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FLORIDA JUDICIAL  
SERVICE COMMISSION

May 7, 1999

Debbie Causseaux, Acting Clerk of the Court  
The Supreme Court of Florida  
Supreme Court Building  
500 South Duval Street  
Tallahassee, Florida 32399-1927

Re: Florida Power Corporation v. Joe Garcia, etc. et al.  
Case No. 94,664

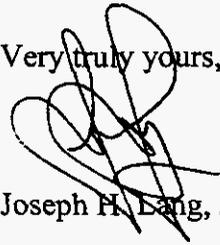
980283-EP

Dear Ms. Causseaux:

Enclosed are the original and seven (7) copies of Appellant's Response to Motion to Supplement the Record for docketing in this cause.

Thank you for your consideration in this matter.

Very truly yours,



Joseph H. Lang, Jr.

- AFA \_\_\_\_\_ JHL:mh
- APP \_\_\_\_\_ Enclosures
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_ cc (w/enclosure): All Counsel of Record
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS \_\_\_\_\_
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_
- SEC \_\_\_\_\_ I
- V/AW \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DAT

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STP#507615.01

CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P.A.

TAMPA ORLANDO PENSACOLA TALLAHASSEE WEST PALM BEACH ST. PETERSBURG

FRS RECORDS/REPORTING

IN THE SUPREME COURT OF THE STATE OF FLORIDA

FLORIDA POWER CORPORATION,

Appellant,

vs.

Case No. 94,664

JOE GARCIA, etc., et al.,

Appellee.

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**APPELLANT FLORIDA POWER CORPORATION'S  
RESPONSE TO MOTION TO SUPPLEMENT THE RECORD**

Appellant, Florida Power Corporation (FPC), responds to Appellees/Intervenors Miami-Dade County, Florida's (Dade) and Montenay-Dade, Ltd.'s (Montenay) Motion to Supplement the Record, and states as follows:

1. Dade and Montenay move this Court to supplement the record on appeal with seven documents that were not present in the record before the Florida Public Service Commission (FPSC) below.

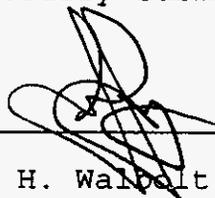
2. The inclusion in the record on appeal of materials not present in the record below is prohibited by both the Florida Statutes and the Florida Rules of Appellate Procedure. Section 120.57, *Florida Statutes* (1997), sets forth an exhaustive list of those documents which should be included in the record. To reinforce its dictate that the statutorily-defined record is

exhaustive, section 120.68(4) states that "judicial review of any agency action shall be confined to the record transmitted . . . ." Finally, rule 9.190(c)(1) states: "As further described in this rule, the record shall include only materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court." (Emphasis added.).

3. Although movants assert that the items sought to be added to the record on appeal are part of "the procedural histories" of these proceedings, they do not state or demonstrate that those items were a part of the record below, let alone that they were furnished to the FPSC in advance of its administrative action as to which FPC now seeks review.

4. In light of all the foregoing, FPC believes the instant motion filed by Dade and Montenay is unauthorized.

Respectfully submitted,



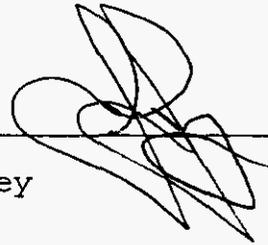
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Florida Power Corporation

Sylvia H. Walcott FBN 033604  
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Post Office Box 3239  
Tampa, Florida 33601-3239  
Attorneys for Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Richard C. Bellack, Division of Appeals, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; John Beranek and Lee L. Willis, Ausley & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32301; John R. Marks, III, Knowles, Marks & Randolph, P.A., 215 South Monroe Street, Suite 130, Tallahassee, Florida 32301; Marilyn E. Culp and Jodi L. Corrigan, Annis, Mitchell, Cockey, Edwards & Roehn, P.A., Post Office Box 3433, Tampa, Florida 33601; Robert Scheffel Wright and John T. LaVia, III, Landers & Parsons, P.A., Post Office Box 271, Tallahassee, Florida 32303; and Gail P. Fels, Office of the County Attorney, Dade County Aviation Division; Post Office Box 592075 AMF, Miami, Florida 33159 this <sup>TH</sup> day of May, 1999.

\_\_\_\_\_  
Attorney

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above a horizontal line.