

STATE OF FLORIDA

Commissioners:  
JOE GARCIA, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
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DIVISION OF LEGAL SERVICES  
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Public Service Commission

ORIGINAL

May 9, 2000

Division of Administrative Hearings  
Ms. Ann Cole, Clerk  
1230 Apalachee Parkway  
Tallahassee, FL 32399

Re: DOAH Case No. 00-1117 - The Colony Beach & Tennis Club, Inc. vs. Florida Power & Light Company (FPSC Docket No. 991680-ED)

Dear Ms. Cole:

Enclosed are an original and one copy of Florida Public Service Commission's Motion for Leave to Intervene. Please file the original and date stamp the copy and return it in the enclosed postage paid envelope. Thank you.

Sincerely,

*Donna M. Clemons*  
Donna M. Clemons  
Staff Counsel

DMC:jb  
Enclosure

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS \_\_\_\_\_
- OFC \_\_\_\_\_
- RFR \_\_\_\_\_
- SEC \_\_\_\_\_
- WAW \_\_\_\_\_
- O'FH \_\_\_\_\_

DOCUMENT NUMBER - DATE  
05787 MAY -98  
FPSC-RECORDS/REPORTING

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

THE COLONY BEACH & TENNIS  
CLUB, INC.,  
    Petitioner,

vs.

FLORIDA POWER & LIGHT CO.,  
    Respondent.

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DOAH Case No. 00-1117  
FPSC Docket No. 991680-EI

MOTION FOR LEAVE TO INTERVENE

The FLORIDA PUBLIC SERVICE COMMISSION (Commission), by and through its undersigned counsel, requests that the Administrative Law Judge grant leave to intervene in the above-styled cause for the reasons set forth below.

1. This case was initiated by the filing of a complaint with the Commission by The Colony Beach & Tennis Club, Inc. (Colony) against Florida Power & Light Company (FPL). Colony alleged that FPL violated Rules 25-6.049(5)(a)(3) and 25-6.093(2), Florida Administrative Code, by failing to master meter Colony's facility when Colony requested a more favorable electric rate from FPL in January 1988. Colony requested a refund of the difference between the residential rate it paid between January 1988, when it claims it first requested to be put on a more favorable rate, and June 1998, when FPL finally master metered the facility.

2. On February 7, 2000, FPL filed a Motion to Transfer Complaint to the Division of Administrative Hearings (DOAH). By

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Order No. PSC-00-0477-PCO-EI, issued March 6, 2000, FPL's motion was granted. The Commission stated, "[b]ecause of the number of disputed facts in this case, we believe that the parties' interests would be best served by granting FPL's motion. We therefore transfer this matter to the Division of Administrative Hearings for a full evidentiary hearing on the merits."

3. Section 120.569(2)(a), Florida Statutes, states that once a case is referred to DOAH the "referring agency shall take no further action with respect to the formal proceedings, except as a party litigant," as long as DOAH has jurisdiction over the formal proceeding.

4. FPL supplies electricity to the public, and is, therefore, a public utility as defined in Section 366.02(1), Florida Statutes. Pursuant to Section 366.04(1), Florida Statutes, the Commission has exclusive jurisdiction "to regulate and supervise each public utility with respect to its rates and service." Thus, the Commission has exclusive jurisdiction over the subject matter of this proceeding, and, therefore, has an interest in the proceeding.

5. The Commission is neither an adversary to, nor advocate for, either party. Pursuant to Chapter 366, Florida Statutes, the Commission's primary duty is to protect the public interest.

6. Pursuant to the Commission's Statement of Agency

Organization & Operations (1999), subsection entitled "Parties,"

page 11:

The Commission staff may participate as a party in any proceeding. Their primary duty is to represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for its consideration.

In cases assigned to the Division of Administrative Hearings, the Commission staff's role is to represent the public interest and be neither in favor nor against any particular party, unless the Commission is enforcing rules or statutes through a show cause or similar proceeding, or unless the Commission is a respondent at the Division of Administrative Hearings. Staff is not a party in interest and has no substantial interests that may be affected by the proceeding. Commission staff's role shall be to assist in developing evidence to ensure a complete record so that all relevant facts and issues are presented to the fact finder. Any position that staff has prior to the hearing is preliminary; final positions are based upon review of the complete record. Commission staff may participate as a party in any proceeding involving the jurisdiction of the Public Service Commission. The Commission staff's primary role is to represent the public interest and be neither in favor or against either party. Staff's primary function in participating in proceedings before the Division of Administrative Hearings is to assist in developing evidence to ensure that all relevant factual, legal, and policy issues are presented to the fact-finder. Staff's final positions will be based upon review of the complete record.

7. The Commission has been granted intervention in similar cases that have been referred to DOAH. See, Blanca Rodriguez v. Florida Power & Light Company, Case No. 96-4935; Thomas L. Fuller v. Florida Power Corporation, Case No. 95-4253; Globe International Realty & Mortgage Corporation v. Florida Power & Light Company,

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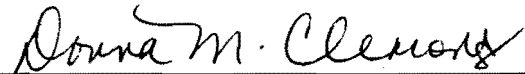
Case No. 95-2514; Jory Bricker v. Florida Power Corporation, Case No. 93-5713; Janet Knauss v. Florida Power & Light Company, Case No. 91-4910; Larry Timm v. Florida Power & Light Company, Case No. 91-2755, Arturo Toboada v. Florida Power & Light Company, Case No. 91-0331.

8. Pursuant to Rule 28-106.204(3), Florida Administrative Code, the undersigned conferred with both parties regarding any objections to our motion to intervene. On May 4, 2000, FPL expressed that it did not wish to take a position at this time, and on May 5, 2000, Colony stated that it did not object.

WHEREFORE, the Florida Public Service Commission respectfully requests that its Motion for Leave to Intervene be granted and the Commission be allowed to intervene in these proceedings while reserving its statement of position pending the evidence developed at the hearing.

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Respectfully submitted this 14<sup>th</sup> day of May, 2000.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true and correct copy of the Florida Public Service Commission's MOTION FOR LEAVE TO INTERVENE has been furnished by U.S. Mail this 9th day of May, 2000, to the following:

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Mr. J. Stephen Menton, Esq.  
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