



**Florida
Power**
CORPORATION

ORIGINAL

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REPORTING

JAMES A. MCGEE
SENIOR COUNSEL

June 22, 1998

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 980682-EI

Dear Ms. Bayó:

Enclosed for filing in the subject docket are an original and fifteen copies of the Answer of Florida Power Corporation to the Complaint by Susan K. Candelore.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. Also enclosed is a 3.5 inch diskette containing the above-referenced document in WordPerfect format. Thank you for your assistance in this matter.

Very truly yours,

James A. McGee

- ACK _____
- AFA _____
- APP _____
- CAF 1
- CMU _____
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- EAG 3
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- LIN _____
- OPC _____
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cc: Parties of record

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FPSC - RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re:

Susan K. Candelore,

vs.

Florida Power Corporation.

Docket No. 980682-EI

Submitted for filing:
June 22, 1998

ANSWER

Florida Power Corporation (Florida Power) hereby files its Answer to the Complaint filed by Susan K. Candelore and states as follows:

AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action pursuant to Rule 1.140(b)(6) of the Florida Rules of Civil Procedure

I. STATEMENT OF THE CASE

Susan K. Candelore (Ms. Candelore) filed a complaint with the Florida Public Service Commission (the Commission) on May 26, 1998, alleging that Florida Power intentionally violated its own "Medically Essential Program" tariff by failing to give 30 days notice before discontinuance of service when it sent a notification letter on August 6, 1997 stating that if Ms. Candelore did not pay her outstanding balance by August 20, 1997, her electric service could be disconnected on or after August 21, 1997.

Florida Power asks the Commission to dismiss this Complaint on the grounds that the Complaint fails to state a cause of action.

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II. STATEMENT OF THE FACTS

A. Brief Background:

Susan K. Candelore has been a customer of Florida Power Corporation since April 27, 1990. Florida Power has worked closely and often with Ms. Candelore regarding her frequent difficulties in the timely payment of her bills for electric service. Her bills average \$300 per month, but her outstanding balances have often averaged \$2,000 per month. A two-year account history for Ms. Candelore reveals 23 delinquent notices and 21 occurrences on the disconnect for non-payment list.

Ms. Candelore has an 11 year old child in her home who is on life support due to a near drowning accident at age 2. Ms. Candelore participates in the Medically Essential Program offered by Florida Power. The Medically Essential Program states that Florida Power will give 30 days notice before discontinuance of service to any customer whose service is deemed to be medically essential. (Non-medically essential customers receive five working days' notice.) The 30-day notice is separate and apart from the normal billing and is automatically generated by Florida Power's computer system. This additional notice period is intended to allow these customers ample time to make alternative arrangements for medical care if financial difficulties prevent continuation of electric service.

Ms. Candelore has received 21 important notices over the past 24 months indicating that her account was delinquent and subject to disconnection if payment is not made. Florida Power has made numerous efforts to help Ms. Candelore to resolve the delinquent balances and notices of impending disconnects for non-payment. Florida Power has established credit arrangements for Ms. Candelore such as monthly installments as opposed to paying the full amount all at once.

Florida Power provided a list of social service agencies to Ms. Candelore on numerous occasions. On one occasion, a Florida Power representative offered to contact the media on Ms. Candelore's behalf to request the assistance of the general public, an offer which she declined.

B: The Issue in Question:

Ms. Candelore's July, 1997 statement was mailed on July 2, 1997 and reflected a delinquent date as of July 24, 1997. When payment was not received a computer generated delinquent notice was mailed indicating a disconnect for nonpayment date of August 1, 1997. However, her service was not disconnected.

On August 6, 1997 another letter was mailed to Ms. Candelore stating that Florida Power needed to receive the payment in full by August 20, 1997 and that failure to do so could result in power being interrupted on or after August 21, 1997.¹

On or about August 14, 1997, Ms. Candelore contacted the Commission's Consumer Affairs Division. On four occasions a Florida Power representative attempted to contact Ms. Candelore to address her inquiry to the Commission. The Florida Power representative left a message with a nurse at Ms. Candelore's home requesting that Ms. Candelore call back collect. On August 18, 1997, Ms. Candelore finally returned the Florida Power representative's call. The representative explained to Ms. Candelore that service would be eligible for disconnect on August 21, 1997 unless the delinquent balance was paid, and inquired if Ms. Candelore had a social worker with the State of Florida. Ms. Candelore

¹ It should be noted that the delinquent balance of \$817.18 identified in this letter was understated and that the actual delinquent amount was \$877.18, a typographical error.

stated she did not have a social worker and that she would not be removing her son from the home even if the electric service was disconnected and threatened her son's life.

Out of concern for the well being the minor child, the Florida Power representative contacted the State of Florida Health Care Administration to seek their advice about the situation. The Health Care Administration referred the Florida Power representative to the State of Florida Protective Investigations in Orlando, which in turn referred the representative to the 1-800-96ABUSE hotline. The Florida Power representative contacted the ABUSE hotline to advise them of the impending disconnect for nonpayment, the medical situation with Ms. Candelore's son, her refusal or inability to satisfy the delinquent utility bill, and her unwillingness to remove her son from the house in the event of a service disconnection. Child Protective Services indicated an intent to investigate and follow up within 24 hours to remove the child from the home before electric service was terminated. The Florida Power representative advised Child Protective Services that service would not be terminated until after it had completed its investigation and secured the child's safety.

Ms. Candelore made payment of \$817.18 on August 20, 1997 and the service was not disconnected. Florida Power took all the necessary precautions and notified the proper authorities to safeguard the child.

III. ARGUMENT

Failure to State a Cause of Action pursuant to Fla. R. Civ. P. 1.140(b)(6)

Pursuant to Section 366.095, F.S., the Commission has the power to "impose a penalty to any entity subject to its jurisdiction under this chapter that is found to have refused to comply with or have willfully violated any lawful rule or order of the commission or any provision of this chapter." Florida Power did not "refuse to comply with" or "willfully violate" any rule or order from the Commission or any provision of Chapter 366. Viewed in a light most favorable to Ms. Candelore, the worst that could be asserted is that Florida Power unintentionally and mistakenly violated a provision of its own tariff (and Florida Power would strenuously disagree with such an assertion). Therefore, Ms. Candelore has failed to state a cause of action.

Ms. Candelore alleges that Florida Power violated its Medically Essential Tariff (Section No. IV, Sheet 4.100, Section 10.03). The tariff states that Florida Power will give 30 days notice of discontinuance of service to any customer whose service is deemed to be medically essential. Florida Power readily admits that the letter sent to Ms. Candelore did not provide a 30-day notice period. (The letter was dated August 6, 1997 and stated that unless payment was received, service could be disconnected on or after August 21, 1997.) The insufficient notice period was the result of a compound mistake on Florida Power's part by first assuming that the 30-day period began with the delinquent notice mailed on July 24, 1997, and then by miscalculating the 30-day period from this incorrect beginning point. (The interval from July 24 to August 21 is 28 days.)

The essential point that Ms. Candelore overlooks in her attempt to characterize a clerical error by Florida Power as willful tariff violation subject to Commission penalty is that her service was not disconnected. The plain purpose of the extended notice period given to medically essential service customers is to ensure that they have adequate time to make necessary arrangements before service is disconnected. In other words, the tariff is intended to prevent the particular kind of harm that can result from disconnecting medically essential service without sufficient notice. Ms. Candelore, however, complains that Florida Power's August 6th letter gave her insufficient notice of a service disconnection that never occurred. Her complaint about this foreshortened notice misses the whole point for establishing the 30-day notice period and seeks to elevate form over substance.

Moreover, Ms. Candelore could hardly have been surprised that the notice, adequate or not, did not result in disconnection of her electric service. Despite the fact that Ms. Candelore's account has been in a virtually constant state of delinquency throughout the eight years has received service from Florida Power, despite the numerous times it has been placed on the "cut for non-pay" list, Florida Power has never actually ordered a disconnection of her service.² Instead, Florida Power has literally gone the extra mile to accommodate Ms. Candelore's difficult circumstances time and time again. If, on this one occasion, Florida Power mistakenly failed to follow the notice provision of its tariff, the fact remains that neither Ms. Candelore nor her son have been harmed because of it. The fact also remains that Ms. Candelore has benefitted over many years from Florida Power

² In 1996, Ms. Candelore's service was unintentionally disconnected and immediately restored when word that she had been removed from the "cut for non-pay" list did not reach the Florida Power field representative in time.

willingness to forego a literal application of the same tariff, under which her service could have been disconnected numerous times.

In conclusion, Ms. Candelore has failed to state a cause of action because Florida Power did not willfully or intentionally violate any rule, order, or statute of the Commission, and because her service was not disconnected without sufficient notice, which is what Florida Power's Medically Essential Service tariff was intended to prevent. Florida Power made a harmless miscalculation of the tariff's notice provision, but in every other respect Florida Power responded and acted in a manner consistent with company policy and the rules and regulations of this Commission.

IV. ANSWER

Florida Power answers the Complaint in the following correspondingly numbered paragraphs and states:

1. Florida Power is without knowledge of the allegations contained in paragraph 1 of the complaint.
2. Florida Power is without knowledge of the allegations contained in paragraph 2 of the complaint.
3. Florida Power admits that it is represented by William B. Wilson, Esquire, in the civil action, Case No. CI8-1183 in the CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA, but is represented by the undersigned in the instant proceeding before this Commission.
4. Florida Power admits the allegations contained in paragraph 4 of the Complaint.

5. Florida Power admits the allegations contained in paragraph 5 of the Complaint.

6. Florida Power is without knowledge of the allegations contained in paragraph 6 of the Complaint.

7. Florida Power is without knowledge to the third sentence contained in paragraph 7 of the Complaint. Florida Power admits the remaining allegations contained in paragraph 7 of the Complaint.

8. Florida Power admits the first two sentences contained in paragraph 8 of the Complaint. Florida Power is without knowledge of the remaining allegations contained in paragraph 8 of the Complaint.

9. Florida Power admits the allegations contained in paragraph 9 of the Complaint.

10. Florida Power denies the allegations in the last sentence contained in paragraph 10 of the Complaint. Florida Power admits the remaining allegations contained in paragraph 10 of the Complaint.

11. Florida Power denies the allegations contained in paragraph 11 of the Complaint.


12. Florida Power denies the allegations contained in paragraph 12 of the Complaint.

13. Florida Power admits the allegations contained in paragraph 13 of the Complaint.

14. Florida Power is without knowledge of the allegations contained in paragraph 14 of the Complaint.

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By 

James A. McGee
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (813) 866-5184
Facsimile: (813) 866-4931

DOCKET NO. 980682-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by US Mail on this 19th day of June, 1998 to the following:

Carol M. Anderson, Esq.
Anderson & Anderson, P.A.
515 South California Avenue
Stuart, Florida 34994

Cochran Keating, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399



Attorney