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July 16, 2002

-VIA FEDERAL EXPRESS-

Blanca S. Bayó
Director, Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

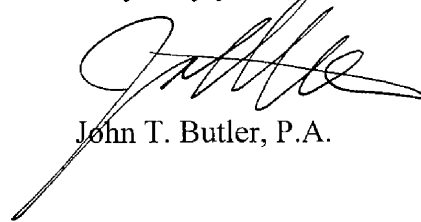
Re: Docket No. 010908-EI

Dear Ms. Bayó:

I am enclosing for filing in the above docket the original and seven (7) copies of Florida Power & Light Company's Motion to Dismiss Complainants' Request for a Hearing on Order No. PSC-02-0788-PAA-EI, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows 2000, and the word processing software in which the documents appear is Word 2000.

If there are any questions regarding this transmittal, please contact me at 305-577-2939.

Very truly yours,



John T. Butler, P.A.

AUS _____ Enclosure
CAF _____ cc: Counsel for Parties of Record (w/encl.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint against Florida Power & Light Company regarding placement of power poles and transmission lines by Amy and Jose Gutman, Teresa Badillo and Jeff Leserra.)
) DOCKET NO. 010908-EI
)
) Dated: July 16, 2002
)
)
)

**FLORIDA POWER & LIGHT COMPANY'S
MOTION TO DISMISS COMPLAINANTS'
PETITION FOR A HEARING ON ORDER NO. PSC-02-0788-PAA-EI**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby respectfully moves the Commission to dismiss the petition filed by the Complainants in this docket on July 1, 2002 (the "Petition"), which seeks a hearing on Points II and III of Order No. PSC-02-0788-PAA-EI, dated June 10, 2002 (the "Order"). The grounds for this motion are as follows:

1. Over the past year and a half, the Complainants have voiced objections to the Commission and its Staff about FPL's placement of a 230 kV transmission line in the South Florida Water Management District ("SFWMD") right of way that runs along a portion of the Hillsboro Canal and connects FPL's newly-constructed Parkland substation to FPL's existing transmission system (the "Parkland Line"). The Complainants have objected to the Parkland Line on several grounds, alleging that it will diminish their property values, that they will lose the quiet enjoyment of their property, that they did not receive proper notice of the SFWMD's permitting and rule waiver proceedings, that restrictions in the deed to the SFWMD's predecessor in interest for the right of way preclude FPL's placement of the Parkland Line in the right of way, and that the Parkland Line is not the least-cost alternative. Order at 6. Based on these objections, the Complainants have sought to

have the Commission require FPL to move the Parkland Line to some other route more distant from their property. *Id.*

2. The Complainants were afforded a lengthy opportunity to express their objections to the Parkland Line at the Commission's May 21, 2002, agenda conference. At the end of the agenda conference, the Commission concluded that it lacks jurisdiction over all of the objections to the Parkland Line raised by the Complainants save one: the Commission has jurisdiction to ensure that the Parkland Line complies with the requirements of the National Electric Safety Code ("NESC"). The Commission further concluded that there were no relevant issues of fact with respect to its jurisdictional determination and, therefore, that it could and would take final agency action with respect to that determination. Finally, the Commission adopted the recommendation of its Staff that the Parkland Line is in compliance with the NESC but concluded that NESC compliance is an issue of fact that precludes final agency action until the Complainants are afforded an opportunity to request a hearing on that issue. *See* Vote Sheet for May 21, 2002, agenda conference, Commission Document No. 05416-02.

3. The Order embodies the Commission's May 21, 2002, decision. Part II of the Order proposes as agency action a finding that the Parkland Line complies with the NESC. The Order gave the Complainants twenty days (until July 1, 2002) to protest the proposed agency action in Part II and request a hearing. In contrast, Part III of the Order is final agency action, finding that the Commission has no jurisdiction over the Complainants' remaining objections to the Parkland Line. The Order advised the Complainants of their right to seek reconsideration of Part III within fifteen days and of their appellate rights, but it did not offer an opportunity for a hearing on Part III.

4. The Petition requests a hearing as to both Parts II and III, ignoring the distinction

drawn in the Order. The Petition clearly must be dismissed with prejudice as to its request for a hearing on Part III, as this is not relief available to the Complainants under the terms of the Order.¹

5. As to Part II of the Order, the Complainants are entitled to request a hearing concerning NESC compliance, but the Petition does not make a valid request for such a hearing. It contains no allegations that the Parkland Line does not comply with the NESC. Instead, the Petition rehashes the Complainants' litany of (primarily non-NESC) objections to the Parkland Line and simply demands "that FPL prove their compliance with all NESC standards." Petition at 12 (emphasis in original). FPL has already demonstrated to the satisfaction of the Commission and its Staff that the Parkland Line complies with the NESC. *See* Order at 5 ("In summary, based upon the evaluations of our electrical safety engineers, we find that the power poles and other facilities associated with FPL's Parkland transmission line are constructed in compliance with the National Electrical Safety Code."). If the Complainants disagree and request a hearing on this issue, it is incumbent upon them at least to state the basis for their disagreement.² Moreover, the Petition continues to press for relocation of the Parkland Line, relief that is not contemplated by either the statute or rule concerning NESC compliance.³ If the Commission were to determine that a transmission line did not comply with the NESC, the proper remedy would be to order the utility to correct the deficiency, not to order that the line be relocated.

1 Nor could the Petition plausibly be considered a valid request for reconsideration of Part III. It is not timely: the 15-day period for seeking reconsideration ended on June 25, 2002, well before the Petition was filed. Moreover, the Petition does not assert any deficiency in the Order that would be a valid basis for reconsideration (*i.e.*, it identifies no point of fact or law which was allegedly overlooked or which the Commission allegedly failed to consider in rendering the Order). *See* Rule 25-22.060, F.A.C.; *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974).

2 *See* §120.80(13)(b), Fla. Stat. (2001) ("... a hearing on an objection to proposed agency action of the [Commission] may only address issues in dispute. Issues in the proposed agency action which are not in dispute are deemed stipulated."). Absent clarification by the Complainants of what it is about the Parkland Line's compliance with the NESC that they dispute, it will be impossible to implement this provision of the Florida APA.

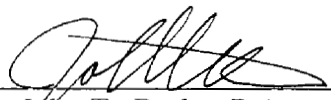
6. For both of these reasons, conducting a hearing based upon the Petition as filed would be an unfocused waste of time and resources for all involved. No legitimate interest would be served by holding a hearing on the Petition unless it were revised to identify with specificity what NESC violations the Complainants allege and what relief they seek that is within the legitimate scope of the Commission's authority.

WHEREFORE, FPL moves the Commission to dismiss the Petition (i) with prejudice as to its request for a hearing on Part III of Order No. PSC-02-0788-PAA-EI; and (ii) without prejudice to the Complainants' right to amend their request for a hearing on Part II of Order No. PSC-02-0788-PAA-EI, in order to identify the specific instances in which they allege that the Parkland Line does not comply with the NESC and the specific relief they seek that is within the Commission's authority under §366.04(6), Florida Statutes, and Rule 25-6.0345, F.A.C.

Respectfully submitted,

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By: 
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3 §366.04(6), Fla. Stat. (2001); Rule 25-6.0345, F.A.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FPL's Motion to Dismiss Complainants' Petition for a Hearing on Order No. PSC-02-0788-PAA-EI was mailed this 16th day of July 2002 to the following:

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