

3/9/98 BAF vcd

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,

Respondents.

_____ /

FINAL ORDER

On November 14, 1997, the Florida Department of Environmental Protection (Department) received a Petition for administrative hearing from Petitioner, Port St. John Homeowners Association. 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.

The Petitioner states that it received notice of the Department's action on October 30, 1997. Rule 62-103.155, Florida Administrative Code (F.A.C.), and the notice provided Petitioner in the Department's Notice of Intent requires 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.

The Petitioner's petition was filed one day late because the public notice of Department's Intent to Issue the Title V air operation permit was published on October 21, 1997. On January 16, 1998, the Department entered an Amended Order Dismissing Petition with Leave to Amend. This Amended Order allowed the Petitioner leave to file an amended petition to show cause as to why it should be considered timely.

On January 26, 1998, and February 19, 1998, the Petitioner filed responses to the Department's Amended Order Dismissing Petition with Leave to Amend. It appears the Petitioner contends the petition should be considered timely because the Petitioner was under the "impression that there was a three week time window" to file a petition for administrative hearing. The responses submitted by the Petitioner do not indicate when and how the Petitioner first received notice of the Department's Intent to Issue. Rather, the responses indicate that the Petitioner first contacted the Department on October 21, 1997, concerning the Department's Intent to Issue.

The Petitioner has failed to demonstrate good cause as to why the petition should not be considered untimely. The Department's applicable rule, as well as the notice provided Petitioner in the Department's Notice of Intent, requires that persons whose substantial interests are affected by the agency's decision must file a petition for an administrative hearing in the Department's Office of General Counsel within fourteen days of publication of notice or receipt of notice *whichever occurs first*. 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,

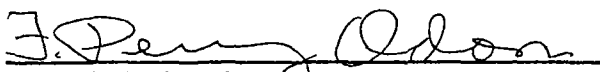
IT IS ORDERED:

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

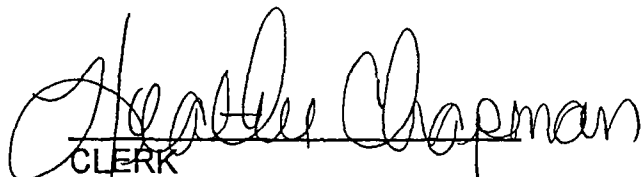
Any party to this order has the right to seek judicial review of the order under section 120.68 of the Florida Statutes by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth 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 4th day of March, 1998, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


for Virginia B. Wetherell
Secretary
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

3/6/98
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was furnished by U.S. 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 9th day of March, 1998.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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