

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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SERVICE COMMISSION
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BROWARD COUNTY, FLORIDA,

Petitioner,

vs.

CASE NO. 96-2367

FLORIDA POWER AND LIGHT
COMPANY,

Respondent.

BROWARD COUNTY'S RESPONSE AND OBJECTION
TO FLORIDA PUBLIC SERVICE COMMISSION MOTION TO INTERVENE

Broward County, Florida (hereafter "County"), files this response and objection to the Motion for Leave to Intervene filed by the Florida Public Service Commission (hereafter "Commission") on July 26, 1996, upon the following grounds:

1. The Commission's motion is filed pursuant to Rule 60Q-2.010, Fla. Admin. Code.

2. The Commission's motion is deficient on its face because it fails to allege that the Commission is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the Commission are subject to determination or will be affected through the proceeding.

3. Rule 60Q-2.010, Fla. Admin. Code, states in pertinent part that "[p]etitions for leave to intervene . . . shall also include allegations sufficient to demonstrate that the intervenor

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is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding."

4. In fact, the Commission has no right of entitlement by any provision of the constitution, a statute, or an agency rule to participate in this proceeding; nor will the substantial interests of the Commission be determined or affected through this proceeding.

5. In addition, the Commission alleges in Paragraph 4 of its motion to intervene that its interest is to represent the public. The public, however, does not have an interest in this proceeding. Even if the Hearing Officer finds that the public has an interest in this proceeding, such interest is neither direct nor substantial as required by Rule 60Q-2.010, Fla. Admin. Code.

6. Moreover, even though the Commission's Motion for Leave to Intervene states in Paragraph 3 that the Commission is "neither an adversary to, nor advocate for, either party", the Commission's participation in this proceeding as a party would not be impartial because the Commission entered the Proposed Order Denying Refund upon which this administrative hearing is based; and further, the Commission will receive any Recommended Order resulting from this proceeding prior to entering a final order. Thus, any intervention by the Commission would be contrary to its required impartiality and will violate the County's right of due process in this action under both the Florida and United States Constitutions.

7. The County believes that the mere filing of the Motion for Leave to Intervene by the Commission demonstrates its lack of impartiality with respect to this proceeding, and further demonstrates that the County will not receive a neutral and fair consideration from the Commission if a Recommended Order is presented to it in connection with this proceeding.

WHEREFORE, Broward County, respectfully requests that the Motion for Leave to Intervene filed by the Florida Public Service Commission be denied.

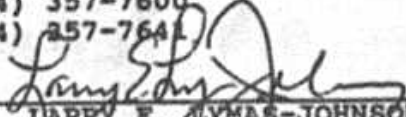
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Linda M. Rigot, Hearing Officer/Esquire, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida 32399; Daniel H. Thompson, Esquire, Berger & Davis, P.A., 215 South Monroe Street, Suite 804, Tallahassee, Florida 32301 and Dawn Meyers, Esquire, Berger & Davis, P.A., 100 Northeast Third Avenue, Suite 400, Fort Lauderdale, Florida 33301, attorneys for Florida Power and Light Company; Sheila L. Erstling,

Esquire, Florida Public Service Commission, Gunther Building, 2540
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, on this
9th day of ~~July~~^{August} 1996.

Respectfully Submitted,

JOHN J. COPELAN, JR.
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By 
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