

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of
BuildSmart Program by Florida
Power & Light Company.

DOCKET NO. 951536-EG
ORDER NO. PSC-97-0690-PCO-EG
ISSUED: June 11, 1997

ORDER GRANTING MOTION
TO REVISE PROCEDURAL SCHEDULE

This docket was set for hearing when Florida Power & Light Company (FPL) protested Florida Public Service Commission Order PSC-97-0092-FOF-EG, which denied FPL's First Amended Petition For Approval of the BuildSmart Program. Lee County is an intervenor in these proceedings.

On March 31, 1997, an Order Establishing Procedure was issued pursuant to FPL's protest, Order No. PSC-97-0357-PCO-EG. The controlling dates in the Order include, among other matters, a June 20, 1997, deadline for the utility's direct testimony and exhibits and a July 11, 1997, deadline for intervenor's direct testimony and exhibits.

On April 11, 1997, FPL filed a Motion For Leave To Further Amend Petition and the Second Amended Petition For Approval of BuildSmart Program. Order No. PSC-97-0556-PCO-EG, issued May 16, 1997, granted FPL's Motion For Leave To Further Amend Petition.

On May 16, 1997, 1997, FPL filed a Motion To Revise Procedural Schedule in this docket. FPL requests an order setting aside the formal proceeding procedural schedule in Order No. PSC-97-0357-PCO-EG, March 31, 1997 (Order Establishing Procedure) and substituting a Proposed Agency Action procedural schedule.

The effect of FPL filing its second amended petition is to supersede its first amended petition. It is a general rule that a pleading is superseded by an amendment of it which does not express an intention to save any portion of the original pleading. Baron Oil Co. v. Nationwide Mutual Fire Inc. Co., 470 So. 2d 810 (Fla. 1st DCA 1985) at 815. The Second Amended Petition in the instant case does not express an intention to save any portion of the First Amended Petition.

In its Motion To Revise Procedural Schedule, FPL states that there is no need for filing testimony on the first amended BuildSmart petition because the second amended petition supersedes the first amended petition. In addition, FPL states that the Order Establishing Procedure should be revised to reflect a Proposed

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Agency Action procedure on the second amended petition while retaining the hearing date previously set aside in this proceeding in the event there is a protest of the Proposed Agency Action on FPL's second amended petition. FPL also states in its motion that it is authorized by Lee County to represent Lee County's ascent to the proposed procedural revisions.

The time for filing a responsive pleading to FPL's Motion To Revise Procedural Schedule has passed with no objection having been filed. The parties and staff have agreed that a Proposed Agency Action schedule is appropriate. The Commission's action on the Second Amended Petition could eliminate the need for the hearing in this docket set for October 10, 1997. This revised schedule is established to accommodate that possibility, yet still preserve the opportunity to hold the hearing on October 10, 1997, if necessary.

Based on the foregoing, it is

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that Florida Power & Light Company's Motion to Revise Procedural Schedule is granted.


ORDERED that the Controlling Dates set forth in Order No. PSC-97-0357-PCO-EG are hereby revised as follows:

- | | |
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| 1) Staff Recommendation | July 2, 1997 |
| 2) Agenda Conference | July 15, 1997 |
| 3) Utility's direct testimony and exhibits | August 25, 1997 |
| 4) Intervenor's direct testimony and exhibits | September 8, 1997 |
| 5) Staff's direct testimony and exhibits | September 23, 1997 |
| 6) Prehearing Statements | September 23, 1997 |
| 7) Rebuttal testimony and exhibits | September 30, 1997 |

All of the remaining dates set forth in the Order Establishing Procedure, Order No. PSC-97-0357-PCO-EG, March 31, 1997, shall remain in full force and effect.

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By ORDER of Commissioner Joe Garcia, as Prehearing Officer,
this 11th day of June, 1997.



JOE GARCIA, Commissioner and
Prehearing Officer

(S E A L)

LJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060,

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