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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA POWER & LIGHT COMPANY,
Petitioner,

vs.

PUBLIC SERVICE COMMISSION,
Respondent.

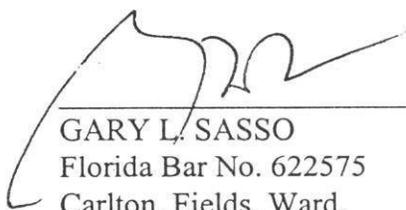
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**FLORIDA POWER CORPORATION'S
NOTICE OF FILING
CORRECTED PETITION FOR LEAVE TO INTERVENE**

FLORIDA POWER CORPORATION (FPC), through its undersigned counsel, hereby gives notice of service via Facsimile and U.S. Mail of Florida Power Corporation's Corrected Petition for Leave to Intervene to all counsel of record as listed on the attached Counsel of Record service list.

Respectfully submitted,

FLORIDA POWER CORPORATION



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FPSC-RECORDS/REPORTING

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¹ Ms. Bayó is served as the PSC representative pursuant to rule 28-106.110, Florida Administrative Code.

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

FLORIDA POWER & LIGHT COMPANY,
Petitioner,

vs.

PUBLIC SERVICE COMMISSION,
Respondent.

**FLORIDA POWER CORPORATION'S
CORRECTED PETITION FOR LEAVE TO INTERVENE**

FLORIDA POWER CORPORATION (FPC), by its attorneys, pursuant to section 120.56(1)(e), Florida Statutes, and Rule 28-106.205, Florida Administrative Code, hereby petitions the Florida Division of Administrative Hearings for leave to intervene in the above-entitled proceeding, and to be aligned in this proceeding with FLORIDA POWER & LIGHT COMPANY (FPL), for the purpose of general participation in the prehearing and hearing and all subsequent proceedings. As grounds for this request FPC states:

INTRODUCTION

1. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. The name, address and telephone number of the petitioner for intervention is:

Florida Power Corporation
P.O. Box 14042
St. Petersburg, Florida 33733
(727) 820-5184

3. All pleadings, motions, orders and other documents directed to the petitioner for intervention are to be served on:

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**FPC HAS SUBSTANTIAL INTERESTS THAT WILL BE DETERMINED AND
AFFECTED IN THIS PROCEEDING**

4. Section 120.56(1)(e), Florida Statutes, in pertinent part, states:

[h]earings held under this section shall be conducted in the same manner as provided by ss. 120.569 and 120.57, except that the administrative law judge's order shall be final agency action. The petitioner and the agency whose rule is challenged shall be adverse parties. Other substantially affected persons may join in the proceedings as intervenors on appropriate terms which shall not unduly delay the proceedings.

§120.56(1)(e), Fla. Stat. (1999)(emphasis supplied.)

5. FPC seeks leave to intervene as a person having a direct and substantial interest in *this proceeding and the outcome of this proceeding*. FPC's substantial interests will be affected by the instant proceeding because, like FPL, FPC is subject to the rules promulgated by the PSC, including Commission Rule 25-22.036(3). For example, FPC is a public utility and electric utility as defined by section 366.02, Florida Statutes, and has been designated by the PSC as an appropriate party in Florida Public Service Commission (PSC) docket number 981890-EU, entitled: "In re: Generic investigation into the aggregate electric utility reserve margins planned for Peninsular Florida." (hereinafter "Reserve Margin docket.") The issues established by the

PSC in the Reserve Margin docket directly affect FPC's substantial interests. For example, PSC seeks to adjudicate certain issues in the Reserve Margin docket, including the methodology for determining reserve margins, the appropriate level of reserve margins for electric utilities, and the remedial action, if any, which must be taken to assure adequate reserve margins. FPC hereby incorporates the arguments made by FPL, in its Petition for Administrative Determination of the Invalidity of Existing Rule, regarding the improper nature of the PSC's use of Rule 25-22.036(3) as a basis to conduct the Reserve Margin docket as an adjudicatory proceeding.

6. If the Division of Administrative Hearings determines that the PSC's Rule 25-22.036(3) violates (or does not violate) the Florida Administrative Procedure Act (FAPA) and the Uniform Rules of Procedure, FPC's substantial interests will certainly be affected. As a regulated public utility and electric utility, FPC is subject to the regulation of the PSC and participates in many different types of proceedings before the PSC every year. FPC has a substantial interest, as a regulated public utility and electric utility, in ensuring that the PSC initiates adjudicatory proceedings in accordance with the FAPA and the Uniform Rules. If the PSC is able to initiate such proceedings by using Rule 25-22.036(3) and without satisfying the requirements of FAPA and the Uniform Rules, FPC's due process rights, pursuant to the United States Constitution, the Florida Constitution, the Florida Statutes, and the Uniform Rules, will certainly be injured. This is currently the case in the Reserve Margin docket. In addition, FPC's substantial interests in future PSC proceedings will be adversely affected. FPC's potential injuries are of a type and nature that this proceeding is designed to protect against.

NOTICE OF AGENCY DECISION

7. There has been no agency decision in the instant proceeding or the Reserve Margin docket; therefore, FPC cannot provide a statement of when and how it received notice of the agency decision. However, FPC received formal notice of PSC's decision to adopt the latest amendment to rule 25-22.036(3) by memorandum from the PSC dated April 26, 1999.

DISPUTED ISSUES OF MATERIAL FACT

8. FPC hereby incorporates the disputed issues of material fact alleged by FPL in its Petition for Administrative Determination of the Invalidity of Existing Rule and states that those facts are similarly applicable to FPC.

ULTIMATE FACTS ALLEGED

9. FPC hereby incorporates the facts alleged by FPL in its Petition for Administrative Determination of the Invalidity of Existing Rule and states that those facts are similarly applicable to FPC. For the reasons more fully described in FPL's Petition for Administrative Determination of the Invalidity of an Existing Rule, Rule 25-22.036(3) is invalid and conflicts with the requirements of FAPA and the Uniform Rules. FPC has argued, several times, to the PSC that the Reserve Margin docket was not properly initiated as an adjudicatory proceeding in which the substantial interests of certain parties were to be determined. These arguments were premised, in part, on the following:

- a. The PSC initiated the Reserve Margin docket as a generic investigation and did not purport to satisfy the requirements set forth in the FAPA and Uniform Rules for initiating adjudicatory proceedings under Sections 120.569 and 120.57,

Fla. Stat. Specifically, the PSC did not provide notice of any particular facts that it was alleging or any particular action that it proposed to take.

b. Nonetheless, the PSC thereafter established certain issues to be adjudicated in the Reserve Margin proceeding, but still did not provide notice of any facts that the PSC proposed to prove or any particular action that it proposed to take. The PSC's adjudication of these issues would substantially affect the parties in the Reserve Margin docket, including the FPC. Nonetheless, as a result of the procedure that the PSC has followed in that docket, the PSC has not afforded FPC and the other parties with any notice of what, if any, particular action the PSC may take at the conclusion of the hearing.

c. The PSC's orders in the Reserve Margin docket make clear that the proceeding will be conducted pursuant to sections 120.569 and 120.57, Florida Statutes, and rule chapter 28-106, Florida Administrative Code.

d. Since the Reserve Margin docket was initially established as a generic investigation, FPC challenged the PSC's ability to initiate an adjudicatory proceeding without satisfying the requirements set out in the FAPA and the Uniform Rules.

e. In defense of its actions in the Reserve Margin docket, the PSC declared that it had initiated the proceeding according to Rule 25-22.036(3), which the PSC construed to provide authority to the PSC to initiate an adjudicatory proceeding by fiat, without notice of grounds, material facts alleged, or proposed action that might be taken.

f. According to section 120.54(5)(a)1., all state agencies must comply with the Uniform Rules of Procedure by July 1, 1998. The Uniform Rules set out specific requirements, in Rule 28-106.201, for initiation of proceedings that determine substantial interests. The PSC did not initiate the Reserve Margin docket in accordance with those requirements.

g. In addition, neither section 120.57 nor Uniform Rule chapter 28-106 apply in the context of agency investigations preliminary to agency action. See §120.57(5), Fla. Stat. (1999); Rule 28-106.101(2), Fla. Admin. Code. Yet, the Reserve Margin docket was initiated as an agency investigation preliminary to agency action.

h. The Administration Commission has already denied PSC's petition for an exception to the Uniform Rules for the text contained in Rule 25-22.036(3) (formerly Rule 25-22.036(6)) and determined that Rule 25-22.036(3) is outside the scope of the Uniform Rules because it should apply only to matters that precede a proposed or final agency action that determines substantial interests. The PSC subsequently adopted by rule a list of exceptions from the Uniform Rules of Procedure that does not include an exception for Rule 25-22.036(3).

i. The PSC's actions in the Reserve Margin Docket illustrate the conflict between Rule 25-22.036(3) and the FAPA, as well as the Uniform Rules of Procedure. The PSC asserts that Rule 25-22.036(3) enables it to initiate a adjudicatory proceeding pursuant to section 120.57, Florida Statutes, despite its failure to satisfy the requirements of section 120.57, Florida Statutes, and the

Uniform Rules of Procedure applicable to such a proceeding. In addition, the PSC seeks to initiate an adjudicatory proceeding in the context of an agency investigation and before it has even proposed any agency action, despite the specific language in section 120.57, Florida Statutes, and the Uniform Rules of Procedure prohibiting such premature adjudicatory proceedings.

SPECIFIC RULES OR STATUTES THE PETITIONER CONTENDS REQUIRE REVERSAL OR MODIFICATION OF THE AGENCY'S PROPOSED ACTION

10. As an illustration of the PSC's improper construction and use of rule 25-22.036(3), which is invalid, FPC specifically challenges the PSC's application of rule 25-22.036(3) to the Reserve Margin docket. The statutes and rules that require rule 25-22.036(3) to be declared invalid include sections 120.52(8), 120.54(5)(a)1., 120.56(1) and (3), and 120.57(5), Florida Statutes; and rule 28-106.101(2), Florida Administrative Code.

RELIEF REQUESTED

11. FPC requests that the Division of Administrative Hearings assign an administrative law judge to conduct a hearing concerning the issues raised in FPC's Petition and FPL's Petition and that the Administrative Law Judge declare rule 25-22.036(3), Florida Administrative Code, to be an invalid exercise of delegated legislative authority; and that the Administrative Law Judge award costs and attorneys fees to FPC pursuant to section 120.595(3), Florida Statutes.

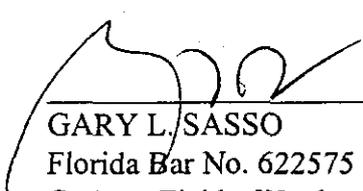
WHEREFORE, FPC requests that an appropriate order granting it leave to intervene in accordance with this petition be entered in this proceeding and that thereafter FPC be given notice of all hearings and other proceedings in this matter and the right to appear in those

hearings and proceedings and to participate for the purposes and to the extent requested in this Petition.

Respectfully submitted,

FLORIDA POWER CORPORATION

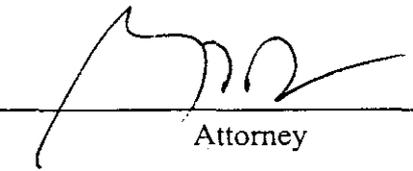
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to all counsel of record listed this 27th day of October, 1999.



Attorney

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