IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC01-1505
LOWER TRIBUNAL NO.: 3D99-2795

IVAN MARTINEZ, ETC., ET AL. **vs.** **FLORIDA POWER & LIGHT CO.**

CASE NO.: SC01-1955
LOWER TRIBUNAL NO.: 1D00-1850

CLAY ELECTRIC COOPERATIVE **vs.** **DELORES JOHNSON, ET AL.**

CASE NO.: SC01-1956
LOWER TRIBUNAL NO.: 1D00-1854

CLAY ELECTRIC COOPERATIVE **vs.** **LANCE, INC., ETC., ET AL.**

Petitioner(s)/Appellant(s) Respondent(s)/Appellee(s)

ON DISCRETIONARY REVIEW FROM THE FIRST AND THIRD DISTRICT COURTS OF APPEAL

GULF POWER COMPANY'S AMICUS CURIAE BRIEF IN SUPPORT OF FLORIDA POWER & LIGHT CO.

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Amicus Curiae Gulf Power Company shall be referred to in this brief as “Gulf Power” or “Gulf”. Petitioner Clay Electric Cooperative shall be referred to as “Clay Electric”. Respondent Florida Power & Light Co. shall be referred to as “FP&L”. Petitioners Ivan Martinez, et al., shall be referred to as the “Martinez Petitioners.”

STATEMENT OF INTEREST

Gulf Power is an investor-owned electric utility providing electric service to over 370,000 customers in ten counties and more than 70 communities throughout the Northwest Florida panhandle. Customers throughout Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun and Gulf counties benefit from Gulf's quality electric service and some of the lowest rates in Florida. As the principal electric service provider for the panhandle, Gulf owns many thousands of installed streetlights throughout its service area.

Traditionally, Gulf Power has installed and maintained streetlights on public rights of way only at the request of a governmental entity (typically a municipality)[1]. In these situations, the placement of streetlights by Gulf Power is often a consequence of a franchise agreement between Gulf Power and the governmental entity. Gulf Power does not place streetlights absent a request from a franchisor. Gulf Power does not select the locations for streetlights; rather, the franchisor requests those utility poles on which lights are to be placed. Gulf Power then charges the franchisor the

[1] Gulf Power will, upon request, erect and supply a streetlight for private property owners. The contractual arrangement in this regard is governed by Gulf Power's retail tariff as approved by the Florida Public Service Commission.

appropriate rate as approved by the Florida Public Service Commission.

At various times during its more than 75 years as a provider of electric service to the Florida panhandle, Gulf has been named as a defendant in personal injury actions with factual scenarios similar to those in the cases presently before the Court. Without exception, these lawsuits alleged that Gulf owed a statutory, contractual and/or common law duty to maintain streetlights for the benefit of the injured party. To date, the majority of these lawsuits have been resolved in favor of Gulf Power on legal grounds by means of summary judgment or judgment on the pleadings.

Gulf believes that its input may be of assistance to this Court in resolving the issues raised in this matter. Also, Gulf has an interest in a judicial determination as to whether an electric utility has a common-law duty to maintain streetlights for the benefit of third-party pedestrians and/or motorists.

SUMMARY OF ARGUMENT

This Court should uphold the Third District's ruling in Martinez v. Florida Power & Light Co., 785 So. 2d 1251 (Fla. 3rd DCA 2001) that a public utility owes no duty to third party pedestrians or motorists to repair damaged or inoperative streetlights. The Third District's ruling is consistent with both the Restatement (Second) of Torts, Section 323 (1965) and the historical body of case law on this issue from inside and outside of Florida. Furthermore, holding a public utility liable to third party pedestrians or motorists would be inconsistent with the "foreseeable zone of risk" analysis established by this Court in McCain v. Florida Power Corp., 593 So. 2d 500 (Fla. 1992).

The Martinez Petitioners incorrectly urge this Court to read the Third District's decision in Martinez as absolving a utility of any and all duties it might have to members of the public in any context, ignoring that court's clearly stated recognition that the case below involved the very specific context of those duties arising from a utility's maintenance of streetlights. The Martinez Petitioners also ask this Court to affirm the decision by the First District in Johnson v. Lance, Inc., 790 So. 2d 1144 (Fla. 1st DCA 2001), however, the Johnson court used a flawed analysis to confirm a duty upon Clay Electric. The Martinez decision should be affirmed and

the Johnson decision reversed.

ARGUMENT

The decision by the Third Circuit in Martinez should be affirmed and the First Circuit's decision in Johnson reversed. There is no common law duty in Florida that a public utility maintain streetlights for the benefit of third-party pedestrians and motorists. Florida courts, including this Court, have refused to force a utility to act, in effect, as a public insurer absent a specific contractual undertaking to do so. To impose such a common law duty would clearly run contrary to the Restatement (Second) of Torts and to the principles established by this Court in McCain.

I. Florida courts have declined to impose upon public utilities a common law duty to maintain streetlights for the benefit of third party members of the public, and have only imposed a duty when such a duty has been specifically assumed in accordance with the terms of a contract.

Florida courts have consistently declined to impose upon public utilities a common law duty to third party members of the public in cases similar to those now before this Court. In Arenado v. Florida Power & Light Company, 523 So. 2d 628 (Fla. 4th DCA 1998), the Fourth District refused to impose a statutory, contractual or common law duty upon FP&L to service a traffic light for the benefit of a third party motorist. Arenado arose from an nighttime accident which occurred at an intersection normally controlled by an electric traffic

signal. Id. at 628. At the time of the accident, however, the traffic light was out due to FP&L's downed transmission line. Id. The trial court dismissed the plaintiff's complaint, stating that the plaintiff lacked a private cause of action against FP&L. Id. The Fourth District affirmed the trial court's dismissal, finding that there was no duty from FP&L to Arenado. Id. at 629.

The Fourth District's decision was based primarily on Justice Cardozo's ruling in H. R. Moch Company, Inc. v. Rensselaer Water Company, 247 N.Y. 160 (N.Y. 1928).[2] In Moch, a waterworks company under contract to supply water to the city of Rensselaer was sued when a property owner's warehouse caught fire and burned. Id. at 163. The property owner claimed that its loss was due to the waterworks' failure to supply adequate water volume and/or pressure in violation of its contract with the city, thus rendering it impossible to stop the fire before it reached the warehouse in question. Id.

Justice Cardozo and the Moch court refused to allow an action for breach of contract, reasoning that, though the city contract may be, in a broad sense, for the benefit of the

[2] Indeed, Justice Cardozo's decision in Moch is generally referred to as the seminal decision regarding a public utility's duty to third parties where said duty arises from the provision of a service and is frequently quoted in cases on the issue.

public, that factor alone was not enough to give rise to a duty. Rather, the court stated:

> The benefit, as it is sometimes said, must be one that is not merely incidental and secondary . . . [i]t must be primary and immediate in such a sense and to such a degree as to bespeak the assumption of a duty to make reparation directly to the individual members of the public if the benefit is lost.

Id. at 164. The Moch court went on to find that a contract such as the one in question had a "benefit to the public that is incidental rather than immediate, an assumption of duty to the city and not to its inhabitants." Id. at 165.

In addition to finding that no contractual duty exists between a utility and the general public, the Moch court went on to hold that no common law duty arose from the utility's undertaking to supply the city's water. Id. at 168. According to the Moch court, the question was "whether the putative wrongdoer has advanced to such as point as to have launched a force or instrument of harm, or has stopped where inaction is at most a refusal to become an instrument of good." Id. To extend a duty to all those individuals with whom the utility came into contact would "unduly and indeed indefinitely" enlarge the zone of duty. Id. Where a utility was simply negligent in its provision of services and there were no other, aggravating circumstances, such negligence "is at most the denial of a benefit. It is not the commission of

a wrong." Id. at 169.

The Fourth Circuit's decision in Arenado came before this Court for review in Arenado v. Florida Power & Light Company, 541 So. 2d 612 (Fla. 1989) (hereinafter "Arenado (SC)"). The basis of review was on the apparent conflict of the Fourth Circuit's ruling with two previous Florida cases, Mugge v. Tampa Waterworks Co., 42 So. 81 (Fla. 1906) and Woodbury v. Tampa Waterworks Co., 49 So. 556 (Fla. 1909). Arenado (SC) at 613. This Court declined review based on a finding that there was no conflict between the Fourth District's decision in Arenado and the Mugge and Woodbury decisions. Id.

Specifically, Mugge and Woodbury involved lawsuits by private landowners against Tampa Waterworks alleging a failure to provide water for purposes of extinguishing fires which destroyed the plaintiffs' property. Arenado (SC) at 613. In Mugge, this Court upheld a cause of action against Tampa Waterworks based on the contractual assumption of a duty by the utility to the citizens of Tampa. Id. The Woodbury Court upheld the trial court's dismissal based on the plaintiff's failure to properly plead a cause of action, but went on to recognize a possible duty between the utility and the plaintiff. Id. at 613-14. The two cases involved the *same* contract between the city of Tampa and the utility. Id. at 613.

This Court recognized in Arenado (SC) that the utility's duty in the Mugge and Woodbury cases arose not from the common law, but from the specific language found in the utility's contract with the city. Specifically, this Court noted that, in Mugge:

> It was also specifically alleged that the principal and primary consideration for grant of the franchises and rights to the defendant . . . was to provide and secure to the citizens, residents, and property owners of the city better protection against fires.

Id. Based on the unique language found in the Tampa Waterworks contract, this Court determined that there was no conflict between the Fourth Circuit's decision in Arenado and its own decisions in Mugge and Woodbury. Id. at 614. This Court clearly indicated that the determining factor was the "special language" in the utility's contract, specifically stating:

> We now agree that Mugge and Woodbury were predicated upon special language in the Tampa Waterworks' contracts which does not exist here. "[T]he contract of the water company is the measure of its duty to the property owner."

Id., (quoting Mugge, 42 So. at 86)

The Fourth Circuit had also recognized this crucial difference between the facts in Mugge and Woodbury and those found in Arenado and Moch. In Arenado, the court noted that "Moch recognized that there were cases imposing liability, but

noted that '[t]hrough them all there runs as a unifying principal the presence of an intention to compensate the individual members of the public in the event of a default.'" Arenado, 523 So. 2d at 629, (quoting Moch, 247 N.Y. at 166). Courts have refused to place a common law duty upon a utility for the provision of its services to the general public as a third party, and has only imposed a contractual duty where there is a specific assumption of such a duty within the contract governing performance. This was the principle adopted by this Court in Mugge and Woodbury and reaffirmed in Arenado (SC).

Other Florida courts have consistently recognized the finite limits of a common law duty where a utility provides a public service. In Levy v. Florida Power & Light Company, 798 So. 2d 778 (Fla. 4th DCA 2001), FP&L was sued when a young boy was killed while crossing a intersection controlled by an inoperative signal. The Fourth Circuit relied on its decision in Arenado in finding that the utility did not owe a duty, noting that the Arenado decision was consistent with other cases from both inside and outside Florida, including the Martinez case now before this Court. Id. at 780. The Levy court noted that the First District's decision in Johnson was inconsistent with the general rule, but differentiates the two based on the fact that Johnson involved a contract for

maintenance rather than provision of electricity. Id. at 781, footnote 1.

The majority decision in Johnson is inconsistent with the general rule in Florida as announced in Arenado, Mugge and Woodbury. The Johnson majority justified its departure by relying, as noted by the Fourth District in Levy, on a distinction as to the *type* of service the utility was providing. Johnson, 790 So. 2d at 1146. This distinction is problematic.

Simply put, the duty, if any, in lighting cases arises when the light fails to illuminate the street below. Regardless of the cause of the outage, whether from a burnt-out bulb, a downed electric transmission line, or some other unforeseeable event, the street beneath the light will be dark. Gulf Power urges that the more rational basis for limiting a public utility's duty is the fact that a public utility provides its services to a large, indeterminable number of people - only *some* of whom may be actual customers of the utility's services. To expand an electric utility's duty to every person who may be "affected" in some minute way by an inoperable streetlight would render moot the zone of risk analysis set forth by this Court in McCain. As Justice Cardozo noted in Moch, to force upon a utility a duty to every member of the general public would mean that "[t]he field of

obligation would be expanded beyond reasonable limits." Moch, 247 N.Y. at 164.

The Johnson majority also failed to recognize the distinction between a common law duty and a contractual duty. Justice Polson realized this problem in his concurring opinion, noting that the plaintiffs in Johnson alleged a breach of a contractual obligation owed by Clay Electric. Id. at 1148-49. The contractual duty "originates from the general facts of the case." Id. at 1148, footnote 1. Justice Polson recognized Arenado and Moch and stated that "the contract of Clay Electric is the measure of its duty to Plaintiffs." Id. at 1148. Justice Polson agreed with the remand to the trial court, but the scope of his inquiry was appropriately narrow: "*Because I do not know what the contractual terms are that Clay Electric allegedly has with either JEA or the City of Jacksonville, I cannot yet determine as a matter of law what the measure of Clay Electric's duty is to the Plaintiffs, if any.*" Id. (Emphasis added) In this regard, Justice Polson was looking for "special language" creating a legal duty to the general public such as that seen in Mugge and Woodbury. Justice Polson's reasoning is in full accord with this Court's ruling in Arenado (SC), and in this regard Gulf Power urges this Court to reverse the majority in Johnson and adopt the reasoning Justice Polson's concurrence.

The Martinez Petitioners further argue that the Third District's decision in Martinez directly conflicts with guidelines established by this Court in McCain. In McCain, this Court noted that the trial court had confused the duty and proximate cause elements of a claim based on negligence. McCain, 593 So. 2d at 504. Separating the two elements, this Court stated that *"[a]s to duty*, the proper inquiry for the reviewing appellate court is whether the defendant's conduct created a foreseeable zone of risk, *not* whether the defendant could foresee the specific injury that actually occurred." Id. (Emphasis in original.) The Martinez Petitioners claim that the Third District failed to properly apply this analysis in Martinez.

Contrary to the Martinez Petitioners' claim, the Martinez court did, in fact, apply the very analysis they now desire. The Third District relied heavily on the well established precedent found in Moch, Arenado, White v. Southern California Edison Co., 25 Cal.App.4th 442 (Cal. App. 1994) and Vaughan v. Eastern Edison Company, 719 N.E.2d 520 (Mass. App. 1999) in making its determination that FP&L had no duty to the Martinez Petitioners. Martinez, 785 So. 2d at 1252-53. All of these cases refer to Justice Cardozo's decision in Moch, which predates McCain by more than 65 years. The Moch decision, however, clearly contains the very elements of the

"foreseeable zone of risk" analysis this Court sought to clarify in McCain. Likewise, by any other name, the Arenado court performed a thorough McCain-type analysis.

As the Third District clearly noted, "the indefinite number of potential beneficiaries 'would be unduly and indeed indefinitely extended by [] enlargement of the zone of duty.'" Martinez at 1252, (quoting Moch, 247 N.Y. at 168) (Alteration in original). This goes to the heart of the rule so clearly restated in McCain, i.e., whether a "defendant's conduct created a foreseeable zone of risk." McCain at 504. The Third District, by its adoption of the Moch and Arenado analysis, simply affirmed the longstanding rule in Florida that, because of the unique nature of a public utility, a common law duty should not be imposed upon the utility in cases involving lighting. The zone of risk analysis in Moch and Arenado (and adopted in Martinez) complied fully with the directive issued by this Court in McCain. The Martinez Petitioners also cite to Union Park Memorial Chapel v. Hutt, 670 So.2d 64 (Fla. 1996) as support for the rule that by voluntarily undertaking to perform an act, one is automatically subject to a duty to those in the zone of risk. This argument must fail because, as noted above, Florida courts have determined that, in circumstances involving lighting, public utilities do not have a duty to the general

public because the general public is, in essence, outside the foreseeable zone of risk arising from the failure to perform. *See* Moch, Arenado, Levy *supra*. The Union Park case, which involved an accident stemming from a funeral director's negligent arrangement of a funeral procession, is a perfect example of why the courts have limited a utility's duty in lighting cases. Union Park, 670 So. 2d at 65. There the "zone of risk" can be clearly defined, it involved all those involved in the procession and those other motorists who might come across the procession. In lighting cases, the "zone" expands dramatically to include all customers, motorists and pedestrians within the utility's service area.

II. The majority view of courts from outside Florida supports the conclusion by the Third District in Martinez that FP&L owed no duty to the Martinez Petitioners. The cases cited by the Martinez Petitioners are easily distinguished and are of little precedential value.

Courts from other jurisdictions support the principle of law that an electric utility company cannot be held liable for injuries to pedestrians or motorists due to inoperable streetlights.

CALIFORNIA: In White v. Southern California Edison Co., 25 Cal.App.4th 442 (Cal. App. 1994), the plaintiff sued the utility company, alleging that he was injured in a vehicular collision due to the fact that "all the streetlights were not functioning adequately and did not sufficiently illuminate the intersection" where the accident occurred. The White court affirmed the trial court's summary judgment in favor of the utility, holding that the utility company:

> generally owes no duty to the motoring public for inoperable streetlights. There is no contractual relation between the utility and the injured party, and the injured party is not a third party beneficiary of the utility's contract with the public entity. The public utility owes no general duty to the public to provide streetlights.

Id. at. 451.

MASSACHUSETTS: In Vaughan v. Eastern Edison Company, 719 N.E.2d 520 (Mass. App. 1999), the plaintiff brought suit against the utility company for "'failing to properly erect,

inspect, repair and maintain'" a streetlight. The Vaughan court reviewed the jurisprudence of other states on the issue of whether an electric utility owes a legal duty to a member of the public in such a circumstance and concluded that the majority rule is that "ordinarily an electric company under contract to make repairs and maintain street lights has no common law duty to third persons who are injured." Vaughan at 523. Vaughan adopted this rule and declined to impose liability on the utility. Id.

LOUISIANA: In Shafouk Nor El Din Hamza v. Bourgeois, 493 So.2d 112 (La. App. 5th Cir. 1986), a pedestrian was struck and killed by a motorist at night while standing in (or near) the roadway. The plaintiff alleged that the utility company was negligent "in failing to provide an adequate amount of lighting in the area and failing to maintain those lights already installed by failing to change one or more burned out bulbs." Id. at 115. The court held that the injured party was not a party to the contract between the utility company and the municipality that had procured the street lights, and, that the utility company could therefore not be held liable. Id. at 116-117.

The Bourgeois court also noted a "common sense" rationale for not imposing liability on the utility in such a situation: "Thousands of miles of Louisiana highways do not have street

lighting, and even if a light were put on every utility pole, it would still be possible for a pedestrian to be 'between' lights and any given moment." Id. at 117.

Louisiana's First Circuit Court of Appeal subsequently adopted Bourgeois in Burdis v. Lafourche Parish Police Jury, 542 So.2d 117 (La. App. 1st Cir. 1989). Burdis, like Bourgeois, dealt with the liability of an electric utility company for injuries to a third party related to inoperable streetlights. The Burdis court found no basis for liability on the part of the utility company under the plaintiff's theories of common law, strict liability and contract. Burdis at 120-121.

The Martinez Petitioners cite two other Louisiana cases in support of their position, Withers v. Regional Transit Authority, 669 So.2d 466 (La. App. 4th Cir. 1996) and Lemire v. New Orleans Public Service Inc., 538 So.2d 1151 (La. App. 4th Cir. 1989). Gulf Power concedes that there is a split of authority among Louisiana's appellate courts on the issue at hand. *See* Lemire, 538 So.2d at 1155 ("To the extent that this holding conflicts with Shafouk v. Bourgeois, *supra*, we respectfully disagree with our brethren of the Fifth Circuit.") Despite this split, however, Bourgeois and Burdis are the majority view in the State of Louisiana.

OHIO: In Gin v. Yachanin, 600 N.E. 2d 836 (Ohio App.

1991), a pedestrian was struck by an automobile and brought suit against Cleveland Electric Illuminating Company ("C.E.I.") for its negligent failure to repair an inoperable streetlight in the area of the accident. The Gin court affirmed and approved the lower trial court's observation that:

> "Courts have repeatedly held that a power and light company owes no duty to non-customers which would be breached by its failure to provide electricity to a customer. Specifically, the courts have held that when an electric company contracts with a city to provide the electricity for street lights and traffic signals, the electric company assumes no duty to the general public to provide such service."

Gin at 838.

NEW JERSEY: In Sinclair v. Dunagan, 905 F.Supp. 208 (N.J. 1995), the United States District Court declined to impose liability on the electric utility for a personal injury attributed to an inoperable streetlight. The Sinclair court gave great weight to the decision in White v. Southern California Edison, *supra*, noting the various public policies served by refusing to impose liability on utility companies (i.e., utility rate structures, availability of other street lights, requirement of headlamps on motor vehicles, etc.).

U.S. VIRGIN ISLANDS: In Turbe v. Government of the Virgin Islands, 938 F.2d 427 (3rd Cir. 1991), the court refused to impose liability on an electric utility for injuries suffered

by a plaintiff in machete attack in an area in which the street lights were inoperable. Turbe contains a comprehensive analysis of the operation of Section 323 of the Restatement (Second) of Torts[3] as it relates to malfunctioning or inoperable streetlights. The Turbe court analyzed Section 323 of the Restatement (Second) of Torts and concluded that Section 323 was not a proper basis to impose liability for inoperable streetlights.

The Martinez Petitioners urge this Court to adopt the holdings in several out-of-state cases dealing with the issues at hand. The cases cited by the Martinez Petitioners represent the minority view.[4] In fact, a thorough reading of the cases cited by the Martinez Petitioners indicates that the jurisprudence of these sister states is substantially aligned with the principles set forth in Mugge, Woodberry and Arenado (SC).

CONNECTICUT: The Martinez Petitioners cite to three Connecticut Superior Court cases involving injuries related to inoperable streetlights. These cases, Espowood v. Connecticut Light & Power Co., 1997 WL 220091 (Conn. Super. 1997), Wojdyla v. Northeast Utilities Service Companies, 1997 WL 429595

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[3] Sometimes referred to as the "Good Samaritan" provision. *See* Turbe at 430.

[4] Vaughan v. Eastern Edison Company, 719 N.E.2d 520 (Mass. App. 1999)

(Conn. Super. 1997), and Todd v. Northeast Utilities, 484 A.2d 247 (Conn. Super. 1984), all imposed a duty on the defendant electric utility for inoperable streetlights. These cases were all decided, at least in part, on the basis of regulations promulgated by Connecticut's public utilities commission. Specifically, the Wojdyla court noted as follows:

> The question of whether there is a duty owed by the defendants to the public has been answered by the department of public utility control in its establishing Section 16-11-102(a) of the Regulations of Connecticut State Agencies. Specifically, §16-11-102(a) provides in pertinent part: "Every utility shall use every effort to properly warn and protect the public from danger and shall exercise all possible care to reduce the hazard to which employees, customers and others may be subjected to by reason of equipment and facilities."

Wojdyla at 2. The duties imposed by the Connecticut courts are derivative of Connecticut's utilities regulations. No similar duties are imposed under Florida's regulatory scheme. Accordingly, the Connecticut cases cited by the Martinez Petitioners are of no value to this Court.

KANSAS: Wilson v. Kansas Gas and Electric Co., 744 P.2d 139 (Kan. App. 1987) does not announce a rule of law as to the liability of an electric utility for inoperable streetlights. If anything, Wilson addressed the requirement that a utility's contract must be evaluated and analyzed in order to determine if the utility assumed a duty to an individual. *See* Moch, Arenado II.

NEW YORK: The Martinez Petitioners cite Cossu v. JWP, Inc., 661 N.Y.S.2d 929 (N.Y. Sup. 1997) for the broad imposition of liability on an electric utility for inoperable streetlights. The Cossu court, however, looked to the substance of the contract between the municipality and the utility to determine the scope of the utility's duty:

> Pursuant to the terms of its contract with the City, Welsbach [the electric utility] assumed a duty to
>
> > take all reasonable precautions to protect the persons and property of the City *and of others* from damage, loss or injury resulting from his or his subcontractor's operations under this contract . . . [emphasis added].
>
> Here . . . the functions to be performed by Welsbach were not directed to a faceless or unlimited universe of persons. Rather its assumed duty must be extended to noncontracting individuals reasonably within the zone and contemplation of its intended safety services.

Cossu at 281. [Emphasis in original] Cossu clearly indicates that a utility's duty is measured by its contract with the municipality. In this regard, Cossu fully supports the duty analysis urged by Gulf Power in the instant and adopted by this Court in Arenado (SC).

If anything, New York adheres to the rule set forth in Moch, *supra*, by Justice Cardozo. *See* Thompson v. City of New York, 157 A.D.2d 634, 550 N.Y.S.2d 653 (N.Y. App. 1990).

ILLINOIS/MICHIGAN: The Martinez Petitioners cite to

Greene v. City of Chicago, 382 N.E.2d 1205 (Ill. 1978) and Ridley v. Collins, 590 N.W.2d 69 (Mich. App. 1998) to support their position. Neither Greene nor Ridley addressed the issues currently before this Court, i.e., whether an electric utility owes a duty to a member of the public for inoperable streetlights. Greene merely addressed the duty owed by the City of Chicago. Greene at 1209. Similarly, Ridley addressed the duty owed by the City of Detroit. Ridley at 71-72. Neither cases discussed the legal duty, if any, owed by an electric utility. Both the Greene and Ridley courts indicated that the respective municipalities could, as a matter of law, be held liable for their negligent failure to fix an inoperable streetlight because of their assumption of such a duty in the first instance. In this regard, Greene and Ridley are in full accord with the principles of sovereign immunity set forth by this Court in Dept. of Trans. v. Neilson, 419 So.2d 1071 (Fla. 1982). The issue before the Court does not involve the determination of whether the contracting municipality owes a duty to maintain its roadways. Accordingly, Greene and Ridley do not advance the Martinez Petitioners' cause.

The position urged by Gulf Power is in full accord with the majority of those sister states that have addressed the issues before the Court. Conversely, those cases cited by the

Martinez Petitioners are the minority view and, moreover, are of little precedential value.

CONCLUSION

The Third District's decision in Martinez correctly determined that a utility's common law duty to the general public should be limited in cases involving the maintenance of streetlights. The First District's decision in Johnson should be reversed and the reasoning set forth in Justice Polson's concurrence adopted. This Court should adhere to its prior decisions in Mugge, Woodbury and Arenado (SC) and uphold the Third District's decision in Martinez.

Respectfully submitted on July 8TH, 2002.

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CERTIFICATE OF SERVICE

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the text contained in this brief is formatted in Courier New 12-point font as required by Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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