

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

PORT ST. JOHN HOMEOWNERS ASSOCIATION,

Petitioner,

vs.

OGC CASE NO. 97-2006

**FLORIDA POWER & LIGHT COMPANY, and
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

RECEIVED

DEC 30 1997

Respondents.

**BUREAU OF
AIR REGULATION**

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On November 14, 1997, the Florida Department of Environmental Protection (Department) received a Petition for administrative hearing from Petitioner, Port St. John Homeowners Association. See Exhibit 1. The Petition challenged the Department's decision to Issue Permit No. 0090006-001-AV to Florida Power & Light Company for a Title V air operation permit for the Cape Canaveral Plant in Brevard County.

Petitioner states that it received notice of the Department's action on October 30, 1997. Florida Administrative Code, (F.A.C.) Rule 62-103.155 and the notice provided Petitioner in the Department's Notice require that persons whose substantial interests are affected by the agency's decision must file a petition for an administrative determination (hearing) in the Department's Office of General Counsel within fourteen days of publication of notice or receipt of notice whichever occurs first.

Rule 62-103.155(3)(b), F.A.C., provides:

(b) Failure to timely file a petition within the applicable time period after receipt of notice of agency action or receipt of notice of proposed agency action, whichever notice first occurs, shall constitute a waiver of any right to request an administrative proceeding under Chapter 120 of the Florida Statutes.

Petitioner's Petition was filed one day late, and that failure to timely file the Petition constitutes such a waiver of its right to request an administrative proceeding under Rule 62-103.155, F.A.C., and chapter 120 of the Florida Statutes. Therefore,

IT IS ORDERED:

The petition for hearing filed by Port St. John Homeowners Association is **DISMISSED**.

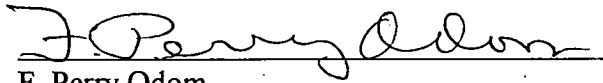
Such dismissal is without prejudice to Port St. John Homeowners Association, to amend its petition to show why it should be considered timely.

The amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within fifteen days from the date set forth in the certificate of service on the last page of this order. This order constitutes final agency action of the Department unless a timely amended petition is filed in conformance with this order.

Any party to this order has the right to seek judicial review of the order under section 120.68 of the Florida Statutes by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date this order is filed with the clerk of the Department.

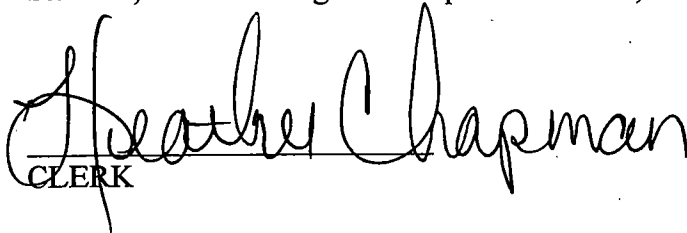
DONE AND ORDERED this 22nd day of December, 1997, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



F. Perry Odom
General Counsel
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Telephone: (904) 488-1554

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to S.120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



CLERK

12/22/97
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was mailed to:

Mary A. Tees
President
Earnest F. Voeglin
Vice President
Port St. John Homeowners Association
Post Office Box 10044
Cocoa, FL 32927

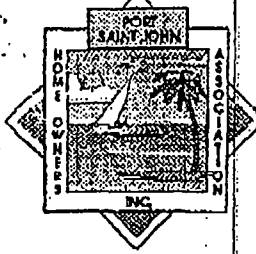
Diana Davis, Esq.
Florida Power and Light Company
Post Office Box 14000
Juno Beach, FL 33408-0420

on this 29 day of December, 1997.



W. DOUGLAS BEASON
Florida Bar No. 379239
Assistant General Counsel

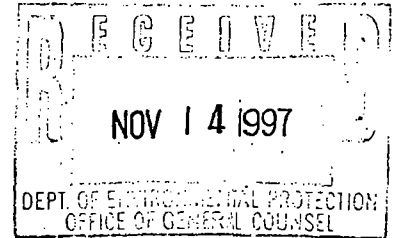
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, FL 32399-3000
Telephone: (904) 488-9730



PORT ST. JOHN HOMEOWNERS ASSOCIATION
 P.O. Box 10044 • Cocoa, Florida 32927

November 12, 1997

State of Florida
 Department of Environmental Protection
 Office of General Counsel
 3900 Commonwealth Boulevard, Mail Station #35
 Tallahassee, Florida 32399-3000



Dear Sir or Madam: By fax (850) 487-4938 and by mail.

Please consider this a petition for an administrative hearing concerning objections to Title V Draft Permit Issuance as outlined herein.

- (a) From: Port St. John Homeowners Association, P.O. Box 10044, Cocoa, Florida, 32927. Mary A Tees, President, (407) 632-4665; Ernest F. Voegtlin, Vice President, (407) 631-4368. Permit File Number: 0090006-001-AV. County of Brevard.
- (b) Notice of permitting authority's proposed action requested by phone 10/30/97; received 11/08/97.
- (c) Visible pollutants emitting from the smokestacks of the Florida Power & Light Company plant, 6000 N US 1, Cocoa, Florida (approximately 8 miles north of Cocoa, on the west bank of the Indian River, adjacent to the community of Port St. John) have increased substantially since 1995, and have adversely affected the community's health and property values.
- (d) See comments in paragraphs (c) and (e).
- (e) The DRAFT Permit No: 0090006-001-AV, Section I, Subsection A., Facility Description, states "Based on the initial Title V Permit application received June 12, 1996, this facility is a major source of hazardous air pollutants (HAPs)." Based on the subject FPL plant's own statistics, 1997 through the 2nd quarter, compared against 1995, the sulfur content of its fuel oil has increased by over 37%, and the equivalent sulfur content of total energy burned has increased by over 33%. The Port St. John Homeowners Association requests that the subject FPL plant be ordered to reduce air pollution levels (opacity) by 50%, with the initial stage, if stages are necessary, being to reduce pollutants (opacity) to no more than the average levels emitted by the same plant during calendar year 1995. The Port St. John community population has grown to approximately 23,000 - 25,000 people.

Department of Environmental Protection

November 12, 1997

It is unconscionable that government environmental agencies would permit our community, not to mention the surrounding population contiguous to our borders, to be exposed to "hazardous air pollutants" on a continual and ongoing basis.

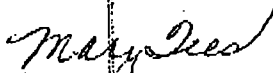
Utility Committee members of the Port St. John Homeowners Association have met with executives of the subject FPL plant and the area Manager, Corporate and External Affairs, on a number of occasions, most recently on October 11, 1997. The PSJHOA presented a request, based on a unanimous vote of the PSJHOA membership, for FPL to initially reduce opacity to no higher than the average 1995 levels as soon as possible. The FPL executives summarily rejected this request, stating that they were operating "within the law..." See attachment 1 for a list of high pollutant (opacity) dates and times recently monitored by our observer. On these days, depending on prevailing winds, a thick brown smog like haze can be seen extending as far west as Orlando or east as Cocoa Beach. Further, on westerly wind days, when FPL's opacity is high, a visible dirty ash is deposited on most parked vehicles in Port St. John in the wind path of the pollutants. This can be demonstrated by viewing the private automobiles of the employees of the Port St. John Library, none of whom live in Port St. John, but whose cars are covered by this pollutant when they leave work. Children's activities are held at this library on a continual basis; thus, they are continually exposed to these dangerous pollutants.

(f) Rules or statutes : Chapter 403, Florida Statutes (F.S.), and Florida Administrative Code (F.A.C.) Chapters 62-4, 62-210 , 62-213, and 62-214.


(g) Immediately order that permitted pollutants (opacity) be reduced by 50%.

Please acknowledge. Thank you.

Sincerely,


Mary A. Tees
President

Sincerely,


Ernest F. Voegelin
Vice President

c: Governor Lawton Chiles
Senator Patsy Ann Kurth
Senator Charlie Bronson
Representative Randy Ball
Representative Bill Posey
Commissioner Truman Scarborough
Commissioner Randy O'Brien
Commissioner Nancy Higgs
Commissioner Mark Cook
Commissioner Helen Voltz

TITV B.DOC