FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center * 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

March 11, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BROWN)
DIVISION OF CONSUMER AFFAIRS (DeMELLO)
DIVISION OF ELECTRIC AND GAS (WHEELER)

RE: DOCKET NO. 960025-EI - COMPLAINT OF BROWARD COUNTY GOVERNMENT AGAINST FLORIDA POWER & LIGHT COMPANY REGARDING STREET LIGHT BILLING IN BROWARD COUNTY

AGENDA: 03/19/96 - REGULAR AGENDA
PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960025.RCM

CASE BACKGROUND

On October 19, 1994, the Commission's Division of Consumer Affairs began investigation of a complaint by Broward County that Florida Power & Light Company (FPL) had been billing Broward County in error for electric service to street lights that should have been billed to the municipalities within Broward County. In its summary report in response to the complaint, FPL claimed that it had been billing the service to the customer that ordered the service and owned the lights - Broward County. FPL contended that if Broward County maintained that it should be reimbursed for the payments it made to FPL for street lighting, the County should recover the funds from the municipalities. Broward County, and its consultant, American Utility Bill Auditors (AUBA), maintained that FPL should credit Broward County for the alleged overbillings and recover the revenue from the municipalities itself.

On December 14, 1994, the Division of Consumer Affairs sent a letter to the County's consultant stating that there appeared to be no evidence that FPL had been notified that billings for the street lights in question, which appeared to be owned and maintained by Broward County, were to be made to the municipalities. Broward County then requested an informal customer conference, which was scheduled for March 28, 1995, at the Broward County Governmental Center in Fort Lauderdale. In attendance were Mr. Len Garvin of AUBA, representatives from Broward County, three representatives

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from FPL, and one representative from the Division of Consumer Affairs. At the conference, the parties requested a temporary postponement to negotiate a settlement. During the ensuing six months, representatives from FPL and from Broward County met periodically and tried to reach an agreement. In October, 1995, both parties confirmed an impasse and requested the continuation of the informal conference.

The second informal conference was held on November 30, 1995. At that conference, Broward County asserted that the County did not initiate the street light service, and, therefore, should not have been billed by FPL. FPL asserted that it cannot bill a city for lights that are owned and maintained by the County unless that city specifically authorizes FPL to do so. The County responded that FPL had billed the County without the County's specific authorization. County representatives stated that Broward County never requested service for the street lights and, therefore, had no responsibility to pay FPL for the energy charges. In addition, the County said the cities should have been billed for the street lights service, according to the terms of its "Traffic Illumination Agreements" with the municipalities. Those agreements provide that the County will install, own, and maintain the lights, and the cities will pay for energy charges. According to Broward County it is its procedure to notify FPL of the agreements.

The County seeks a refund from FPL for monies it paid on bills for service that it asserts it never authorized. According to the County, the Traffic Illumination Agreements support its position that it did not and would not have authorized the service in its name, because the cities agreed to be responsible under the terms of the agreements. FPL responded that it was not a party to any of those agreements and was not notified by the County or the cities that it should bill the cities. No settlement was reached by the parties at the second informal conference.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Florida Power and Light Company to refund $897,008.00 to Broward County for payments made for street lighting accounts that Broward County alleges FPL should have charged to municipalities in the County?

RECOMMENDATION: No. There is not sufficient cause to support Broward County's refund claim. There does not appear to be any evidence that FPL was notified that it should bill the municipalities directly for street lighting service. The County paid all bills for service to the street lights and did not express any concerns to FPL regarding the charges at the time they were paid. Under these circumstances Rule 25-6.106(2), Florida Administrative Code does not require a refund to the County.

STAFF ANALYSIS: The County provided an audit report prepared by its consultant, AUBA, to support its claim for a refund. The 30 audit findings in the report represent groups of street lights within city boundaries that FPL charged to Broward County's bill. In each audit finding, the electricity has been charged to Broward County since installation. The total number of street lights in question is 497, and the total dollar amount in question is $897,008.

The audit findings are divided into three groups. **Group I** consists of County road projects, including 223 lights for a total refund request of $344,719. **Group II** consists of street lights that are not County road projects. This group includes 150 lights for a total refund request of $471,473. For these projects, the County maintains that there is no evidence that the County initiated street light service. **Group III** consists of street lights on properties that have been annexed to cities since installation. This group includes 124 lights for a total refund request of $80,816. (SEE ATTACHMENT A for a summary of audit findings by grouping.) Broward County is requesting a refund of all energy charges, plus interest, back to the date of installation (or annexation for Group III). The County's requested refund period ranges from two to 21 years.

FPL responds that it was not a party to any of the Traffic Illumination Agreements and was never notified of the agreements until the AUBA audit report was issued. According to an FPL report filed with the Division of Consumer Affairs (December 14, 1994), in a meeting with FPL on October 20th, 1994, both Broward County and AUBA verified that there was no record of any notification to FPL. FPL asserts that it has no record of any notification either.

Since it was never notified of the agreements, their terms, or any special billing arrangements, FPL argues that no reason existed for the company to establish billing in the municipalities' names.

Broward County asserts that while FPL received no authorization from the municipalities, FPL cannot produce any authorization from the County for the street light billing in Group I, either. For the audit findings in Group II, Broward County asserts that many County projects include plans for the energy costs to be paid by the municipality.

In the case of the annexations in Group III, FPL stated that it cannot arbitrarily change billing responsibility for any accounts just because there is an annexation. FPL also stated that Broward County typically pays energy charges for traffic signal accounts in annexed areas. Without specific authorization from a city to take over street light billing, there would be no justification for FPL to change the billing. FPL said it was never notified by either the County or any of the cities to change billing for the lights as a result of annexation. According to FPL, none of the audit claims shows that FPL failed to bill a city when FPL was so authorized by the city.

After the audit report was issued, FPL contacted several cities regarding responsibility for street light billing. FPL asserts that it did not receive authorization from any of the cities within Broward County to put service into their names for billing purposes. All of the cities FPL contacted verified that they had never previously notified FPL to bill them for any of the street lights. According to FPL, even where FPL may have been aware of an agreement, this alone would not justify putting the billing in the cities' names without their specific authorization.

FPL also asserts that Broward County was notified when billing for the lights commenced, and it did not question the bills. The County also paid all subsequent bills without ever questioning their accuracy, and FPL had no reason at any time to believe a billing problem existed. FPL has contacted the cities, and the problem has been corrected on a going forward basis.

The County asserts that the fact that FPL was not a party to the Traffic Illumination Agreements is not relevant to its contention that FPL incorrectly and improperly billed it for the street light service. Rather, the Traffic Illumination Agreements show that the County never had a reason to ask for the service and did not benefit from the service. County representatives stated there was no reason for the County to ask for the service, since

the cities were contractually obligated to provide the energy charges. Likewise, since the cities were obligated to pay for the service, there was no benefit to the County. The County said it never established service for the disputed lights in its name, nor did it authorize anyone else to establish service in the County's name. The County also stated that a contractor has the responsibility to establish service in the contractor's name for any electric service which the contractor may need for installation of street lights. The County stated that it has never authorized its contractors to establish service in the County's name. County representatives indicated that their contractor typically initiates service for most or all lighting installations, of which those being disputed represent only a portion of the total jobs worked over the past 21 years. FPL responded that the County has ratified this practice by allowing it to continue for the past 21 years without ever notifying FPL that its contractor does not have such authority.

The terminology used in the Traffic Illumination Agreements is confusing. (SEE ATTACHMENT B for sample agreement.) Section 3.(A) of the sample agreement is unclear as to how the energy charges would actually be paid to the County. It suggests that the cities would simply reimburse Broward County for energy charges after the County paid the bill. It does not specify that the energy bills for street lights would be placed in the city's name. Furthermore, Broward County has paid all bills rendered for the street lights for years without questioning any of the charges, and no municipality has ever inquired as to the lack of receipt of any bill for service to the lights. FPL tendered the bills to the customer who ordered the service; Broward County. FPL had no reason to check the billing, as the billing appeared to be correct. The County's contractor represented the County in all other aspects related to street light installations, and it is reasonable to assume that the contractor was authorized to represent the County in this instance as well, especially since there were no specific instructions from the cities to the contrary. At any time the County could have requested a review of the accounts, and FPL would have provided a detailed listing of the facilities and locations being billed.

It appears that Broward County failed to manage its review and payment of bills for street lights, and also failed to communicate properly with the cities involved in cases where the County felt the cities should pay for energy charges. FPL followed its established procedures for the provision of electric service as set out in its tariffs, entitled "General Rules and Regulations for Electric Service". See, specifically, Tariff Sheet No. 6.010,

Section 1.4, Application by Agents, and Section 2.1, Service. See also Tariff Sheet No. 6.060, Section 7.8, Change of Occupancy. (ATTACHMENT C) FPL and its ratepayers should not be held responsible today for the County's past failure to review street light billings. Because there does not appear to be any evidence that FPL was notified about the street light billing prior to AUBA's audit report, Rule 25-6.106(2), Florida Administrative Code, does not require FPL to refund the contested amounts to Broward County.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if no protest is filed within 21 days of the issuance of this order.

STAFF ANALYSIS: Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interests are affected by the proposed agency action shall have 21 days after the issuance of the order to file a protest. If no timely protest is filed, the docket should be closed.

ATTACHMENT A

Office of Budget & Management Policy
115 S. Andrews Avenue, Room 404
Fort Lauderdale, FL 33301
(305) 357-6345 • FAX (305) 357-7360

March 4, 1996

Ms. Beverly S. DeMello, Director
Division of Consumer Affairs
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Your request for a summary of audit findings by grouping.

Dear Ms. DeMello:

This summary is in response to your telephone query to Carol Hartman on 3/4/95 requesting a summary of audit findings by grouping including the total number of lights and dollar amount in question.

GROUP I. Includes 223 lights for a total refund request of $334,413 as of 11/30/95.

A revised amount of $344,719 accounts for an increased time period through 2/29/96 and for billings that have been assumed by cities in response to FPL's inquiry.

GROUP II. Includes 166 lights for a total refund request of $455,576 as of 11/30/95.

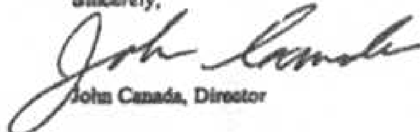
A revised amount of 150 lights and $471,473 accounts for an increased time period through 2/29/96, for billings that have been assumed by cities in response to FPL's inquiry and for lights that have been removed in the field that were subsequently removed from bills by FPL.

GROUP III. Includes 124 lights for a total refund request of $74,109 as of 11/30/95.

A revised amount of $80,816 accounts for an increased time period through 2/29/96 and for lights that have been removed in the field that were subsequently removed from the bills by FPL.

I hope this information will assist your efforts. Please contact Carol Hartman at 305-357-4355 if there is any additional information that we can provide.

Sincerely,



John Canada, Director

JC:CH/clo

cc: Steve Romig, Florida Power Light
Carol H. Hartman, Office of Budget & Management Policy

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Scott I. Cowan | Suzanne N. Gunzburger | John P. Hart | Lori Nance Parrish | Sylvia Poitier | John E. Rodstrom, Jr. | Gerald F. Thompson
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ATTACHMENT B

A G R E E M E N T

FOR TRAFFICWAYS ILLUMINATION

Between

BROWARD COUNTY

AND

HOLLYWOOD

This is an Agreement made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida (hereinafter referred to as COUNTY), and CITY OF HOLLYWOOD, a municipal corporation located in Broward County, Florida, and organized and existing under the laws of the State of Florida (hereinafter referred to as the MUNICIPALITY);

W I T N E S S E T H:

WHEREAS, STIRLING ROAD FROM I-95 TO US 1 (is) (are) public trafficway(s) (hereinafter referred to as the "trafficwry(s)") located within the municipal boundaries of the MUNICIPALITY; and

WHEREAS, it is of mutual benefit to the residents of the COUNTY and MUNICIPALITY to illuminate the trafficway(s) by installation and maintenance of lighting systems; and

WHEREAS, the MUNICIPALITY by resolution of its governing body adopted on the 20 day of Feb, 198_, has approved joint illumination of the trafficway(s) with the COUNTY pursuant to the terms of this Agreement and has authorized the appropriate officers of the MUNICIPALITY to execute this Agreement; and

WHEREAS, the COUNTY by action of its Board of County Commissioners on the 15 day of April, 19__, has likewise approved the joint illumination of the trafficway(s) with the MUNICIPALITY and has authorized the appropriate COUNTY officers to execute this Agreement; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payment hereinafter set forth, the COUNTY and MUNICIPALITY agree as follows:

1. The COUNTY and MUNICIPALITY shall participate in the illumination of the trafficway(s) in the manner set forth in this Agreement.

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2. The COUNTY shall perform the following:

   (a) Prepare or cause to be prepared sodium vapor design plans and specifications for the illumination of the trafficway(s). Such plans and specifications shall be reviewed and approved by the Director of the COUNTY'S Department of Transportation (hereinafter referred to as the "Director") and shall substantially conform to the Standard Specifications for Highway Lighting established by the Florida Department of Transportation.

   (b) In accordance with the approved design plans and specifications, install a lighting system along the trafficways. The lighting system so installed shall remain the property of the COUNTY after installation and shall not be moved or relocated without the express written consent of the Director.

   (c) Maintain the lighting system along the trafficway(s) in accordance with the approved design plans and specifications and in substantial conformance with the Standard Specifications for Highway Lighting adopted by the Florida Department of Transportation. As part of such maintenance responsibility, the COUNTY shall keep in good repair and replace defective or wornout lighting system parts and equipment.

3. The MUNICIPALITY shall perform the following:

   (a) Pay all electrical energy charges relating to the operation of the lighting system used in the illumination of the trafficway(s).

   (b) If the length of the trafficway or any portion of such length is (are) coterminous with the jurisdictional boundaries of the MUNICIPALITY, the MUNICIPALITY shall pay the utility charges for a number of street lights based on the MUNICIPALITY'S frontage along the referenced trafficway. The pro rata share for the MUNICIPALITY along this trafficway is as follows:

   5 ± LUMINAIRES

   (c) Notify COUNTY promptly when MUNICIPALITY, its agents, contractors, or employees, receives notice, or has or should have either actual or constructive knowledge, of any and all defects, imperfections, malfunctions, or failings of the lighting system.

4. As a material consideration for the COUNTY'S entry into this Agreement, to the extent allowed by law, the MUNICIPALITY agrees to indemnify,

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defend, save and hold harmless the COUNTY from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of, or due to the breach of this Agreement by the MUNICIPALITY, its agents, contractors, or employees, or due to any act, occurrence, or omission to act by the MUNICIPALITY, its agents, contractors or employees.

5. The Director shall decide all questions, difficulties and disputes of whatever nature which may arise under or by reason of the illumination of the trafficway(s) pursuant to the terms of this Agreement.

6. This Agreement does not effect responsibility for installation and maintenance of traffic control signals and devices along the trafficway(s).

7. This Agreement may be terminated by either party upon thirty (30) days written notice given by the terminating party to the other party.

IN WITNESS WHEREOF, the COUNTY and MUNICIPALITY have made and executed this Agreement on the respective dates under each signature; BROWARD COUNTY, through its Board of County Commissioners, signing by and through its Chairman, authorized to execute same by Board action on the 15 day of April, 1980, and City of Hollywood signing by and through its mayor duly authorized to execute same.

COUNTY

ATTEST:

County Administrator and Ex-Officio Clerk of the Board of County Commissioner of Broward County, Florida

BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS

By ______ Chairman

23 day of April, 1980

Approved as to form and legality by Office of General Counsel for Broward County, Florida
HARRY A. STEWART, General Counsel
Room 248, Courthouse
Fort Lauderdale, Florida 33301
Telephone: (305) 765-5105

By ______
Assistant General Counsel

GCF#119-3
Rev 5/22/79

GENERAL RULES AND REGULATIONS FOR ELECTRIC SERVICE

INTRODUCTION

These General Rules and Regulations are a part of the Company's Tariff, covering the terms and conditions under which Electric Service is supplied by the Company to the Customer. They are supplementary to the "Rules and Regulations Governing Electric Service by Electric Utilities" issued by the Florida Public Service Commission.

1 SERVICE AGREEMENTS

1.1 Application for Service. Service may be obtained upon application in writing, by telephone or in person at an office of the Company. Usually all that is required is the service application and the posting of a guarantee deposit.

1.2 Information Needed. To provide service promptly the Company will need the applicant's name and address including the street, house number (and apartment number), or the name of the subdivision with lot and block numbers. On new or changes installations, the Company will also need to know the equipment that will be used. The Company will advise the Customer as to whether the desired type of service is available at the designated location.

1.3 Agreement. Service is furnished upon acceptance of the agreement or contract by the Company. Applications are accepted by the Company with the understanding that there is no obligation to render service other than the character of service then available at the point of delivery. A copy of any written agreement accepted by the Company will be furnished to the applicant upon request.

1.4 Applications by Agents. Applications for service requested by firms, partnerships, associations, corporations, etc., shall be made only by duly authorized parties. When service is rendered under an agreement or agreements entered into between the Company and an agent of a principal, the use of such service by the principal shall constitute full and complete ratification by the principal of such agreement or agreements.

1.5 Prior Indebtedness. The Company may refuse or discontinue service for failure to settle, in full, all prior indebtedness incurred by any Customer(s) for the same class of service at any one or more locations of such Customer(s). The Company may also refuse service for prior indebtedness by a previous customer provided that the current applicant or customer occupied the premises at the time the prior indebtedness occurred and the previous customer continues to occupy the premises.

1.6 Discontinuance of Service. Service may be discontinued for violation of the Company's rules after affording the Customer reasonable opportunity to comply with said rules, including five (5) days' written notice to the Customer; provided, however, that where the Company believes a dangerous condition exists on the Customer's premises, service may be discontinued without notice.

1.65 Life Sustaining Medical Equipment. A residential Customer who has electric-powered medical equipment at his/her service address which is necessary to sustain the life of or avoid serious medical complications requiring hospitalization of the Customer or another permanent resident at the service address may participate in the Company's Life Sustaining Medical Equipment Program. This Program provides for special protection against discontinuation of service for qualified Customers and for direct on-site contact with a Company customer service representative to render such assistance as may be consistent with the provisions of this tariff and suitable to the circumstances of the situation.

1.7 Reimbursement for Extra Expenses. The Customer may be required to reimburse the Company for all extra expenses incurred by the Company on account of violations of agreement or of the Company's Rules and Regulations by the Customer.

2 SUPPLY AND USE OF SERVICE

2.1 Service. Service includes all power and energy required by the Customer and, in addition, the readiness and ability on the part of the Company to furnish power and energy to the Customer. Thus, the maintenance by the Company of approximately the agreed voltage and frequency at the point of delivery shall constitute the rendering of service, irrespective of whether the Customer makes any use thereof.

7.2 Non-Receipt of Bills. Non-receipt of bills by the Customer shall not release or diminish the obligation of the Customer with respect to payment thereof.

7.3 Evidence of Consumption. When service used is measured by meters, the Company's accounts thereof shall be accepted and received at all times, places and courts as prima facie evidence of the quantity of electricity used by the Customer unless it is established that the meter is not accurate within the limits specified by the Commission.

7.4 Application of Rate Schedules. Electric service will be measured by a single metering installation for each point of delivery. The Company will establish one point of delivery for each Customer and calculate the bill accordingly. Two or more points of delivery shall be considered as separate services and bills separately calculated for each point of delivery.

The Company may adjust the measured kilowatt-demand (kwd) of a Customer to compensate for registration of an abnormal demand level due to testing of electrically-operated equipment prior to general operation provided that the Customer contacts the Company in advance and schedules the testing at a mutually agreed upon time.

7.5 Optional Rate. Where a Customer is eligible to take service at a given location under one of two or more optional rate schedules, the Company will, on request, assist in the selection of the most advantageous rate on an annual basis. If the Customer applies in writing for another applicable schedule, the Company will bill on such elected schedule from and after the date of the next meter reading. However, a Customer having made such a change of rate may not make another change until an interval of 12 months has elapsed.

7.6 Taxes and Charges. All of the Company's rates, including minimum and demand charges and service guarantees, are dependent upon Federal, State, County, Municipal, District, and other Governmental taxes, license fees or other impositions, and may be increased or a surcharge added if and when the cost per kilowatt hour, or per Customer, or per unit of demand or other applicable unit of charge, is increased because of an increase in any or all such taxes, license fees or other impositions. A franchise charge shall be added to the bills of all Florida Public Service Commission jurisdictional customers, as determined by the franchise agreements between Florida Power & Light Company and governmental authorities. The charge shall be computed as a percentage of the bill for energy including fuel delivered within the franchise area, excluding separately stated taxes and the franchise charge itself. This charge shall reflect the estimated amount of the annual franchise payment to that specified governmental authority in which the Customer's account is located, plus adjustment for the gross receipts tax and the regulatory assessment fee, and shall be corrected at least annually for any differences between the actual collections and actual payments.

7.7 Disconnection and Reconnection of Residential Service.

7.71 Disconnection of Residential Service. When a residential Customer orders service discontinued, the Company may ask the Customer to open the main switch upon vacating the premises. This will allow the use of electric service until the time of departure and will insure that no energy is used or charges accrue after the Customer leaves. As convenient, after the date of disconnection, a Company employee will visit the premises to read the meter.

7.72 Reconnection of Residential Service. A Customer who reconnects service by closing the switch should give immediate notice thereof to the Company so that proper records may be maintained. Should the Customer neglect to give such notice, the regular meter reader will note this fact and reconnection will be recorded as of the date when the switch was closed. If this date cannot be readily determined, reconnection shall be recorded as of the next preceding meter reading date.

7.8 Change of Occupancy. When change of occupancy takes place on any premises supplied by the Company with electric service, notice should be given at the nearest office of the Company not less than three (3) days prior to the date of change by the outgoing party who will be held responsible for all electric service used on such premises until such notice is received and the Company has had a reasonable time to discontinue service. However, if such notice has not been received prior thereto, the application of the succeeding occupant for the electric service will automatically terminate the prior account.

7.9 Delinquent Bills. Bills are due when rendered and become delinquent if not paid within twenty (20) days from the mailing or delivery date. Thereafter, following five (5) working days' written notice, service may be discontinued and the deposit applied toward settlement of the bill. For purposes of this subsection, "working day" means any day on which the Company's business offices are open and the U.S. Mail is delivered.

8 METERS

8.1 Location of Meters. The Company will determine the location of and install and properly maintain at its own expense such standard meter or meters and metering equipment as may be necessary to measure the electric service used by the Customer. The Customer will keep the meter location clear of obstructions at all times in order that the meter may be read and the metering equipment may be maintained or replaced.

8.2 Setting and Removing Meters. None but duly authorized agents of the Company or persons authorized by law shall set or remove, turn on or turn off, or make any changes which will affect the accuracy of such meters. Connections to the Company's system are to be made only by its employees.

Issued by: W. H. Brunetti, Executive Vice President
Effective: JAN 1 1991