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February 8, 1999

VIA HAND DELIVERY

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 110
Tallahassee, FL 32399-0850

Re: **John Charles Heekin v. Florida Power & Light Company;**
Docket No. 981923-EI

Dear Ms. Bayó:

I enclose and hand you herewith for filing in the above-referenced matter, an original and fifteen copies each of Florida Power & Light Company's ("FPL") Motion to Dismiss and its Motion for a More Definite Statement.

Also included herewith is a diskette containing electronic copies of the two motions in WordPerfect version 6.1 for Windows.

Please do not hesitate to contact me should you or your Staff have any questions regarding this filing.

Sincerely,

R. Wade Litchfield
R. Wade Litchfield LAA

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG 1 *RWL/hjw*
Enclosures
- LEG _____
- LIN _____
- JPC _____ cc: _____
- JCH _____
- EC 1
- JAS _____
- TH _____

cc: John Charles Heekin, Esq. (via U.S. Mail)
Grace Jaye, Esq. (via hand delivery)

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[Signature]
FPSC-BUREAU OF RECORDS

Motion to Dismiss
DOCUMENT NUMBER-DATE

01636 FEB-8 99
FPSC-RECORDS/REPORTING

Motion for More Definite Statement
DOCUMENT NUMBER-DATE
01607 FEB-8 99
FPSC-RECORDS/REPORTING

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint and Petition of)
John Charles Heekin against)
Florida Power & Light Company)

DOCKET NO. 981923-EI
Filed: February 8, 1999

**MOTION TO DISMISS THE COMPLAINT AND PETITION
OF JOHN CHARLES HEEKIN**

NOW BEFORE THIS COMMISSION, through its undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), named as defendant in the above numbered and entitled matter, and with a specific reservation of all of its rights, and without waiving any of them, appearing solely for the purpose of this, its Motion to Dismiss the Complaint and Petition of John Charles Heekin, states as follows:

1. FPL is a public utility subject to the jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, Florida Statutes. FPL's general Offices are located at 9250 West Flagler Street, Miami, FL 33174.
2. Any pleading, motion, notice, order or other document required to be served upon the petitioner or filed by any party to this proceeding should be served upon the following individuals:

William G. Walker, III
Vice President
Florida Power & Light Company
215 South Monroe Street
Suite 810
Tallahassee, FL 32301-1859
(850) 224-7517

R. Wade Litchfield
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700 Universe Boulevard
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(561) 691-7101

DOCUMENT NUMBER-DATE

01636 FEB-89

FPSC-RECORDS/REPORTING

3. This Motion is filed pursuant to Rule 25.22-037 of the Florida Administrative Code.

4. FPL was served by the Florida Public Service Commission ("FPSC" or the "Commission") with a Notice of Complaint and Petition filed on behalf of John Charles Heckin ("Petitioner"). FPL requested twenty (20) additional days, or until and including February 8, 1999, in which to file responsive pleadings. By order dated January 20, 1999, the Pre-hearing Officer granted FPL's motion for an extension of time.

5. In the Complaint and Petition of John Charles Heckin ("Petition"), Petitioner alleges violations by FPL of sections 810.02, 810.115, 810.12, 810.14, 934.01(4), and 934.03 of the Florida Statutes, Rules 1.280 and 1.410 of the Florida Rules of Civil Procedure, and Rules 25-6.021 and 25-6.094 of the Florida Administrative Code. Petition at 3-4. The alleged violations of sections 810.02, 810.115, 810.12, 810.14, 934.01(4), and 934.03 of the Florida Statutes hereinafter sometimes are referred to as Counts One, Two, Three, Four, Five, and Six, respectively. The alleged violations of Rules 1.280 and 1.410 of the Florida Rules of Civil Procedure hereinafter sometimes are referred to as Counts Seven, and Eight, respectively. The alleged violations of Rules 25-6.021 and 25-6.094 of the Florida Administrative Code hereinafter sometimes are referred to as Counts Nine, and Ten, respectively.

6. The alleged actions of FPL that form the basis of Petitioner's complaint and request for relief are "eavesdropping, voyeurism, breaking the fence and thereby forcibly entering the curtilage of the dwelling of the Petitioner and bad faith games-playing in the defense of the resulting litigation." Petition at 4.

7. As relief, Petitioner requests that FPL be fined by the Commission, that FPL be required to "investigate and adjust the damage" from the alleged "burglary;" that the Commission decide "whether FPL should be permitted to charge [to rate payers] the bad faith conduct" alleged by Petitioner; that FPL be required to issue a written apology to Petitioner for the alleged actions of its employee, and that FPL be required to pay the court costs and attorney's fees of the Petitioner in his civil action against FPL, and for Petitioner's costs and fees for attendance at any hearing before this Commission. Petition at 4-5.

8. The Petition should be dismissed. The Commission should dismiss with prejudice Counts One through Eight of the Petition for lack of subject matter jurisdiction and/or failure to state a cause of action. Petitioner's request for some type of rate relief in connection with the alleged "bad faith" defense by FPL of the Civil Action also should be dismissed for failure to state a cause of action. Counts Nine and Ten have not been properly brought before the Commission and should be dismissed without prejudice, allowing the Petitioner to resubmit those claims to the Division of Consumer Affairs of the Commission, to be handled in the manner prescribed by Rule 25-22.032 of the Florida Administrative Code.

LACK OF SUBJECT MATTER JURISDICTION

9. This Honorable Commission lacks subject matter jurisdiction over Counts One through Seven of the Petition and should dismiss the Petition with prejudice as to these claims. "The Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State." City of Cape Coral v. GAC Utilities, Inc., 281 So.

2d 493, 496 (Fla. 1973) (citing, among other authorities, Burr v. Jacksonville Terminal Co., 71 Fla. 295, 71 So. 474 (1916)). FPL is a public utility within the meaning of section 366.02(1) of the Florida Statutes and, therefore, is subject to applicable Commission jurisdiction and regulation. The Commission's jurisdiction relative to public utilities is set forth in section 366.04 of the Florida Statutes.

10. Petitioner's claims relative to Counts One through Six clearly fall outside the scope of the Commission's jurisdiction. Nothing in chapter 366 or elsewhere in the Florida Statutes grants the Commission jurisdiction or authority to adjudicate alleged violations of sections 810.02 (burglary), 810.115 (breaking or injuring fences), 810.12 (unauthorized entry on land), 810.14 (voyeurism prohibited), 934.01(4) (legislative findings relative to security of communications), and 934.03 (interception and disclosure of wire, oral, or electronic communications prohibited) of the Florida Statutes, whether claims based on such alleged violations are brought as a civil or criminal action. Indeed, such claims are the subject of a separate pending civil action, Case No. 98-1304-CA in the Circuit Court of the Twentieth Judicial Circuit in Charlotte County (sometimes hereinafter the "Civil Action"). Assuming the Civil Action proceeds to trial, the Circuit Court in Charlotte County will make factual findings regarding Petitioner's contentions relative to Counts One through Six.

11. Petitioner's claims relative to Counts Seven and Eight also are beyond the scope of the Commission's jurisdiction. The alleged violations of Rules 1.280 (general provisions governing discovery) and 1.410 (subpoena) of the Florida Rules of Civil Procedure relate solely to discovery matters in the Civil Action. If the Court in the Civil Action were to determine that

Petitioner's complaints relative to FPL's conduct in discovery in that case are well founded, Petitioner has adequate remedies in that forum through recourse provided under Rule 1.380 of the Florida Rules of Civil Procedure.

12. Not surprisingly, Petitioner has not cited, and in fact cannot cite, any decision in the Civil Action affirming Petitioner's contentions of misconduct by FPL in that proceeding. Indeed, with respect to the outstanding discovery issues in the Civil Action, the Court has not upheld Petitioner's motions and, in fact, has quashed all outstanding subpoenas in that case. Petitioner would place this Commission not only in the role of adjudicating pending discovery disputes in the Civil Action, but potentially second-guessing the Court in this matter. Petitioner's attempts for a "second bite at the apple" in this regard should not be entertained. The Commission has no such jurisdiction.

13. Likewise, the Commission has no jurisdiction to award Petitioner attorney fees and court costs incurred in connection with the Civil Action. Petitioner has asserted no basis for such authority.

FAILURE TO STATE A CAUSE OF ACTION

14. With respect to Counts One through Eight, Petitioner has failed to state a cause of action upon which the Commission can grant the relief requested. The Commission has no statutory authority (and Petitioner has alleged no such authority) to make findings relative to the alleged violations of sections 810.02, 810.115, 810.12, 810.14, 934.01(4), and 934.03 of the Florida Statutes, and Rules 1.280 and 1.410 of the Florida Rules of Civil Procedure. The

Commission is not authorized by statute to adjudicate matters in favor of individuals except to remedy a violation of a Commission rule or regulation.

15. Petitioner alleges that he has "increased utility bills" as a result of the alleged "bad faith" conduct by FPL in defense of the Civil Action. Putting aside for the sake of discussion whether the Commission has the authority to reduce a utility's rates on a case-by-case basis by amounts representing expenses incurred by FPL as a result of its alleged "bad faith conduct" in defending a particular lawsuit, Petitioner has failed to allege facts in this instance upon which such relief could be based, under any theory.¹ As discussed supra, whether the conduct of which Petitioner complains was undertaken in "bad faith" or constitutes "game-playing" is wholly outside the jurisdiction of this Commission. Therefore, even assuming arguendo that the Commission possessed the authority to grant the relief requested, because the Commission itself has no authority to resolve or make a determination with respect to such matters, Petitioner's bare allegations of misconduct would be insufficient upon which to grant the relief requested. Petitioner should not be permitted to bring non-jurisdictional issues before this Commission under the color of an assertion that such actions somehow have an effect on Petitioner's rates.

USE OF IMPROPER PROCEDURE

16. Petitioner's claims relative to Counts Nine and Ten, while otherwise within the scope of this Commission's regulatory oversight, are not properly before the Commission at this time. Petitioner filed his claims pursuant to Rule 25-22.036(4) and (5) of the Florida

¹ In the event the Circuit Court in Charlotte County were to find that Petitioner brought the Civil Action in bad faith, intending only to harass Sandra Cates, a FPL employee and her employer, one might query (in light of Petitioner's argument) whether Petitioner would agree that he should pay higher utility rates relative to his neighbors in order to prevent his neighbors from bearing litigation costs unreasonably imposed on FPL by Petitioner.

Administrative Code. However, Rule 25-22.036(1) states, in pertinent part: "This rule shall not apply to the extent that a proceeding is governed by rules or statutes that prescribe alternative procedures." Rule 25-22.032 of the Florida Administrative Code prescribes such an alternative procedure.

17. Rule 25-22.032 provides that in the event a customer has an unresolved dispute with the utility pertaining to the utility's service, the customer may file a complaint with the Division of Consumer Affairs. Rule 25-22.032 provides first for an informal procedure designed to address the complaint, and if possible to resolve the dispute, without the expense, time, and effort associated with formal proceedings. Petitioner's allegations that FPL violated Rule 25-6.094 (which requires the full and prompt investigation of customer complaints) and Rule 25-6.021 (which requires the utility to keep a record of all written complaints received) of the Florida Administrative Code are properly addressed through the procedures set forth in Rule 25-22.032. If resolution of the dispute is not achieved through the informal procedures outlined in Rule 25-22.032, more formal proceedings may be available to Petitioner.

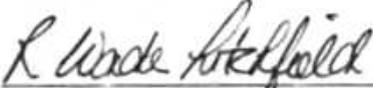
18. Rule 25-22.025 states, in pertinent part: "This [Part IV – Decisions Determining Substantial Interests] shall be construed to secure the just, speedy, and inexpensive determination of every proceeding." Petitioner's claims relative to Rules 25-6.021 and 25-6.094 should be addressed through the procedures outlined in Rule 25-6.032. Petitioner should not be permitted to unilaterally circumvent the Consumer Affairs Division of the Commission and Commission rules and procedures that are designed for the just, expeditious, and inexpensive resolution of customer complaints. Counts Nine and Ten of the Petition should be dismissed, without

prejudice, permitting Petitioner to resubmit those claims to the Consumer Affairs Division of the Commission pursuant to Rule 25-6.032.

19. Indeed, to the extent that the Commission believes that any of the claims raised by Petitioner are within the Commission's jurisdiction, Petitioner should be directed to submit such claims to the Consumer Affairs Division and proceed pursuant to Rule 25-6.032.

WHEREFORE, defendant, Florida Power & Light Company respectfully prays as follows: that with the exception of Counts Nine and Ten, the Petition be dismissed with prejudice; that with respect to Counts Nine and Ten, the Petition be dismissed without prejudice, permitting Petitioner, at Petitioner's option, to resubmit said claims to the Consumer Affairs Division to be addressed pursuant to Rule 25-22.032.

Respectfully submitted,


R. WADE LITCHFIELD ZDA
Senior Attorney
Florida Authorized Counsel
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
(561) 691-7101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for a More Definite Statement has been served by hand delivery* or by first class United States mail, postage prepaid, this 8th day of February 1999, addressed to the following:

John Charles Heekin, Esquire
Post Office Box 2434
Port Charlotte, FL 33949-3434

Grace Jaye, Esq.*
Florida Public Service Commission
Division of Legal Services
2450 Shumard Oak Boulevard
Gunter Building, Room 370N
Tallahassee, FL 32399-0850


R. Wade Litchfield LDA