# BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of George and ) DOCKET NO. 930807-EI Irene Tabor against Florida ) ORDER NO. PSC-94-0692-FOF-EI Power & Light Company regarding ) ISSUED: June 7, 1994 relocation of facilities not on ) an easement.

The following Commissioners participated in the disposition of this matter:

> J. TERRY DEASON, Chairman SUSAN F. CLARK JULIA L. JOHNSON DIANE K. KIESLING

### ORDER ADOPTING HEARING OFFICER'S ORDER

BY THE COMMISSION:

On September 21, 1993, this Commission issued a Notice of Proposed Agency Action Order (Order No. PSC-93-1382-FOF-EI) denying relief to complainants George and Irene Tabor (the Tabors) to have Florida Power & Light Company (FPL) remove certain electric facilities from their property at its expense. Allegedly FPL's facilities were located on the Tabors' property without an appropriate easement.

On October 12, 1993, the Tabors requested a hearing on the Proposed Agency Action Order. The matter was referred to the Division of Administrative Hearings (DOAH) for further proceedings.

A Motion to Dismiss was filed by FPL with the hearing officer at DOAH arguing that the proceeding should be dismissed due to the Commission's lack of subject matter jurisdiction over the issues relating to real property law contained in the complaint. According to FPL that jurisdiction is within the province of the courts of this State. After an oral argument on FPL's Motion to Dismiss, the hearing officer on April 15, 1994 entered his order recommending dismissal of the proceeding due to the lack of subject matter jurisdiction over the issues presented relating to real property law. No exceptions to the recommended order were received.

We have reviewed the Hearing Officer's Order and adopt it as our own. It is, therefore,

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ORDERED by the Florida Public Service Commission that the Recommended Order issued by the Department of Administrative Hearings' Hearing Officer, a copy of which is attached to the Order as Attachment "A" is adopted as this Commission's Order. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission, this 7th day of June, 1994.

BLANCA S. BAYÓ, Director Division of Records and Reporting

by: <u>Kay Hupp</u> Chief, Bureau of Records

(SEAL) MRC:bmi

# NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure. ATTACHMENT A ORDER NO. PSC-94-0692-FOF-EI DOCKET NO. 930807-EI PAGE 3

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STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

GEORGE & IRENE TABOR, Petitioner, VS. FLORIDA POWER & LIGHT COMPANY, Respondent, and FLORIDA PUBLIC SERVICE COMMISSION, Intervenor.

#### RECOMMENDED ORDER OF DISMISSAL

THIS CAUSE having come before the undersigned Hearing Officer on Respondent's Motion to dismiss, and upon Petitioner's response, and having heard argument of counsel for the Petitioner, Respondent, and Intervenor at a hearing on the motion on April 4, 1994, in Tallahassee, Florida, and being otherwise fully advised in the premises, therefore,

FINDS AND DETERMINES that the Florida Public Service Commission (Commission) lacks subject matter jurisdiction over the issues presented that relate to matters of real property law. <u>Florida Public Service Commission v. Bryson</u>, 569 So.2d 1253 (Fla. 1990). The jurisdiction over such matters is vested in the Circuit Courts of the state and will be determinative of the issues of whether the Respondent must remove or relocate the facilities at Respondent's expense. ORDER NO. PSC-94-0692-FOF-EI DOCKET NO. 930807-EI PAGE 4

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NOW, THEREFORE, IT IS RECOMMENDED that Respondent's Motion to Dismiss the Complaint of George and Irene Tabor be granted for lack of jurisdiction over the subject matter.

DONE AND ORDERED this 15th day of April 1994 in

Tallahassee, Florida.

DANTEL M. KILBRIDZ Hearing Officer Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, FL 32399-1550 (904) 488-9675

Filed with the Clerk of the Division of Administrative Hearings this \_\_\_\_\_ day of April 1994.

COPIES FURNISHED:

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Steve Tribble Director of Records and Recording Public Service Commission 101 East Gaines Street Tallahassee, Florida 32399-8153

William D. Talbott, Executive Director Public Service Commission 121 Fletcher Building 101 East Gaines Street Tallahassee, Florida 32399-8153 ORDER NO. PSC-94-0692-FOF-EI DOCKET NO. 930807-EI PAGE 5

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Copies furnished continued:

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## NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party <u>at least ten</u> <u>days</u> in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. <u>You</u> should contact the agency that will issue the final order in this <u>case concerning agency rules on the deadline for filing</u> <u>exceptions to this recommended order</u>. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this the final order in this case.