Commission dockets are only opened by the filing of an initial pleading. (As discussed above, the issuance of the CASR herein was at least equivalent to the Commission's opening this docket on its own

motion. Moreover, if FPL believed that the Commission erred in granting Peoples' intervention herein, FPL should have challenged the Commission's Order Granting Intervention via an appropriate motion or appeal.)

Second, in April 1994, the Commission opened Docket No. 940349-GU, via issuance of a CASR, for the purpose of considering whether the Commission should adopt certain integrated resource planning standards to be applicable to Florida's investor-owned gas utilities. The CASR was issued on April 6, 1994. Tampa Electric Company petitioned to intervene on April 19, 1994, before the Commission issued its Notice of Hearing and Order Establishing Procedure on April 21, 1994. Gulf Power Company petitioned to intervene on April 22, FPC on April 28, and FPL on April 29, 1994. Peoples opposed TECO's petition to intervene, which was subsequently granted, by filing its memo in opposition to TECO's intervention on May 2, 1994, the same day that Peoples filed its direct testimony -- of three witnesses -- in the proceeding. (Peoples argued against the other utilities' petitions to intervene, which were also granted, at the prehearing conference.) FPL cannot complain that it should be excused from responding to timely filed petitions to intervene while it is preparing its direct case in a docket, and FPL surely cannot argue that it should be excused from responding to a Commission order -- here, the Order Granting Intervention -- that it believes will affect it because it is too busy preparing its case materials.

F. The Commission Should Stand By Its Order Granting Intervention.

FPL's Motion in Opposition nakedly asks the Commission to ignore its own Order Granting Intervention and effectively accuses the Commission of improperly issuing that Order, calling it "a nullity." The Commission acted properly. If FPL, a named party to the docket from its inception, felt that the Commission erred by issuing its Orders granting Peoples' intervention in December and January, FPL should have sought reconsideration or appealed. Just as FPL cannot now get a "second bite" at Peoples' standing, FPL cannot now get a "second bite" at the Commission's Order Granting Intervention via its attempted collateral attack on Peoples' Petition on Proposed Agency Action.

II. CONTRARY TO FPL'S ASSERTIONS, PEOPLES IS ADVANCING ENTIRELY CONSISTENT INTERPRETATIONS OF THE FLORIDA ENERGY EFFICIENCY AND CONSERVATION ACT.

FPL asserts that Peoples is advancing an internally inconsistent interpretation of FEECA, i.e., that gas utilities may have energy conservation programs that increase gas use while electric utilities may not have programs that increase electric use. This is generally accurate as a statement of Peoples' position based on the factual state of the world today, but it is not at all inconsistent with FEECA. The plain and simple facts are as follows:

1. Gas use is increasingly efficient because of the efforts of appliance manufacturers in producing more efficient appliances, the efforts of gas utilities such as Peoples in

promoting them, and the economic decisions of consumers. Accordingly, as a general proposition, the promotion of new gas technologies, and the promotion of new installations of more efficient gas appliances, is specifically consistent with FEECA's directive to increase the overall efficiency of natural gas production and use.

2. The use of gas at the end-use level is, for most applications, more efficient, on a total fuel cycle basis, than the use of electricity, produced by consumption of a primary fuel in an electric generating plant at a conversion efficiency of 25 to 40 percent, to power comparable electric appliances at the end use level. Accordingly, the use of gas in such applications is specifically consistent with FEECA's directive to promote the overall efficiency of electricity and natural gas production and use.[2]

3. The use of gas at the end use level instead of electricity will incontrovertibly reduce electric peak demands. Since many gas appliances and technologies displace electricity at the end use level, the use of gas at the end use level is specifically consistent with FEECA's directive to reduce and

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[2] It is possible that some electric cooling applications, if powered electrically by high-efficiency combined cycle electric generators, would have a higher overall energy efficiency than some gas cooling applications. However, even when high-efficiency or very-high-efficiency electric cooling applications are powered by the output of electric generators with conversion efficiencies less than 33 percent, plus losses of another 6 to 9 percent of the power put onto the grid from the generator, the overall fuel cycle efficiency is less than that of many gas cooling applications.

control the growth of weather-sensitive peak electric demands.

4. The use of gas at the end use level instead of electricity will incontrovertibly reduce electric energy consumption and the consumption of electric generating fuels. Since most gas appliances and equipment displace electric energy consumption, the use of gas at the end use level is specifically consistent with FEECA's directive to reduce and control the growth of electric energy consumption. Additionally, whenever the incremental electric generating fuel is oil, the use of gas at the end use level is also specifically consistent with FEECA's directive to conserve expensive resources, particularly petroleum fuels.[3]

The Commission has long recognized the benefits of efficient gas use and the consistency of increasing the efficient use of gas with FEECA's goals. The Commission has consistently approve gas utilities' energy conservation programs pursuant to FEECA. The Commission has also recognized that "natural gas is a clean, efficient and, in many instances, a cost-effective alternative to the use of electricity for home heating" and recognized the prudence of electric utilities' consideration of gas use as a means to mitigate winter peak demands in Florida. In Re: Investigation Into the Cold Weather Capacity Shortfall Emergency Occurring in Peninsular Florida, December 23-25, 1989, FPSC Docket No. 900071-

[3] To the extent that gas measures displace oil-fired end use technologies, gas use is also specifically consistent with FEECA's directive to conserve expensive resources, particularly petroleum fuels.

EG, Order No. 22708 at 7 (March 20, 1990).

By contrast, electric end use measures, even where more efficient than a "baseline" electric technology, will necessarily increase electric energy consumption, contrary to FEECA, as compared to the same end use application being served by gas technologies. Similarly, except for electric appliances or measures that are used exclusively in off-peak periods, electric measures will also increase electric peak demands, contrary to FEECA, as compared to the same end use application being served by gas appliances.

In summary, the laws of Florida are naturally in harmony with the laws of physics. Increasing the efficient use of natural gas to reduce and control the growth of electric peak demands and energy consumption, and to increase overall energy efficiency within Florida, is specifically consistent with FEECA. Increasing the use of electricity, where more efficient alternatives are available, is not. Peoples is fully prepared to prove its allegations as to the efficiency of natural gas technologies at hearing.

III. CONTRARY TO FPL'S ASSERTIONS, PEOPLES IS EMPHATICALLY NOT SEEKING TO RELITIGATE ISSUES ALREADY DECIDED IN THE CONSERVATION GOALS PROCEEDINGS.

FPL asserts that Peoples is attempting to relitigate issues that were decided in the 1994 Conservation Goals Dockets and that Peoples is therefore barred from doing so by the doctrines of administrative finality and collateral estoppel. FPL asserts that

the Commission has already determined that load control offerings are appropriate energy conservation programs, that Peoples is simply attempting to relitigate the issue whether gas technologies should be offered through electric utility DSM programs, and that any attempt to relitigate cost-effectiveness is barred.

Regarding FPL's assertions regarding load control programs, Peoples simply raises the same and similar concerns as those raised by the Commission Staff regarding FPL's (and FPC's and TECO's) commercial and industrial load control offerings: that they "may be more correctly classified as load building or load retention programs." FPSC Docket Nos. 941170-EG et al., FPSC Staff Recommendation, FPSC Document No. 04390 (May 4, 1995). These concerns led the Commission to schedule an undocketed workshop regarding these issues on September 5, 1995. Order No. PSC-95-0691-FOF-EG at 13. Unfortunately, as Peoples noted in its Petition on Proposed Agency Action, this undocketed workshop is not adequate to protect Peoples' interests in these issues.

As to the second point, FPL incorrectly asserts that Peoples is simply trying to relitigate whether Gas DSM measures should be offered by electric utilities. Peoples is properly and appropriately attempting to litigate issues relating to the terms and conditions under which electric DSM measures may be offered and whether such measures may be used -- as part of an electric utility's energy conservation programs, with cost recovery pursuant to FEECA -- to promote electric load growth where other, more efficient alternatives are available to serve the same end uses and

the Commission has already determined that load control offerings are appropriate energy conservation programs, that Peoples is simply attempting to relitigate the issue whether gas technologies should be offered through electric utility DSM programs, and that any attempt to relitigate cost-effectiveness is barred.

Regarding FPL's assertions regarding load control programs, Peoples simply raises the same and similar concerns as those raised by the Commission Staff regarding FPL's (and FPC's and TECO's) commercial and industrial load control offerings: that they "may be more correctly classified as load building or load retention programs." FPSC Docket Nos. 941170-EG et al., FPSC Staff Recommendation, FPSC Document No. 04390 (May 4, 1995). These concerns led the Commission to schedule an undocketed workshop regarding these issues on September 5, 1995. Order No. PSC-95-0691-FOF-EG at 13. Unfortunately, as Peoples noted in its Petition on Proposed Agency Action, this undocketed workshop is not adequate to protect Peoples' interests in these issues.

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where such alternatives are not comparably supported by the offering utility. Peoples does not argue that FPL cannot implement its programs; Peoples simply argues that FPL cannot implement its programs as part of its energy conservation offerings pursuant to FEECA where doing so would discriminate against and impede more efficient alternatives, unless FPL also provides comparable incentives for such alternatives. (FPL's own evaluations of gas technologies in the conservation goals dockets showed that 9 of the 11 measures evaluated would be cost-effective to FPL's general body of ratepayers. In Re: Adoption of Numeric Conservation Goals for Florida Power & Light Company, Florida Power Corporation, Gulf Power Company, and Tampa Electric Company, FPSC Order No. PSC-94-1313-FOF-EG at page 29. While FPL's concern regarding promotion of programs that may not be cost-effective to all potential participants is legitimate (which concern, incidentally, probably also applies to some participants in electric DSM programs), such measure must be cost-effective to some significant number of customers. As the Commission noted in its order on conservation goals,

> The nearly total failure of the gas technologies to pass the electric utilities' calculation of the participant test is difficult to accept. We do not believe that approximately 600,000 existing Florida gas customers have made a mistake in their economic decision, nor that the manufacturers of gas technologies would commit resources to develop and market new gas technologies if they are

all destined to be market failures.

FPSC Order No. PSC-94-1313-FOF-EG at page 29.

Finally, the cost-effectiveness of measures is obviously on the table in this proceeding; FPL has itself proposed a program (see FPL's Motion at 31, note 12) that was not cost-effective per FPL's filings in the goals dockets but which has now been re-designed to be cost-effective. Additionally, the Commission has, in a later order herein (Order No. PSC-95-0865-FOF-EG) reviewed revised calculations of the cost-effectiveness of FPL's proposed commercial and industrial load control program offerings.

IV. THE COMMISSION'S RULES DO NOT REQUIRE A PETITION ON PROPOSED AGENCY ACTION TO "STATE A CAUSE OF ACTION" AGAINST OTHER PARTIES TO A PROCEEDING.

FPL criticizes Peoples' Petition on Proposed Agency Action for allegedly failing to state a cause of action in discrimination involving any of FPL's programs. This criticism is misplaced. In the first instance, Peoples has effectively protested the Commission's proposed action herein; this is not a complaint proceeding. Secondly, Peoples has identified, as specifically as possible under the circumstances, those provisions of the PAA Order that it is protesting and also those provisions that propose to approve enumerated specific utility programs. Most of the reason that Peoples' Petition on Proposed Agency Action is not any more specific is that the Commission's PAA Order proposes to approve, or to permit administrative approval, of DSM program provisions -- the "program participation standards" -- that no one outside the

electric utilities has yet seen. The procedural "Catch-22" that Peoples identified in its Petition is that protesting the PAA Order is the only known opportunity that Peoples will have to protect its interests herein. If FPL wishes to move for a more definite statement of Peoples' concerns, Peoples will gladly provide same after it has had an adequate opportunity to review the program participation standards. Indeed, this further identification of more specific issues would normally occur as the case progresses.

Again, Peoples is not seeking to obstruct the legitimate, non-discriminatory implementation of electric utility DSM programs; Peoples is properly seeking to protect its substantial interests. Accordingly, Peoples pledged in Petition on Proposed Agency Action to "diligently review the proposed program participation standards when they are filed and [to] work with the electric utilities and the Commission Staff to resolve disputes regarding those standards," with the intent of resolving such disputes without a hearing.

V. PEOPLES GAS SYSTEM SUPPORTS CONSISTENT APPLICATION OF EVEN-HANDED STANDING PRINCIPLES IN PROCEEDINGS INVOLVING ELECTRIC AND GAS UTILITIES.

As explained above, Peoples' standing in this proceeding is no longer at issue, that issue having been resolved, with finality, when the Commission's order granting Peoples' Petition to Intervene and permitting Peoples to participate as a full party herein passed beyond the time for appeal. Even assuming, for the sake of argument, that Peoples' standing were still at issue, FPL's arguments for evenhanded standing criteria and decisions are of no

avail to FPL to prevent Peoples from participating herein. Indeed, Peoples assuredly supports the Commission's application of evenhanded standing criteria and decisions. In this context, the evenhanded application of the Commission's standing criteria would indicate that both electric and gas utilities should be permitted to intervene in each other's energy conservation proceedings and that neither electric nor gas utilities should be permitted to intervene in each other's non-ECCR tariff filings.

FPL cites to the Commission's decision earlier this year in In Re: Petition of Peoples Gas System, Inc. for Approval of Load Profile Enhancement Rider, 95 FPSC 3:352 (1995) (hereinafter "Load Profile Enhancement Rider"). In that case, Peoples had petitioned the Commission for approval of a new tariff rider offering. Peoples did not seek approval of the new rider as part of Peoples' Energy Conservation Plan, nor did Peoples seek recovery of any costs or revenues associated with the rider through its Energy Conservation Cost Recovery ("ECCR") factor. Tampa Electric Company sought to intervene in this non-ECCR tariff proceeding, and Peoples opposed TECO's intervention. Among other things, TECO argued that it should be permitted to intervene in the proceeding because "Peoples was allowed to intervene in the conservation goals proceedings for the electric utilities, and Peoples has filed a complaint against TECO concerning" certain of TECO's electric water heating "pilot programs." 95 FPSC 3:356.

In denying TECO's intervention, the Commission correctly distinguished the petition for approval of a non-ECCR tariff in

Load Profile Enhancement Rider from the conservation goals proceedings. The Commission noted that "the gas utilities' interests were more directly tied to those proceedings," and further noted that:

> the proceedings in the conservation goals docket were likely to affect more than just the gas utilities' economic interests. The proceedings in that docket were likely to affect how the gas utilities would implement their own conservation programs.

Load Profile Enhancement Rider, 95 FPSC 3:357.

This is exactly the interest that Peoples has alleged, and seeks to have protected, via its Petition to Intervene, and its Petition on Proposed Agency Action, in this case. This interest is at stake for Peoples, with significantly more immediacy here than in the conservation goals dockets, because this is the proceeding in which FPL's (and the other electric utilities') DSM programs will be approved for implementation, and because this is Peoples' only known opportunity to protect its interests. Thus, following the Commission's reasoning in Load Profile Enhancement Rider, Peoples is at least entitled to standing in this docket.

The Commission will also recognize that its decision in Load Profile Enhancement Rider was not, as suggested by FPL, "an important departure from prior Commission decisions on standing" or from the Commission's standing jurisprudence. The Commission properly identified TECO's interests therein as being solely competitive, and applying its precedents, denied TECO standing.

The Commission further correctly distinguished that case from the conservation proceedings in which the Commission granted Peoples standing to intervene and from Peoples' complaint against TECO's water heating "pilot programs," wherein Peoples contended that TECO's "pilot programs" were really an attempt to harm Peoples' implementation of its Commission-approved energy conservation programs.

Moreover, the Commission must note well that if the Commission prohibits Peoples from intervening in this proceeding to approve FPL's DSM Plan and programs, then the evenhanded application of standing principles purportedly sought by FPL will require that this precedent be applied to prohibit FPL, or Florida Power Corporation, Tampa Electric Company, or any other electric utility from intervening in <u>any</u> future proceeding to approve Peoples', or any other gas utilities', energy conservation plans or programs.

Finally, the evenhanded application of the Commission's standing decisions in the conservation proceedings and in <u>Load Profile Enhancement Rider</u> would simply result in <u>both</u> electric and gas utilities being permitted to intervene in each other's energy conservation proceedings, assuming some reasonable allegation of protected substantial interests being affected, and <u>neither</u> electric nor gas utilities being permitted to intervene in each other's non-ECCR tariff filings. This would satisfy the "goose and gander" principle, it would be fair and evenhanded, and it would be entirely consistent with the Commission's prior decisions on these matters.

CONCLUSION

FPL is barred by operation of law, i.e., by the finality of the Commission's Order Granting Intervention, from challenging Peoples' standing to intervene in this case by its attempted collateral attack on Peoples' Petition on Proposed Agency Action. When Peoples filed its Petition on Proposed Agency Action, the Commission had already affirmed Peoples' status under the PAA rules, Rule 25-22.029, as a party whose substantial interests might or would be affected by the Commission's proposed action herein. Even if the Commission were to reach an Agrico analysis herein, Peoples has satisfied the standing requirements by pleading injury in fact -- that FPL's DSM programs will conflict with and undermine Peoples' ability to implement its Commission-approved energy conservation programs -- and that Peoples and its customers are protected from FPL's implementation of programs that will discriminate against gas use.

Contrary to FPL's allegations, Peoples is advancing an entirely consistent interpretation of FEECA: consistent with the laws of physics and the factual state of technology as it exists today, the increased efficient use of gas to serve energy end uses that might otherwise be served by electricity is specifically consistent with FEECA's directives to increase overall energy efficiency and to reduce and control the growth of electric peak demands and electric energy consumption. The increased use of electricity, where more efficient alternatives are available, is not.

Contrary to FPL's assertions, Peoples is not seeking to relitigate matters decided in the Conservation Goals Dockets. Peoples is appropriately seeking to protect its interests in preventing discrimination against gas use, and in preventing the use of electric DSM programs to undermine its Commission-approved energy conservation programs.

Finally, Peoples fully supports evenhanded application of standing criteria and decisions. The consistent and evenhanded application of the Commission's standing decisions would indicate that both electric and gas utilities should be permitted to intervene in each other's energy conservation proceedings, assuming some reasonable allegation of protected substantial interests being affected, and that neither electric nor gas utilities should be permitted to intervene in each other's non-ECCR tariff filings.

BASED ON THE FOREGOING, the Commission should stand by its Order Granting Intervention and DENY FPL's Motion in Opposition to Peoples' Petition on Proposed Agency Action.

Respectfully submitted this 24th day of July, 1995.

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (*) or by United States Mail, postage prepaid, on the following individuals this 24th day of July, 1995:

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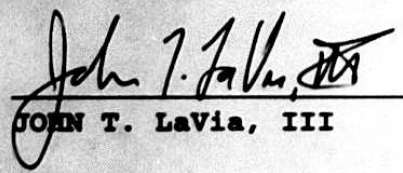

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