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Steel Hector & Davis

Tallahassee, Florida

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August 25, 1995

ORIGINAL
FILE COPY

Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

RE: Docket No. 941170-EG

Dear Ms. Bayó:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Motion in Opposition to Petition for Formal Proceeding of Peoples Gas System, Inc. and Memorandum of Law Supporting Florida Power & Light Company's Motion in Opposition to Peoples' Petition for Formal Proceeding in Docket No. 941170-EG.

Very truly yours,

Charles A. Guyton
Charles A. Guyton

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 OTH _____

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cc: All Parties of Record

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Memo Opposition

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Approval of Demand-Side Management)
Plan by Florida Power & Light Company)**

**Docket No. 941170 - EG
Filed: August 25, 1995**

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**MOTION IN OPPOSITION TO PETITION FOR
FORMAL PROCEEDING OF PEOPLES GAS SYSTEM, INC.**

Florida Power & Light Company ("FPL"), pursuant to Florida Administrative Code Rule 25-22.037(2), moves that the Commission deny, or in the alternative dismiss, the Petition For Formal Proceeding of Peoples Gas System, Inc. ("Peoples") requesting a hearing "on the terms and conditions under which FPL's CILC program is to be offered and on the propriety of including the CILC program as an energy conservation program eligible for cost recovery through the Energy Conservation Cost recovery factor." Peoples' petition does not comply with the requirement of Florida Administrative Code Rule 25-22.036(7)(a)2. to include "an explanation of how his or her substantial interests will be or are affected by the Commission determination." Peoples does not have standing. The Commission may deny a petition on proposed agency action "if it does not adequately state a substantial interest in the Commission determination" Florida Administrative Code Rule 25-22.036(9)(b)1.

Peoples' petition also attempts to raise numerous issues that have previously been litigated before the Commission and decided by the Commission. The Commission has previously determined in the goals proceeding that (a) FPL's CILC is conservation that reduces peak load and energy, and (b) that no gas measures were used to set FPL's goals and that Florida-specific research needs to be done before further considering gas measures as electric utility conservation options. Peoples' attempt to place these issues before the Commission again is barred by the doctrines of collateral estoppel and administrative finality; consequently, these allegations fail to state a cause of action.

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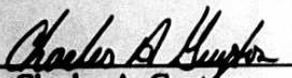
Peoples' petition is also premised upon an erroneous statement and construction of the discrimination prohibition found in Section 366.81, Florida Statutes (1993). This statute only prohibits approval of rates that discriminate against customers using explicitly identified conservation options. Peoples has not and cannot show that it is entitled to represent a class of FPL's customers. Peoples also has not shown that any gas measures fall within the protected conservation options or that FPL customers use such measures. Section 366.81, Florida Statutes, the only statute alleged as a basis for Peoples' discrimination claims, does not protect the economic interests of a competing utility or provide a basis for Peoples' request for relief.

Peoples' petition advances internally inconsistent applications of FEECA in asserting Peoples interest (that Peoples has a substantial interest in preserving an approved load building "conservation" program) and in asserting a potential cause of action against FPL (that FPL cannot have an approved load building program). Statutes are to be applied consistently.¹ Any consistent interpretation of FEECA defeats Peoples' petition.

FPL's grounds are more fully developed in the attached supporting Memorandum.

Respectfully submitted,
Steel Hector & Davis
215 South Monroe Street
Tallahassee, Florida 32301

Attorneys for Florida Power
& Light Company

By: 
Charles A. Guyton

¹ There are at least two provisions of the Florida Constitution that require statutes to be applied consistently. See, Art. I, §§ 3, 9, Fla. Const.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of Florida Power & Light Company's Motion In Opposition To Petition On Proposed Agency Action Of Peoples Gas System, Inc. and supporting Memorandum, were served by Hand Delivery (when indicated with an *) or mailed this 25th day of August, 1995 to the following:

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