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May 5, 1997

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Application of Rules 25-6.0441(2)(a) and 25-6.0441(2)(d), Florida
Administrative Code to a Customer Request for Service, Docket No.
970502

Dear Ms. Bayo:

✓ Enclosed for filing are the original and fifteen (15) copies of Florida Power & Light
Company's Motion to Dismiss in the above-styled docket

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this
letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,



Mark K. Logan

- ACK _____
- AEA _____
- APP 1
- CAF _____
- GMU _____
- DTR _____
- EAG 1
- LEG _____
- LIT 5
- PPS _____
- PRR _____
- SPR 1
- WAS _____
- OTH _____

MKI/th
Enclosures



DOCUMENT NUMBER - DATE
04442 MAY-56
FPSC-RECORDS/REPORTING

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application of Rules 25-6.0441(2)(a))
and 25-6.0441(2)(d), Florida Administrative)
Code to a Customer Request for Service)
_____)

Docket No. 970502

MOTION TO DISMISS

Florida Power & Light Company ("FPL") pursuant to Rule 25-22.037, Florida Administrative Code moves to dismiss the petition for declaratory statement filed by Clay Electric Cooperative, Inc. ("Clay") and in support thereof states:

1. On Friday, April 25, 1997, Clay, via U.S. Mail, served a petition for declaratory statement on the Commission and FPL. The sole relief requested in the petition is to determine whether a territorial dispute exists under an alleged set of facts pertaining to certain area in Baker County where FPL and Clay currently provide service. FPL contests the majority of alleged facts Clay relies upon in seeking a declaratory statement from the Commission.

2. On Tuesday, April 29, 1997, FPL filed a Petition with the Commission to Resolve a Territorial Dispute with Clay in Baker County.

3. Notwithstanding FPL's disagreement as to the salient facts at issue in Clay's Petition, FPL's filing of the territorial dispute with the Commission renders Clay's Petition for Declaratory statement moot.

4. Even if Clay's Petition were not moot, the Petition is framed in such a way as that it is not confined to a set of specific facts and a specific petitioner, but instead would require such a broad response as to necessitate the promulgation of a rule defining when a territorial dispute exists. Agencies such as the Commission may not use the declaratory statement provisions of Section 120.565, Florida Statutes (1995), derivatively promulgated by the Commission as Rule

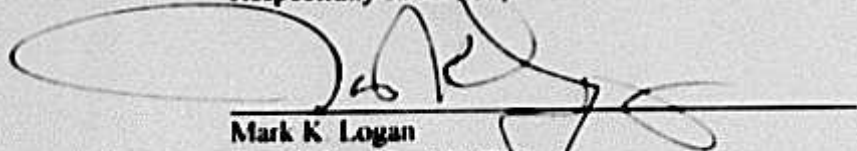
DOCUMENT NUMBER - DATE

04442 MAY-55

FPSC RECORDS/REPORTING

25-22 020, Fla. Admin. Code, as a short cut to announce a rule Florida Optometric Association v. Department of Professional Regulation, Board of Opticianry, 567 So. 2d 928 (Fla. 1st DCA 1990) As the Commission can more than adequately resolve the issues presented by Clay in its Petition via resolution of the territorial dispute filed by FPL, the Commission should refrain from entertaining Clay's Petition. Couch v. State, 377 So. 2d 32 (1979)

Respectfully submitted,



Mark K. Logan
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and

Patrick Bryan
Law Department
700 Universe Boulevard
Juno Beach, FL 33408

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

U.S. Mail to the following on this 5th day of April, 1997.


Mark K. Logan

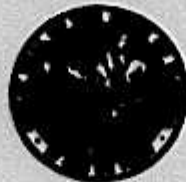
John H. Haswell, Esquire
Chandler, Lang & Haswell, P.A.
P.O. Box 23879
Gainesville, FL 32602

Legal Division
Florida Public Service Commission
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Tallahassee, FL 32399

Lucille Wright
Florida Power & Light Company
3103 East Duval Street
Lake City, FL 32055

Commissioners

H LIA I. JOHNSON, CHAIRMAN
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING



DIVISION OF RECORDS &
REPORTING
BLANCA S. BAYO
DIRECTOR
(904) 413-6770

Public Service Commission

April 28, 1997

John H. Haswell, Esquire
Chandler, Lang & Haswell, P.A.
Post Office Box 23879
Gainesville, Florida 32602-3879

Re: Docket No. 970502-EC

Dear Mr. Haswell:

This will acknowledge receipt of a petition for declaratory statement by Clay Electric Cooperative, Inc. pursuant to Rules 25-22.020 and 25-22.021, F.A.C., which was filed in this office on April 28, 1997 and assigned the above-referenced docket number. Appropriate staff members will be advised.

Mediation may be available to resolve any dispute in this docket. If mediation is conducted, it does not affect a substantially interested person's right to an administrative hearing. For more information, contact the Office of General Counsel at (904) 413-6078 or FAX (904) 413-6079.

Division of Records and Reporting
Florida Public Service Commission