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ORIGINAL

RECEIVED FPSC
FEB-8 1999
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REPORTING

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)

RECEIVED & FILED
[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 FOR A MORE DEFINITE STATEMENT IN 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 for a More Definite Statement relative to the Complaint 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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Florida Power & Light Company
700 Universe Boulevard
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(561) 691-7101

DOCUMENT NUMBER-DATE

01637 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 Heekin ("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. FPL submits this Motion for a More Definite Statement in the alternative, and without prejudice, to its Motion to Dismiss the Complaint and Petition of John Charles Heekin ("Motion to Dismiss"). In the event that any portion of the Complaint and Petition of John Charles Heekin ("Petition") is allowed to stand, FPL respectfully requests that the Commission require Petitioner to amend his Petition to correct the defects set forth herein below.

6. 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 section 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.

FAILURE TO ALLEGE GROUNDS FOR JURISDICTION

7. The Petition is vague and fails to comply with the requirements of Rule 1.110 of the Florida Rules of Civil Procedure in that it does not contain a statement of the grounds upon which this Commission's jurisdiction depends. Petitioner should be required to amend the Petition to correct this defect, failing which the Petition should be stricken.

FAILURE TO INCLUDE A STATEMENT OF ULTIMATE FACTS

8. The Petition also is vague and ambiguous and fails to comply with the requirements of Rule 1.110 of the Florida Rules of Civil Procedure in that it does not contain a statement of ultimate facts showing that Petitioner is entitled to relief as to Counts Four, Five, and Six, or with respect to Petitioner's request that FPL be fined, and that Petitioner be awarded attorneys fees and costs.

9. With respect to Counts Four, Five, and Six, Petitioner alleges simply that FPL's "agents engaged in repeated and pervasive acts of voyeurism and eavesdropping" which Petitioner claims to have observed. Petitioner's allegations are in the nature of conclusions, which cannot serve as the ultimate facts upon which relief could be granted. Petitioner should be required to set forth a clear and concise statement of the ultimate facts upon which Counts Four, Five, and Six are predicated. Failing Petitioner's correction of this defect of vagueness in the Petition, such claims should be stricken.

10. Petitioner requests that FPL be fined, and that FPL be required to pay the court costs and attorney's fees of the Petitioner in his civil action against FPL, and also Petitioner's costs and fees for attendance at any hearing before this Commission. Petition at 4-5. However, Petitioner fails to identify the jurisdictional bases for such requests and, for that matter, any factual allegations in support of such relief. In this respect, the Petition must be amended to cure the defect of vagueness, and to provide a clear and concise statement of the facts, including jurisdictional bases, underlying Petitioner's request for the above-referenced relief. Failing such amendment, the foregoing requests for relief should be stricken from the Petition.

WHEREFORE, defendant, Florida Power & Light Company respectfully prays that, in the event any portion of the Petition is allowed to stand, Petitioner be required to amend the Petition to cure the defects described herein above, failing which the Petition, or the applicable claims or portions thereof, should be stricken.

Respectfully submitted,



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