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June 5, 1997

BY HAND DELIVERY

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

Re: Petition of Florida Power & Light Company to Resolve a Territorial Dispute with Clay Electric Cooperative in Baker County; Docket No. 970512-EU

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen (15) copies of Florida Power & Light Company's Memorandum in Opposition to Motion to Dismiss in the above-referenced docket.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,

Mark K. Logan

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power & Light Company to Resolve a Territorial Dispute with Clay Electric Cooperative in Baker County	)	Docket No. 970512-EU Filed: June 5, 1997

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

Florida Power and Light Company ("FPL"), pursuant to Rule 25-22.037, Fla. Admin. Code, files this Memorandum in Opposition to Clay Electric Cooperative, Inc.'s ("Clay's") Motion to Dismiss and states:

1. The basis for Clay's Motion to Dismiss FPL's Petition to Resolve a Territorial Dispute is predicated upon two erroneous assumptions: first that a territorial dispute requires the Petitioner (here FPL) to actually be providing service to a customer or geographic area in dispute; and second, that the Petitioner must in its petition allege that it can provide a "quality and character" of service that the customer requires. See paragraphs 2,5 Clay Motion to Dismiss. Clay offers no citation of authority in support of the proposition that these are essential elements of a proper petition to resolve a territorial dispute. A review of the Commission's rules suggest they are not.

2. Rule 25-6.0439(1)(b), Fla. Admin. Code defines a "territorial dispute" as a "disagreement as to which utility has the right and the obligation to serve a particular geographic area." Nowhere within the definition of "territorial dispute" is there a reference to actual service to a particular customer or particular character of service which may or may not be necessary to serve the area in dispute.

3. Rule 25-6.0441(1), Fla. Admin. Code provides that any utility may initiate a territorial dispute proceeding simply by requesting the Commission to resolve the dispute. That is exactly what FPL did in its petition. The function of a complaint, or here a petition, is to notify the defendant or respondent, of the claim against it so that the defendant may intelligently respond to the claim. Dyson v. Dyson, 483 So. 2d 546 (1st DCA 1986); Dawson v. Blue Cross Association, 293 So. 2d 90, 92 (1st DCA 1974); Cohn v. Florida-Georgia Television Company, 218 So. 2d 787, 788 (1st DCA 1969). Where a complaint contains sufficient allegations to acquaint the respondent of the claim against it, it is error to dismiss on the grounds that more specific allegations are required. Fontainebleau Hotel Corp. V. Walters, 246 So. 2d 563 (Fla. 1971). Here the entire basis of Clay's Motion appears to be that FPL should have made more specific allegations in its petition. FPL categorically disagrees that any further allegations are necessary to support its Petition. The actual standard is whether Clay has been adequately informed of the nature of the claim against it. Clearly Clay has and as such the Motion to Dismiss should be denied.

4. Clay's decision to file a Motion to Dismiss is most interesting given its filings in Commission Docket No. 970502-EU. There Clay filed a Petition for a Declaratory Statement that, if granted, would have stated there was in fact a territorial dispute between FPL and Clay concerning the identical set of facts contained in FPL's Petition. In fact, when FPL filed the Petition initiating this docket, Clay voluntarily withdrew its Petition for a declaratory statement. That notice of voluntary dismissal, filed with the Commission on May 7, 1997, stated that the basis of its withdrawal was FPL's filing of a Petition to Resolve a Territorial Dispute. Whatever its motives, it is abundantly clear that both parties recognize there is a territorial dispute.

Dismissing FPL's Petition will simply prolong the ultimate resolution of that dispute by the Commission. As Clay has alleged no basis in law or fact that supports dismissal of FPL's Petition, the Commission should deny the same.

WHEREFORE, FPL request that the Commission deny Clay's Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following on this 5th day of June, 1997.

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