

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida) DOCKET NO. 921034-EG
Power and Light Company for) ORDER NO. PSC-93-0339-FOF-EG
approval of the New Home) ISSUED: 03/04/93
Construction.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER ACCEPTING VOLUNTARY DISMISSAL OF PROTEST
AND MAKING ORDER NO. PSC-92-1451-FOF-EG FINAL AND EFFECTIVE

BY THE COMMISSION:

On October 8, 1992, Florida Power & Light Company (FPL) filed a petition for approval of its new home construction research project. The Legal Environmental Assistance Foundation, Inc., and Deborah B. Evans (LEAF) filed a petition for intervention on November 23, 1992, which was subsequently granted. No other entities sought to intervene. On November 24, 1992, we considered this matter at the agenda conference and voted to issue a proposed agency action (PAA) order granting approval. LEAF participated in the agenda conference. The PAA Order No. PSC-92-1451-FOF-EG approving FPL's new home construction project was issued on December 15, 1992. On January 5, 1993, the last day to file objections to the PAA order, LEAF filed its protest to the PAA order and requested a formal administrative hearing to contest the Commission's proposed action. No other substantially affected persons filed objections. On January 28, 1993, LEAF filed a Notice of Dismissal to voluntarily dismiss its petition to intervene.

LEAF has filed a Notice of Dismissal to voluntarily dismiss its Petition to Intervene. Dismissal of LEAF's intervention acts as a withdrawal of its protest of the PAA. The question remains of whether withdrawal of the protest revives Order No. PSC-92-1451-FOF-EG, or whether a new PAA must be issued. LEAF was the only party to protest proposed agency action Order No. PSC-92-1451-FOF-EG. Any affected person had a clear point of entry and an opportunity to request a hearing at the time Order No. PSC-92-1451-FOF-EG was issued and during the ensuing protest period. By failing to timely protest, other persons have waived the right to

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a hearing. Where persons have not availed themselves of a clear point of entry, they must be considered to have waived their rights to a hearing. Florida Medical Center v. Dept. of H.R.S., 484 So. 2d 1292 (Fla. 1st DCA 1986); NME Hospitals, Inc. v. Dept. of H.R.S., 492 So. 2d 379 (Fla. 1st DCA 1985). Thus, by dismissing LEAF's protest and reviving Order No. PSC-92-1451-FOF-EG, no party's rights would be violated.

It is, therefore,

ORDERED by the Florida Public Service Commission that the petition of the Legal Environmental Assistance Foundation and Deborah B. Evans for formal proceedings on Proposed Agency Action Order No. PSC-92-1451-FOF-EG is hereby dismissed. It is further

ORDERED that Order No. PSC-92-1451-FOF-EG is hereby revived and is final and effective. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 4th
day of March, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
DLC:bmi

by: Kay Hizon
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.