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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. In enforcing its Orders, the Commission is acting in its judicial capacity and has concurrent jurisdiction, along with the circuit courts, to enforce its Orders. Section 120.69(7), Florida Statutes, provides as follows:

In any final order on a petition for enforcement the court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate."

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

EAG (Fla. 1991). In addition, attorney's fees can only be awarded if authorized by a contract or statute

LEG 1 or is for services performed by an attorney which creates or brings into a court a fund or other

LI 5 property. Gibson v. Courtois, 539 So.2d 459 (Fla. 1989). Section 120.69(7), Florida Statutes

OPC property. Gibson v. Courtois, 539 So.2d 459 (Fla. 1989). Section 120.69(7), Florida Statutes

RCH (1995), cited by Petitioner as authority for an award of attorney's fees is only applicable in a circuit

SEC 1 (1995), cited by Petitioner as authority for an award of attorney's fees is only applicable in a circuit

WAS (1995), cited by Petitioner as authority for an award of attorney's fees is only applicable in a circuit

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court proceeding for enforcement of an agency order. (emphasis supplied). Section 120.69(1)(a), Florida Statutes (1995), states: "Any agency may seek enforcement of an action by filing a petition for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located." (emphasis supplied). No provision of Section 120.69, Florida Statutes (1995), authorizes an agency to award attorney's fees in a proceeding brought before that agency.

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

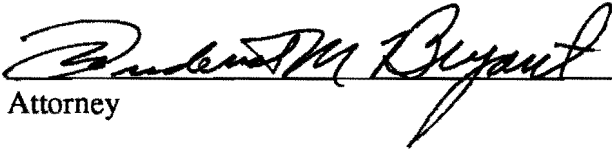


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CERTIFICATE OF SERVICE

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 13th day of May, 1997.



Attorney