

ORDER NO. PSC-94-0692-FOF-EI
DOCKET NO. 930807-EI
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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: Kay Flynn
Chief, Bureau of Records

(S E A L)
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
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MAY 16, 1994

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GEORGE & IRENE TABOR,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 93-6852
)	
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,

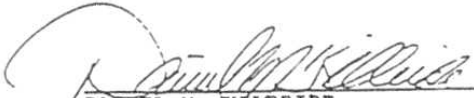
FINDS AND DETERMINES that the Florida Public Service Commission (Commission) lacks subject matter jurisdiction over the issues presented that relate to matters of real property law. Florida Public Service Commission v. Bryson, 569 So.2d 1253 (Fla. 1990). The jurisdiction over such matters is vested in 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.

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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.


DANIEL M. KILBRIDE
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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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 at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.