

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power & Light  
Company for Enforcement of  
Order No. 4285 in Docket No.  
9056-EU.

Docket No. 970022-EU

**MOTION TO DISMISS  
FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER**

Comes now the CITY OF HOMESTEAD ("City"), by and through its undersigned attorneys, pursuant to Rule 1.140, Florida Rules of Civil Procedure, and files this Motion to Dismiss for Lack of Jurisdiction Over the Subject Matter. The grounds upon which this motion is based and the substantial matters of law intended to be argued are set forth herein.

1. "An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction." Department of Environmental Regulation v. Falls Chase Special Taxing District, 424 So.2d 787, 793 (Fla. 1st DCA 1982).

2. FPL alleges in its Petition that the City is in violation of Order No. 4285 and seeks an

order from the Commission enforcing Order No. 4285 against the City, but FPL has failed to state any statutory authority or Commission rule which procedurally or substantively grants FPL the right to file this Petition and seek the remedies requested in the Petition.

3. Section 120.69 of the Florida Statutes entitled, Enforcement of Agency Action,

provides that a substantially interested person (presumably FPL) can file a petition for enforcement of an agency action "in the circuit court where the subject matter of the enforcement is located."

F.S. 120.69(1)(a). There is no provision in F.S. 120.69 or other statute or Commission rule cited by

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_  
EAG \_\_\_\_\_  
LEG 1 \_\_\_\_\_  
LIN 5 \_\_\_\_\_  
OPC \_\_\_\_\_  
RCH \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE  
01112 JAN 29 5  
000045  
FPCO-R...

FPL as grounds for this Petition being filed before the Commission or for the relief requested by Petitioner. Therefore, the Commission lacks subject matter jurisdiction over this Petition as FPL has failed to file the Petition in the appropriate forum, i.e., the circuit court.

4. Petitioner has failed to cite any statutory authority or Commission rule whereby the Commission has jurisdiction over the Lease Agreements between the City and Silver Eagle Distributors, Ltd. ("Silver Eagle") and Contender Boats.

5. In paragraph 9 of the Petition, Florida Power & Light Company ("FPL") seeks a determination from the Commission ". . . that the City cannot legitimately assert or contend that Silver Eagle's warehouse, distribution and office facility in the Park of Commerce qualifies as a 'city-owned facility' entitling the City to provide electrical service to it because all electricity-consuming structures and equipment on the site are owned by, and are the sole responsibility of Silver Eagle." (emphasis supplied)

6. In paragraph 11 of the Petition, FPL asserts: "Ownership of the reality, however, is not the issue. Ownership of the facilities and Anheuser-Bush beer distribution facility and a Contender Boats manufacturing facility is the issue." Therefore, FPL has put at issue before the Commission the very terms and conditions of the Lease Agreements between the City and Silver Eagle and Contender Boats. In paragraph 7 of the Petition, FPL cites to numerous provisions of the aforesaid Lease Agreements as grounds for the determination by the Commission that under the lease the City is not the owner of the facilities. The judicial determination of the ownership of the facilities built upon the real property owned by the City and leased to Silver Eagle and Contender Boats by the City is not within the Commission's jurisdiction.

7. In addition, FPL seeks in Paragraph 12 of the Petition an adjudication from the Commission that the Lease Agreement is unconstitutional and that the City is engaged in "an ultra-vires act violative of the Florida Constitution." The Commission lacks any jurisdiction to make such a determination. "The administrative agency is not generally the appropriate forum in which to consider questions of constitutional import." Metropolitan Dade County v. Department of Commerce, 365 So.2d 432, 435 (Fla. 3d DCA 1978).

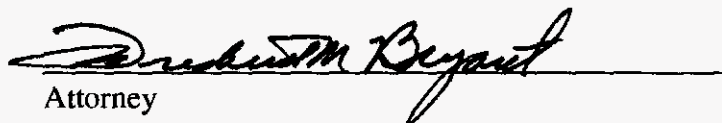
WHEREFORE, based upon the above authority, the Petition for Enforcement of Order must be dismissed by the Commission for lack of jurisdiction over the subject matter.



FREDERICK M. BRYANT  
Fla. Bar No. 0126370  
Williams, Bryant, Gautier & Donohue, P.A.  
306 E. College Avenue  
P.O. Box 1169  
Tallahassee, FL 32302  
(904) 222-5510  
Attorneys for the City of Homestead

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that an original and 15 copies of the foregoing Motion to Dismiss for Lack of Jurisdiction over the Subject Matter were filed with **Ms. Blanca S. Bayó, Director, Division of Records and Reporting, Florida Public Service Commission, Room 110, Easley Conference Center, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850**; and that a true and correct copy of the foregoing was furnished by Hand Delivery to **Lorna R. Wagner, Esquire, Division of Legal Services, Florida Public Service Commission, Room 370, Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850**; and that true and correct copies of the foregoing were furnished by regular U.S. mail to **Wilton R. Miller, Esquire, Bryant, Miller and Olive, P.A., 201 South Monroe Street, Suite 500, Tallahassee, FL, 32301**; and **David L. Smith, Esquire, Florida Power & Light Company, P.O. Box 029100, Miami, FL 33102-9100** on this 27th day of January, 1997.



Attorney

c:\wpdocs\mb\homestead\subjmr.dis