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November 30, 1998

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COMMUNICATIONS

Ms. Blanca S. Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Florida Power & Light Company and Jacksonville Electric
Authority--Docket No. 980755-EU

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light
Company and Jacksonville Electric Authority are the original and
fifteen copies of the Joint Response of FPL and JEA in Opposition
to Petition to Intervene.

By copy of this letter, this document is being furnished to
the parties on the attached service list.

Very truly yours,

Richard D. Melson

Richard D. Melson

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
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- EAG 2 RDM/kcg
- LEG 2 Enclosures
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Richard D. Melson
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Florida) Docket No. 980755-EU
 Power & Light Company and)
 Jacksonville Electric Authority) Filed: Nov. 30, 1998
 to approve a new territorial)
 agreement between the two utilities)
 _____)

**JOINT RESPONSE OF FPL AND JEA
 IN OPPOSITION TO PETITION TO INTERVENE**

Florida Power & Light Company (FPL) and Jacksonville Electric Authority (JEA), by and through their respective undersigned attorneys, file this Joint Response in Opposition to the Petition to Intervene (Petition) filed by Citizens Against Power Exchange, Inc. (CAPE). As grounds for their opposition, FPL and JEA state:

1. CAPE's Petition to Intervene was filed in this docket on or about November 12, 1998. CAPE did not serve the Petition on either FPL or JEA. Upon subsequently learning of the filing by a review of the docket file, FPL and JEA obtained copies of the Petition from the Division of Records and Reporting.

2. FPL and JEA urge the Commission not to rule on the Petition at this time since that Petition will become moot unless CAPE files a timely protest to the Commission's Proposed Agency Action in this docket. CAPE was permitted to participate fully in the Agenda Conference held on November 17, 1998, at which the

Commission voted to enter a Proposed Agency Action Order approving the new territorial agreement. By allowing CAPE to participate in this manner, the Commission has adequately protected any interest that CAPE may have in participating at this stage in the proceedings. If CAPE elects to protest the PAA Order, the question of CAPE's standing to protest should be decided on the basis of the facts alleged in that protest, rather than on the conclusory allegations in its Petition to Intervene. If CAPE elects not to protest the PAA Order, there is nothing to be served by ruling on the Petition to Intervene.

4. If the Commission nevertheless decides to rule on the Petition to Intervene at this time, that petition should be denied based on CAPE's failure to allege facts demonstrating that it has standing to participate in this proceeding. To demonstrate standing to intervene under Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 479, 482 (Fla. 2d DCA 1981), a petitioner must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. CAPE's petition fails both prongs of this test.

5. As to the first prong of the Agrico test, the petition does not identify any injury in fact that will be suffered by CAPE's members, much less one of sufficient immediacy to confer standing to intervene in this docket. CAPE's petition contains

only the conclusory allegation that CAPE's "members will be adversely affected by this territorial swap." (Petition, ¶13) The petition gives no hint of what the adverse effect will be. Based on comments made by CAPE's members and attorney at the Agenda Conference, it appears that CAPE is concerned about potential rate and reliability impacts to its members. Even if those concerns had been adequately pleaded -- which they were not -- they would not show an injury in fact of sufficient immediacy to entitle CAPE to party status in this proceeding. First, in light of the Commission's action approving a five year transitional rate, none of CAPE's members will suffer an adverse rate impact from the transfer for at least five years. Any effect beyond that time is purely speculative, since FPL offers conservation and load management programs that CAPE's members can use to reduce their electric bills and since the existing rate differential between FPL and JEA may not continue that far into the future. In any event, the fact that a customer may suffer an economic detriment from paying a particular utility's rates has previously been held insufficient to confer standing. AmeriSteel Corp. v. Clark, 691 So.2d 473, 477-478 (Fla. 1997) Second, any adverse reliability effect is also purely speculative and will be addressed, in any event, by the Commission's on-going monitoring of reliability in this service area.

6. As to the second prong of the Agrico test, CAPE's petition simply alleges, without explanation, that "this

[unidentified] substantial injury is the type that the proceedings in this regard are designed to protect." (Petition, ¶5) The case law is clear, however, that in reviewing territorial agreements, the Commission has the responsibility to ensure "that the territorial agreement works no detriment to the public interest." Utilities Commission of City of New Smyrna Beach v. Florida Public Service Commission, 469 So.2d 731, 732 (Fla. 1985). In this regard, the rate impact on a particular group of customers is not the type of interest that the proceeding to review and approve such an agreement is designed to protect. This is especially so in light of the long-standing principle that no individual has an organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself. Storey v. Mayo, 217 So.2d 304, 307-308 (Fla. 1968).

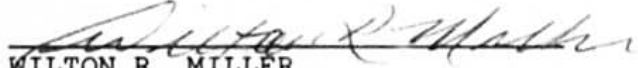
7. Since the Petition to Intervene fails to allege facts sufficient to confer standing, the Petition must be denied.

WHEREFORE, FPL and JEA request that the Commission:

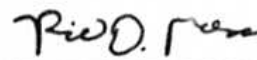
(1) decline to take action at this time on the Petition to Intervene, since that Petition will become moot unless CAPE files a timely protest to the Proposed Agency Action in this proceeding; or, in the alternative

(2) deny the Petition to Intervene for lack of standing.

RESPECTFULLY SUBMITTED this 30th day of November, 1998.


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ELECTRIC AUTHORITY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following by U.S. Mail or Hand Delivery(*) this 30th day of November, 1998.

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