

IN THE SUPREME COURT OF FLORIDA

CITY OF HOMESTEAD)	
)	
Respondent/Appellant,)	CASE NO. 91,820
)	
v.)	
)	
JULIA L. JOHNSON, etc. et al.)	
)	
Appellees.)	
)	
)	

RESPONSE TO MOTION TO STRIKE

Appellee, the Florida Public Service Commission, whose members are Julia L. Johnson, J. Terry Deason, Susan F. Clark, Joe Garcia, and Diane K. Kiesling (the "Commission") files its response to Appellant's, City of Homestead ("City" or "Homestead"), Motion to Strike Response in Opposition to Motion to Reinstate Notice of Administrative Appeal or In the Alternative, Leave to File Response. The Commission requests the

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 EAG _____
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Court to deny Appellant's Motion to Strike and as grounds therefor states:

1. The Commission does not argue that Order No. PSC-97-1132-FOF-EU did not become final until October 21, 1997. The Commission does argue, however, that because Homestead failed to challenge the Proposed Agency Action (PAA) order as required in the Notice of Judicial Proceedings or Further Review, it cannot appeal the final order. Had the order been otherwise appealable,

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the jurisdictional clock for a timely appeal would have run from October 21, 1997. However, since Homestead failed to pursue its administrative remedies, the issue of timeliness is a moot issue.

2. The Commission relies upon its arguments in its Response that the Notice of Judicial Proceedings or Further Review is not permissive, that the City failed to exhaust its administrative remedies, and that that failure was a waiver of its right to appeal. Should the Court strike Commission's Response, the Commission requests that in the alternative, it treat that Response as a Motion to Dismiss.

3. The City is not a newcomer to the Commission's forum nor this Court's. It should not be allowed to bypass the procedural processes below and avoid the development of a record and argue its case before this Court.

For the reasons stated above, Homestead's Motion to Strike should be denied. The Commission does not oppose Homestead's request for Leave to File Response so long as its Response in Opposition to Motion to Reinstate Notice of Administrative Leave is treated as a Motion to Dismiss.

Respectfully Submitted,

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FLORIDA PUBLIC SERVICE COMMISSION
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Dated: December 24, 1997

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to the following on this 24th day of December, 1997.

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