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MAIL ROOM

Michael T. Caldwell
12540 SW 108 Avenue
Miami, FL 33176

December 2, 2000

ORIGINAL

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

Re: Docket No. 000982-EI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Petitioner Michael T. Caldwell is the following document:

1. Original of Petitioner's Rebuttal to Florida Power & Light Company's Motion for Summary Final Order and Request for Expedited Disposition.

Thank you for your assistance with this filing.

Sincerely,



Michael T. Caldwell

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3. On November 15, 2000, FPL filed the Motion for Summary Final Order and Request for Expedited Disposition, requesting that (1) the Commission dismiss or deny Petitioner's Request for Section 120.57 Hearing and Protest of Proposed Agency Action; and (2) the Commission affirm the Commission's proposed agency action reflected in Order No. PSC-00-1913-PAA-EI issued October 19, 2000 ("PAA Order").

4. Petitioner disputes the statements made in FPL's Motion. FPL fails to address the issues stated in the Petition and misinterprets the Petitioner's words and intent. The specifics are noted below.

5. In paragraph 19 of the Motion, FPL indicates that the buy-out of the two Standard Offer contracts is not a "settlement for damages" and was not determined to be such by the Commission. Petitioner notes that the FPL "settlement" is not a "buy-out" of such contracts but, as stated by FPL in paragraph 11 of its Motion, it is an "agreement" to "find a mutually acceptable resolution of their disputes and eliminate the uncertainty and risk involved in ...the litigation.." Therefore, in FPL's own words, the "settlement" is actually an Agreement that in effect, settles the claims for damages that the defendant Partnerships were pursuing in state court. The Petitioner never said that the Commission determined the settlement to be damages, but that the outcome of the state court action would be considered as "damages" using common terminology.

6. In paragraph 20 of the Motion, FPL emphasizes that it did not voluntarily terminate the two Standard Offer contracts but that "its legal obligations under the Contract ceased effective January 1, 1997." This is not a misstatement on the part of the Petitioner but simply a matter of semantics. If FPL took actions that stopped its purchase of power under the Standard Offer Contracts, whether those actions taken were in court or were in the daily

operations of the utility, they are still voluntary actions taken by FPL. In fact, in paragraph 22 of the Motion, FPL "agrees that it exercised what it believed to be its right..to confirm that it no longer had any legal obligations under the contracts.." This resulted in the QFs choosing to file for bankruptcy. The end result is that the contracts were terminated, or breached, or whatever other terminology one might choose to use, and these were voluntary actions by FPL.

7. In paragraph 21 of the Motion, FPL agrees that they never petitioned the Commission for approval to buy-out the Standard Offer Contracts but dismisses this as a non-disputed fact that is neither relevant or material to the issue at hand. FPL misses the point that is made by the Petitioner - FPL should have approached the Commission with a request to approve a buy-out of the Standard Offer Contracts if FPL believed that those Contracts were no longer cost-effective rather than choosing to attempt to "cease its legal obligations" through court action. It is interesting that FPL is now characterizing its request for approval of this settlement by the Commission as a "buy-out" when, in fact, it is truly a settlement in lieu of potential damages that might be assessed by the court.

8. In paragraph 23 of the Motion, FPL claims that the Petitioner inaccurately stated the facts and inaccurately characterized the Commission's decision with the statement that the settlement "is to settle those damages incurred as a result of Florida Power & Light Company's voluntary actions." FPL further notes that "there has been no final judgement awarding damages" but that the payment is a "compromise..in recognition of..risks of litigation." This is true - the settlement is not final yet until the Commission has approved passing the costs on to the ratepayer. At that point, the settlement will end up being considered "damages" or "in lieu of damages" or a "compromise" or whatever other terminology one wishes to use - FPL is simply playing with semantics to avoid addressing the issue raised.

9. In paragraph 24 of the Motion, FPL raises the question of "damages" again. See the answer in paragraph 8 above regarding "damages."

10. In paragraph 25 of the Motion, FPL disputes the issue that the settlement resulted from "bad business decisions on the part of FPL's management" and that this reflects the Petitioner's "disagreement with the Commission and does not present a basis for an evidentiary hearing." The Petitioner's reference to "bad business decisions on the part of FPL's management" is not a disagreement with the Commission and is a basis for an evidentiary hearing; in fact, it goes to the heart of the matter. The Commission is supposed to ensure that only "prudent and reasonable costs" incurred by a utility in the normal course of business are passed on to the ratepayer. Costs that result from "bad business decisions" are not considered prudent and reasonable costs and should not be passed on to the ratepayers but borne solely by the utility's stockholders. The Petitioner is asserting that FPL's voluntary decision to "cease its legal obligations" (as FPL characterizes it) under the Standard Offer Contracts is a "bad business decision" which resulted in litigation; the proposed results of that litigation is a "settlement" of \$222.5 million in "damages" or "compromises" (as FPL characterizes it). The Commission should not reward a utility for "bad business decisions" which result in additional costs for ratepayers. (Please note that FPL ratepayers have not received, and will not receive, any kilowatt hours of electricity in return for the proposed settlement of \$222.5 million. They are paying for something that they never have received.). FPL further quotes Chairman Deason as stating that "customers stand to benefit." The Petitioner fails to see how the customer benefits from paying \$222.5 million for nothing.

11. In paragraph 26 of the Motion, FPL states that the Petition does not challenge the findings and determination regarding the potential savings from the buy-out of the two Standard

Offer Contracts of approximately \$412 million or \$300 million, depending on the outcome of the litigation. FPL is incorrect and misstates the facts in the Petition. In paragraph 5(e) of the Petition, it is noted that **"one of the four possible outcomes of the litigation is that FPL prevails. The potential cost of this outcome is a potential cost to the ratepayers of \$7.6 million in attorney's fees and court costs. Obviously this would be a better choice if FPL's customers are to pay for the outcome of the litigation."** FPL has chosen to ignore this section of the Petition entirely and characterizes the Petition as not having challenged the findings and determinations regarding the potential savings. The Petitioner finds it amazing that FPL cannot figure out that this paragraph does challenge those findings and that there is another alternative outcome that is much more cost-effective for the ratepayer. The Petitioner also finds it interesting that FPL chose to ignore this section and did not respond at all to the issue raised. FPL voluntarily chose to go into court to try to "cease its legal obligations" under the contracts and obviously assumed that it would prevail in that challenge. Circumstances must have occurred to make FPL believe that it will no longer prevail and that this is a very uncertain outcome, and thus it has chosen to "settle" the litigation.

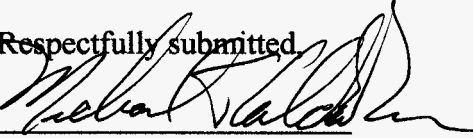
The Petition further notes in paragraph (6) that **"the Commission's proposed agency action is premature; it should wait to see what the outcome of the litigation is;** then, if FPL does not prevail and the Court orders performance of the QF contracts, the Commission could entertain a petition by FPL for a buy-out of the QF contracts." The point being made by the Petitioner is that the buy-out option still remains if FPL does not prevail; if FPL does prevail, the ratepayer would only pay \$7.6 million which is a savings of \$214,900,000 over the Commission's currently Proposed Agency Action. This is why the Petitioner is asking for the Commission to reconsider its decision and to dismiss FPL's Motion.

12. In paragraph 27 of the Motion, FPL states "the PAA Petition offers nothing more than an unjustified and unsupported disagreement with the Commission's decision." This is untrue and is a mischaracterization of the Petition by FPL. As noted above, FPL has chosen to try to use semantics to change what the Petition says and to misrepresent the Petitioner's arguments by using "compromise" instead of "damages" and "cease legal obligations" instead of "voluntary actions" or "bad business decisions." In some cases, FPL totally ignores the Petitioner's arguments and fails to respond to them.

13. As noted above, there are other, more cost-effective alternatives that the Commission should consider before approving FPL's request for conditional settlement agreement. If FPL pursues litigation and prevails (and it must have assumed that it would prevail prior to choosing to "cease its legal obligations" under the Contracts), the cost to the ratepayer is only \$7.6 million which is a savings of \$214.9 million over the Commission's Proposed Agency Action. If FPL fails to prevail and the Court orders performance of the QF contracts, FPL still has the option to petition the Commission for a buy-out of the QF contracts.

WHEREFORE, for the foregoing reasons, Petitioner respectfully requests that the Commission deny or dismiss FPL's Motion for Summary Final Order and Request for Expedited Disposition, and affirm the Petition Requesting Section 120.57 Hearing and Protest of Proposed Agency Action filed by Petitioner.

DATED this 2nd day of December, 2000.

~~Respectfully submitted,~~

MICHAEL T. CALDWELL
12540 SW 108th Avenue
Miami, FL 33176
305-233-7779

DOCKET NO. 000982-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 2nd day of December, 2000.

A handwritten signature in black ink, appearing to read "Michael T. Caldwell", written over a horizontal line.

Michael T. Caldwell

Wm. Cochran Keating IV
Senior Attorney
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850