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Public Service Commission

April 30, 1997

DK# 96/179-EI

Division of Administrative Hearings
Clerk of the Court
1230 Apalachee Parkway
Tallahassee, Florida 32399

Re: Case No. 96-5834 - Francisco Mesa, Petitioner, vs. Florida Power & Light Company, Respondent.

Dear Sir:

Enclosed are the original and one copy of the Florida Public Service Commission's **Amended Motion for Leave to Intervene** in the above case. Please date stamp the additional copy and return in the enclosed postage paid envelope. Thank you.

Sincerely,

Vicki D. Johnson
Senior Attorney

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANCISCO MESA,

Petitioner

vs.

FLORIDA POWER & LIGHT COMPANY

Respondent.

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CASE NO. 96-5834

AMENDED MOTION FOR LEAVE TO INTERVENE

The FLORIDA PUBLIC SERVICE COMMISSION (Commission), by and through its undersigned counsel, requests that the Administrative Law Judge grant leave to intervene in the above-styled cause for the reasons set forth below.

1. This case was initiated by the filing of a complaint with the Commission by Francisco Mesa against Florida Power & Light Company (FPL). Mr. Mesa complained that he was unjustifiably charged with current diversion by FPL.
2. By Notice of Proposed Agency Action, Order No. PSC-96-1333-FOF-EI, issued November 5, 1996, the Commission found that FPL's billing of the Mesa account is appropriate.
3. On November 26, 1996, Mr. Mesa timely filed a protest to the Commission's proposed action.
4. On December 10, 1996, the Commission referred this matter to the Division of Administrative Hearings (DOAH) to conduct a formal hearing. Section 120.569(2)(a), Florida Statutes, states that once a case is referred to DOAH the "referring agency shall take no further action with respect to the formal proceedings, except as a

party litigant," as long as DOAH has jurisdiction over the formal proceeding.

5. FPL supplies electricity to the public and is therefore, a public utility as defined in Section 366.02(1), Florida Statutes. Pursuant to Section 366.04(1), Florida Statutes, the Commission has exclusive jurisdiction "to regulate and supervise each public utility with respect to its rates and service." Thus, the Commission has exclusive jurisdiction over the subject matter of this proceeding, and therefore, has an interest in the proceeding.

6. The Commission is neither an adversary to, nor advocate for, either party. Pursuant to Chapter 366, Florida Statutes, the Commission's primary duty is to protect the public interest.

7. Rule 25-22.026(3), Florida Administrative Code, provides that the Commission staff may participate as a party in any proceeding.

8. According to Rule 25-22.026(4), Florida Administrative Code, in cases assigned to DOAH, the Commission staff's primary role is to represent the public interest and be neither in favor of or against either party. The rule states that staff is to assist in developing evidence to ensure that all relevant factual, legal and policy issues are presented to the fact-finder. The rule further states that staff's final positions are to be based upon review of the complete record.

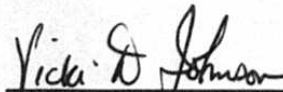
9. The Commission has been granted intervention in similar cases that have been referred to DOAH. See for example, Blanca Rodriguez v. Florida Power & Light Company, Case No. 96-4935; Thomas L. Fuller v. Florida Power Corporation, Case No. 95-4253; Globe

International Realty & Mortgage corporation v. Florida Power & Light Company, Case No. 95-2514; Jory Bricker v. Florida Power Corporation, Case No. 93-5713; Janet Knauss v. Florida Power & Light Company, Case No. 91-4910; Larry Timm v. Florida Power & Light Company, Case No. 91-2755, Arturo Toboado v. Florida Power & Light Company, Case No. 91-0331.

10. In view of the fact that the hearing in this matter is approaching, Mayra Trinchett, Esquire, counsel for Francisco Mesa, Petitioner, and Robert Stone, Esquire, counsel for Florida Power & Light Company, Respondent, were contacted to determine their position as to the Commission's intervention in this matter. Neither party objects to the Commission's Motion to Intervene.

WHEREFORE, the Florida Public Service Commission respectfully requests that its Amended Motion for Leave to Intervene be granted and the Commission be allowed to intervene in these proceedings while reserving its statement of position pending the evidence developed at the hearing.

Respectfully submitted this 30th day of April, 1997.



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