

STEEL
HECTOR
DAVIS

REGISTERED LIMITED LIABILITY PARTNERSHIP

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
850 222 2300
850 222 8410 Fax
www.steelhector.com

Matthew M. Childs, P.A.

ORIGINAL

February 18, 1999

Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
4750 Esplanade Way, Room 110
Tallahassee, FL 32399

RE: DOCKET NO. 971660-EI

Dear Ms. Bayó:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Motion to Dismiss in the above-referenced docket.

Very truly yours,


Matthew M. Childs, P.A.

MMC:ml
Enclosure
cc: All Parties of Record

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG |
- LEG |
- LIN _____
- OPC _____
- RCH _____
- SEC |
- WAS _____
- OTH _____

RECEIVED & FILED
mm
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE
02153 FEB 18 99

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: 1997 Depreciation Study)
by Florida Power & Light Company) DOCKET NO. 971660-EI
_____) DATE: FEBRUARY 18, 1999

MOTION TO DISMISS

Florida Power & Light Company ("FPL") hereby files this its Motion to Dismiss the Petitions on Proposed Agency Action in this Docket by The Florida Industrial Power User's Group ("FIPUG") and The Coalition for Equitable Rates ("Coalition").

The Petition on Proposed Agency Action by FIPUG is deficient in that it fails to allege a proper basis for FIPUG as an Association. As set forth by Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982) and Friends of the Everglades, Inc. v. Board of Trustees of the Internal Improvement Trust Fund, 595 So. 2d 186 (Fla. 1st DCA 1992), to establish standing an association must allege: (1) that a substantial number of its members are substantially affected by the Commission's action, (2) that the subject matter of the proceeding is within the association's general scope of interest and activity, and (3) that the relief requested is of the type appropriate for an association to receive on behalf of its members. It is apparent that these allegations are not presented in the

Petition by FIPUG in this proceeding. FPL also respectfully submits that the deficiencies in allegations may not be furnished properly absent appropriate pleading by FIPUG.

FIPUG has also failed to establish that it is entitled to participate in this proceeding in that it fails to allege a substantial interest as is required under applicable law. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981) and AmeriSteel Corporation v. Clark, 691 So. 2d 473 (Fla. 1997). The standard that must be pled is set forth in Agrico as follows:

...before one can be considered to have a substantial interest in the outcome of the proceeding he must show (1) that he will suffer injury-in-fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing and (2) that his substantial interest is of a type or nature which the proceeding is designed to protect.

The Petition by FIPUG in this proceeding merely alleges:

"As FPL customers, the Commission's decision in this matter will affect the substantial interest of FIPUG members."

This allegation is clearly deficient and the Petition by FIPUG is not in substantial compliance with the applicable Uniform Rules and therefore must be dismissed. Once again, deficiencies in the pleading by FIPUG are not appropriately furnished from other sources.

The Petition by the Coalition is deficient in that it fails to

meet the standards required by Agrico and AmeriSteel as set forth previously. Instead of alleging that the members of the Coalition "will suffer injury-in-fact" from the Commission's action and that "the injury-in-fact" is of "sufficient immediacy" to entitle it to a Section 120.57 hearing, the Coalition alleges variously:

"...it [the protested Order] would not provide rate relief to ratepayers such as the Coalition and its members."

"...the Coalition and its members [under an appropriate study] would receive a reduction in rates paid to FPL."


Then, without establishing any factual relationship or even attempting to allege any such factual relationship, the Coalition manufactures some numbers to "attempt" to show that the "composite depreciation rate" for Florida Power & Light is too high.

The Coalition has failed to establish any relationship to the rules of the Commission or standard practice with respect to depreciation studies and the approval of such studies to its contention concerning rate adjustment. As a matter of law, this Docket and this proceeding is not a proceeding to set base rate charges or to evaluate such base rate charges to customers. In addition, the Petition by the Coalition has simply failed to establish that there are any material facts in dispute. Clearly, the Petition has alleged no basis to conclude that depreciation rates are set by comparison to other utilities and, the comparison presented is clearly in error.

WHEREFORE, FPL hereby moves to dismiss the Petitions on Proposed Agency Action by FIPUG and the Coalition in this proceeding.

Respectfully submitted,

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

By: 
Matthew M. Childs, P.A.

**CERTIFICATE OF SERVICE
DOCKET NO. 971660-EI**

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion to Dismiss has been furnished by Hand Delivery (*), or U.S. Mail this 18th day of February, 1999, to the following:

Robert V. Elias, Esq.*
Legal Division
FPSC
2540 Shumard Oak Boulevard
Gunter Building, Room 370
Tallahassee, FL 32399-0872

Ronald C. LaFace, Esq.
Greenberg, Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301

Jack Shreve, Esq.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399

John W. McWhirter, Jr., Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
P. O. Box 3350
Tampa, FL 33601-3350

Joseph A. McGlothlin, Esq.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

By:


Matthew M. Childs, P.A.