

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power & Light
Company for Enforcement of
Order No. 4285 in Docket No.
9056-EU.

Docket No. 970022-EU

**MOTION TO DISMISS FOR FAILURE
TO JOIN INDISPENSABLE PARTIES**

Comes now the CITY OF HOMESTEAD ("City"), by and through its undersigned attorneys, pursuant to Rule 1.140, Florida Rules of Civil Procedure, and files this Motion to Dismiss for Failure to Join Indispensable Parties. The grounds upon which this motion is based and the substantial matters of law intended to be argued are set forth herein.

1. In paragraphs 6, 7, 9, 11, 13 and 16 of the Petition for Enforcement of Order ("Petition"), Florida Power & Light Company ("FPL") is seeking an adjudication by the Commission that substantially affects the interest of parties who are not before the Commission in this proceeding; i.e., Silver Eagle Distributors, Ltd. ("Silver Eagle") and Contender Boats, both of which are parties to the Lease Agreements referred to in the Petition and the Lease Agreement between the City and

Silver Eagle is attached by FPL as Exhibit "C" to the Petition. FPL seeks a determination by the Commission that under the terms and conditions of the aforesaid Lease Agreements, Silver Eagle and Contender Boats and not the City are the owners of the facilities (building and other improvements) constructed on the real property owned by the City and leased to Silver Eagle and Contender Boats.

2. In Paragraph 12 of the Petition, FPL is seeking an adjudication from the Commission that the Lease Agreements are unconstitutional and that the City is engaged in "an ultra-vires act violative of the Florida Constitution." A determination of the validity of the Lease Agreements by

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG 1 _____
LIN 5 _____
OPC _____
RCR _____
SEC 1 _____
WFS _____
OTH _____

DOCUMENT NUMBER-DATE
01113 JAN 29 5
000048
FPSO-1111334-01111111

the Commission will substantially affect the interest of parties who are not before the Commission in this proceeding; i.e., Silver Eagle and Contender Boats, both of which are parties to the Lease Agreements.

3. An indispensable party is one whose interest will be substantially and directly affected by the outcome of the case. W.F.S. Co. v. Anniston Nat. Bank of Anniston, Ala., 191 So. 300 (Fla. 1939); Carter v. Howarth, 285 So.2d 442 (Fla. 1st DCA 1973). FPL, by virtue of its Petition seeking the PSC's determination of whether or not the City is the owner of the facilities and whether or not the Lease Agreements are unconstitutional, will substantially and directly affect the interests of Silver Eagle and Contender Boats and the terms and conditions of the Lease Agreements.

WHEREFORE, the CITY OF HOMESTEAD, requests that the Commission dismiss the Petition for failure to join indispensable parties, Silver Eagle and Contender Boats.



FREDERICK M. BRYANT

Fla. Bar No. 0126370

Williams, Bryant, Gautier & Donohue, P.A.

306 E. College Avenue

P.O. Box 1169

Tallahassee, FL 32302

(904) 222-5510

Attorneys for the City of Homestead

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and 15 copies of the foregoing Motion to Dismiss for Failure to Join Indispensable Parties were filed with **Ms. Blanca S. Bayó, Director, Division of Records and Reporting, Florida Public Service Commission, Room 110, Easley Conference Center, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850**; and that a true and correct copy of the foregoing was furnished by Hand Delivery to **Lorna R. Wagner, Esquire, Division of Legal Services, Florida Public Service Commission, Room 370, Gunter Building, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850**; and that true and correct copies of the foregoing were furnished by regular U.S. mail to **Wilton R. Miller, Esquire, Bryant, Miller and Olive, P.A., 201 South Monroe Street, Suite 500, Tallahassee, FL, 32301**; and **David L. Smith, Esquire, Florida Power & Light Company, P.O. Box 029100, Miami, FL 33102-9100** on this 27th day of January, 1997.


Attorney

c:\wpdocs\fmh\homestead\dismiss.mot