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November 1, 1990

Mr. Steve Tribble  
Director of Records and Recording  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

RE: Docket No. 900796-EU

Dear Mr. Tribble:

Enclosed are the original and 15 copies of Florida Power & Light Company's Motion for Reconsideration of Order Granting Intervention and Motion in Opposition to Florida Municipal Power Agency's Petition for Leave to Intervene in Docket No. 900796-EI.

Very truly yours,

*Charles A. Guyton*  
Charles A. Guyton

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMD**
- CTR \_\_\_\_\_

CAG:do  
Enclosures

cc: All Counsel of Record

- LEB *w/m*
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Florida Power & Light Company for Inclusion of the Scherer Unit No. 4 Purchase in Rate Base, Including an Acquisition Adjustment. )  
Docket No. 900796-EI )  
Filed: Nov. 1, 1990 )

**MOTION FOR RECONSIDERATION OF ORDER  
GRANTING INTERVENTION AND MOTION  
IN OPPOSITION TO FLORIDA MUNICIPAL  
POWER AGENCY'S PETITION FOR LEAVE TO INTERVENE**

Pursuant to Florida Administrative Code Rules 25-22.060 and 25-22.037, Florida Power & Light Company ("FPL") hereby moves the Commission to reconsider Order No. 23664 granting intervention in Docket No. 900796-EI and deny the Florida Municipal Power Agency's Petition for Leave to Intervene. In support of this motion, FPL states:

1. On October 12, 1990 the Florida Municipal Power Agency ("FMPA") petitioned the Commission for leave to intervene in Docket No. 900796-EI.
2. On October 24, 1990, the Commission issued Order No. 23664 granting FMPA's petition.
3. FPL seeks reconsideration of Order No. 23664 granting FMPA's intervention on two grounds: (1) the Order granting FMPA's intervention was issued prematurely, without FPL having the full time contemplated in the Commission's rules to respond to FMPA's petition, and (2) FMPA's petition fails to satisfy the Commission's requirements for intervention.

FPL SHOULD BE ACCORDED TWENTY DAYS  
TO RESPOND TO FMPA'S PETITION  
FOR LEAVE TO INTERVENE

4. Under the Commission's procedural rules, motions in opposition to a petition may be filed. Fla. Admin. Code Rule 25-22.037(2). Such motions in opposition "shall be filed within the time provided for filing an answer." Fla. Admin. Code Rule 25-22.037(2)(a). Answers may be filed within twenty (20) days of service of a petition. Fla. Admin. Code Rule 25-22.037(1). Therefore, under the Commission's procedural rules, a motion in opposition to a petition for leave to intervene may be filed within twenty (20) days of service of the petition.

5. In this instance the Commission issued an order granting FMPA'S intervention only twelve (12) days after FMPA filed and served its petition. It was FPL's intention at that time to respond and oppose FMPA's intervention within the twenty (20) days allowed by rule. By means of this motion, it has now done so. The premature ruling on FMPA's petition effectively denies FPL its opportunity to make its intended response; it is a mistake of law; and it is a ground, by itself, warranting reconsideration or withdrawal of the order granting intervention.

**FMPA'S PETITION FOR LEAVE TO  
INTERVENE IS DEFICIENT**

6. FMPA's petition fails to satisfy the Commission's requirements under Rule 25-22.039 for intervention. One the essential requirements of Rule 25-22.039 is that a petition for leave to intervene establish one of three alternatives: (a) that the intervenor is entitled to participate in the proceeding as a matter of right, (b) that the substantial interests of the intervenor are subject to determination, or (c) that the substantial interests of the intervenor will be affected through the proceeding. FMPA has not and cannot establish any of these three alternatives.

7. Another significant requirement of the Commission's rule governing interventions is that the petition to intervene must conform to Commission Rule 25-22.036(7)(a), the Commission's rule regarding initial pleadings in contested proceedings. As is developed more fully hereinafter, FMPA has failed to meet this requirement as well.

**FMPA HAS NO RIGHT TO INTERVENE  
AND HAS NO SUBSTANTIAL INTEREST  
IN THE MATTERS TO BE DETERMINED  
IN THIS PROCEEDING**

8. The ultimate matter at issue in this proceeding and the matter which the Commission has been asked to determine is whether the purchase price of Scherer Unit No. 4, including the portion which exceeds the depreciated original cost of that unit, will be included in FPL's retail electric rate base. A

corollary and necessary determination is whether the purchase of a portion of Scherer Unit No. 4 by FPL is a reasonable and prudent investment. The Commission's ultimate resolution of these issues will impact only FPL's retail customers. The retail customers alone have interests that will be determined by or substantially affected by the Commission's determination in this proceeding.

9. FMPA acknowledges in its petition for leave to intervene that it is a wholesale customer of FPL. As a wholesale customer of FPL, the terms and conditions of service by FPL to FMPA are established by the Federal Energy Regulatory Commission ("FERC"). This Commission's determination of the prudence of the Scherer purchase and its treatment of the associated costs for purposes of retail ratemaking is not binding on the FERC.

10. Because FMPA has no interest in the ultimate determination and will not be affected by the Commission's ultimate determination in this proceeding, FMPA has not and cannot not satisfy the essential requirement of Rule 25-22.039 - demonstration that "the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding."

11. In its petition for leave to intervene, FMPA has cited no statutory or constitutional provision that gives it a right to intervene in this proceeding. Similarly, it has cited no Commission rule which entitles FMPA to participate as a matter of right. Consequently, it may only be allowed to intervene if it can demonstrate that it has a substantial interest that is subject to determination or will be affected through the proceeding.

12. As previously discussed, the Commission's determination of the ultimate issues in this proceeding in no way impacts the interest, substantial or otherwise, of FMPA. FMPA will be totally unaffected by the Commission's determination of the proper retail regulatory treatment of Scherer Unit No. 4. Consequently, FMPA has not and cannot show the necessary interest to intervene in this proceeding.

**FMPA'S FAILURE TO CONFORM WITH  
RULE 25-22.036(7)(A)**

13. As previously noted, the Commission's rule governing intervention, Rule 25-22.039, requires that a petition for leave to intervene must conform with Commission Rule 25-22.036(7)(a), the Commission's rule governing the form and content of initial pleadings. By requiring an intervenor in its petition for leave to intervene to supply the detailed information of an initial pleading, the Commission serves to narrow the scope of the proceeding and refine the matters at

issue. Without the information required by Rule 25-22.036(7)(a), the Commission, which must rule on the intervention, and the other parties potentially affected by the intervention, do not have sufficient information to assess the request for intervention.

14. One of the requirements of Rule 25-22.036(7)(a) is "a concise statement of the ultimate facts alleged." Perhaps because it is clear that FMPA has no interest in the Commission's determination of the ultimate facts of this case, FMPA has totally disregarded this necessary element in its petition for leave to intervene. Since FMPA has stated that it knows of no known disputed issues of material fact, one might assume that FMPA's petition for intervention is in support of, at least, FPL's factual allegations. However, given FMPA'S failure to state a basic position or the ultimate facts, neither FPL nor the Commission has been apprised of whether FMPA believes that the relief requested by FPL should be granted or denied.

15. Without these basic allegations FMPA's petition for leave to intervene is deficient and should be denied. The absence of the specific information that would have been supplied by these allegations puts the Commission in the position where it cannot meaningfully assess FMPA's position or interest.

WHEREFORE, FPL respectfully requests that the Commission reconsider or withdraw Order No. 23664 and deny the Florida Municipal Power Agency's petition for leave to intervene in Docket No. 900796-EI.

Respectfully submitted,

STEEL HECTOR & DAVIS  
215 South Monroe Street  
Suite 601  
Tallahassee, Florida 32301-1804  
Attorneys for Florida Power  
& Light Company

By: Charles A. Guyton

Charles A. Guyton



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power ) Docket No. 900796-EI  
& Light Company for Inclusion of )  
the Scherer Unit No. 4 Purchase )  
in Rate Base, Including an ) Filed: Nov. 1, 1990  
Acquisition Adjustment. )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion for Reconsideration of Order Granting Intervention and Motion in Opposition to Florida Municipal Power Agency's Petition for Leave to Intervene has been furnished to the following individuals by Hand Delivery or U. S. Mail on this 1st day of November, 1990:

Robert Christ, Esq.  
Division of Legal Services  
Florida Public Service Commission  
101 E. Gaines Street  
Tallahassee, Florida 32301

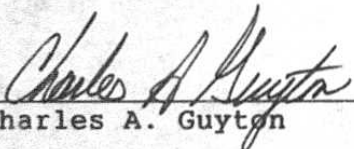
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