

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 STRIKE

Comes now the CITY OF HOMESTEAD ("City") and moves, pursuant to Rule 1.140, Florida Rules of Civil Procedure, that the claim by FPL for "Petitioner's reasonable attorneys' fees and such other penalties as the Commission deems appropriate" be stricken. The grounds upon which this motion is based and the substantial matters of law intended to be argued are set forth herein.

Petitioner, FPL, claims an entitlement to attorneys' fees and penalties in Paragraph 17 of its Petition for Enforcement of Order.

"17. If the Commission finds that the City's violation of Order No. 4285 was willful and intentional, FPL further prays that the Commission assess the City for Petitioner's reasonable attorneys' fees and such other penalties the Commission deems appropriate."

A claim for attorney's fees must be specifically plead. Stockman v. Downs, 573 So.2d 835

- ACK _____ (Fla. 1991). In addition, attorney's fees can only be awarded if authorized by a contract or a statute
- AFA _____
- APP _____ or for services performed by an attorney in creating or bringing into a court a fund or other property.
- CAF _____
- CMU _____ Gibson v. Courtois, 539 So.2d 459 (Fla. 1989). Petitioner has failed to cite any statutory authority
- CTR _____ or Commission rule authorizing the Commission to assess attorneys' fees and penalties as plead, and
- EAG** _____
- LEG _____ / "... a general claim for attorney's fees does not satisfy the pleading requirements of Stockman. This
- LIN 5 necessarily means that the requesting party must plead the statutory or contractual basis on which the
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

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party seeks attorney's fees." Dealers Insurance Co. v. Haideo Investments Enterprises, Inc., 638 So.2d 127, 130 (Fla. 3d DCA 1984).

WHEREFORE, based on the above authority, the claim for attorney's fees and penalties must be stricken.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and 15 copies of the foregoing Motion to Strike 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 22nd day of January, 1997.



Attorney