

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** March 27, 2014

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Corbari) *KFC H*  
Office of Consumer Assistance and Outreach (Forsman) *REF.*  
Division of Engineering (Graves) *REV*

**RE:** Docket No. 130290-EI – Initiation of formal proceedings of Complaint No. 1115382E of Brian J. Ricca against Florida Power & Light, for failing to provide reasonable service.

**AGENDA:** 04/10/14 – Regular Agenda – Motion to Dismiss – Oral Argument Not Requested – Participation at Commission's Discretion

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On May 6, 2013, Brian Ricca purchased an unfinished, residential home in North Port, Florida. At the time Mr. Ricca purchased the home, Mr. Ricca was aware the structure was neither substantially complete nor possessed electric utility service.<sup>1</sup> After purchasing the home, Mr. Ricca contacted FPL and began discussions for the installation of new electric service to the home. FPL initially advised Mr. Ricca that the installation costs for providing electric service to the home would be approximately \$60,000.

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<sup>1</sup> See, Document No. 07469-13, in Docket No. 130290-EI, Informal Complaint No. 1115382E CATS notes, p. 4 and 17.

On July 8, 2013, Mr. Ricca contacted the Commission's Consumer Assistance Bureau and lodged a complaint against Florida Power & Light Company (FPL) concerning the estimate of contribution-in-aid-of-construction (CIAC) required by FPL to provide new overhead electric service to the unfinished home. Mr. Ricca stated that FPL's quote of \$60,000 was excessive and that, because FPL was the only electric utility and his home was the first and only structure built in the neighborhood, he should not have to pay the cost of providing electric service to the home.<sup>2</sup>

On or about July 11, 2013, FPL provided the Commission and Mr. Ricca with a written estimate in the amount of \$55,325.59, for the CIAC cost for installing new overhead electric service to the home.<sup>3</sup> Mr. Ricca was not satisfied with FPL's estimate, believing the estimate to be excessive.<sup>4</sup> Mr. Ricca requested Commission staff review the estimate and assist him in getting FPL to reduce the CIAC costs, and continued to dispute the estimates with FPL.<sup>5</sup>

On or about August 5, 2013, FPL provided Mr. Ricca with two additional written estimates for the CIAC costs of installing new electric service to the home. One estimate was a revised estimate for the CIAC cost for installing new overhead electric service to the home using a different route than the route previously estimated by FPL in July 2013. The CIAC estimate for the alternate overhead route was \$40,706.16.<sup>6</sup> The second estimate was for the CIAC cost for installing new underground electric service to the home in the amount of \$31,850.85.<sup>7</sup>

After receiving three different estimates for the cost of installing new service, Mr. Ricca continued to be dissatisfied with FPL's estimates, asserting that the estimates were obviously erroneous, and requested the Commission review the estimates. In addition, Mr. Ricca consulted with Mr. William D'Onofrio, a Certified Public Accountant in Ohio with utility experience, concerning the FPL estimates.<sup>8</sup> Based on his utility experience in Union County Ohio, Mr. D'Onofrio concurred with Mr. Ricca that FPL's estimates were "excessive."<sup>9</sup> Commission staff reviewed the three estimates provided by FPL and determined the estimates were calculated in accordance with Commission rules and applicable tariffs.<sup>10</sup> Despite Commission staff's review, Mr. Ricca continued to believe the estimates were erroneous, FPL had committed a violation by providing an erroneous estimate, and requested Commission staff order FPL to waive or drastically reduce the CIAC costs.<sup>11</sup>

At Mr. Ricca's request, a formal review of Mr. Ricca's complaint was also performed by Commission staff, pursuant to Rule 25-22.032, Florida Administrative Code (F.A.C.). During

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<sup>2</sup> Id., p. 2.

<sup>3</sup> Id., p. 4.

<sup>4</sup> Id., p. 5.

<sup>5</sup> Id., p. 5-6.

<sup>6</sup> Id., p. 10-12.

<sup>7</sup> Id.; Staff notes that the CIAC cost for installing underground service to Mr. Ricca's was less than the cost of both overhead routes. The reason is because FPL provides the customer with the option of performing the trenching and PVC installation. Thus, the CIAC estimate for underground service FPL provided to Mr. Ricca included a \$12,324.48 credit for performing the trenching and PVC installation himself.

<sup>8</sup> Id., p. 18-19.

<sup>9</sup> Id., p. 23-24.

<sup>10</sup> Id., p. 26-33.

<sup>11</sup> Id., p. 5-6, 18-20, 26-33, 35-36.

the formal review, staff discovered no evidence FPL violated any rule or statute and that the CIAC estimates provided to Mr. Ricca were calculated in accordance with Rule 25-6.064, F.A.C., and FPL's Commission-approved tariff.<sup>12</sup> A copy of Rule 25-6.064, F.A.C., "Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities" and FPL's Tariff Sheet 6.199 Section 11 CIAC are attached hereto as Attachments 1 and 2.

On December 2, 2013, Mr. Ricca's informal complaint was closed. Mr. Ricca was advised that, if he remained unsatisfied with staff's findings on his informal complaint, he could file a formal complaint with the Commission, pursuant to Rule 25-22.036, F.A.C. On December 5, 2013, Mr. Ricca filed a formal complaint against FPL and requested a formal hearing.<sup>13</sup>

The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes.

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<sup>12</sup> Id.

<sup>13</sup> See, Document No. 07305-13, in Docket No. 130290-EI, Mr. Ricca request formal hearing, dated December 5, 2013, lodging violation and complaint against FPL.

## **Discussion of Issues**

**Issue 1:** Should Florida Power & Light Company's Motion to Dismiss be granted?

**Recommendation:** Yes. Staff recommends that the Commission grant FPL's Motion to Dismiss and dismiss the complaint without prejudice because the complaint fails to demonstrate a cause of action upon which relief can be granted. (Corbari, Forsman, Graves)

## **Staff Analysis:**

### Standard of Review

A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action.<sup>14</sup> In order to sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition still fails to state a cause of action for which relief may be granted.<sup>15</sup> The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations.<sup>16</sup> A sufficiency determination should be confined to the petition and documents incorporated therein, and the grounds asserted in the motion to dismiss.<sup>17</sup> Thus, "the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side."<sup>18</sup> All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.<sup>19</sup> Finally, pursuant to Section 120.569(2)(c), F.S., a petition shall be dismissed at least once without prejudice unless it conclusively appears from the face of the petition that the defect cannot be cured.<sup>20</sup>

### Mr. Ricca's Complaint

On December 5, 2013, Mr. Ricca filed a one-page letter requesting a formal hearing, alleging FPL violated Section 366.03, F.S., by providing "inefficient service due to internal errors within the original quote for CIAC charges."<sup>21</sup> Mr. Ricca asserts that he discovered a

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<sup>14</sup> Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000); Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

<sup>15</sup> Varnes v. Dawkins, 624 So. 2d at 350.

<sup>16</sup> Matthews v. Matthews, 122 So. 2d 571 (Fla. 2nd DCA 1960).

<sup>17</sup> Barbado v. Green and Murphy, P.A., 758 So. 2d 1173 (Fla. 4th DCA 2000); Varnes v. Dawkins, 624 So. 2d at 350; and Rule 1.130, Florida Rules of Civil Procedure.

<sup>18</sup> Varnes v. Dawkins, 624 So. 2d at 350.

<sup>19</sup> See, e.g. Ralph v. City of Daytona Beach, 471 So. 2d 1, 2 (Fla. 1983); Orlando Sports Stadium, Inc. v. State of Florida ex rel Powell, 262 So. 2d 881, 883 (Fla. 1972); Kest v. Nathanson, 216 So. 2d 233, 235 (Fla. 4<sup>th</sup> DCA, 1986); Ocala Loan Co. v. Smith, 155 So. 2d 711, 715 (Fla. 1<sup>st</sup> DCA, 1963).

<sup>20</sup> See also, Kiralla v. John D. and Catherine T. MacArthur Found, 534 So. 2d 774, 775 (Fla. 4th DCA 1988)(stating that a dismissal with prejudice should not be ordered without giving the plaintiff an opportunity to amend the defective pleading, unless it is apparent that the pleading cannot be amended to state a cause of action); and Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company.

<sup>21</sup> See, Document No. 07305-13, in Docket No. 130290-EI, Mr. Ricca request formal hearing, dated December 5, 2013, lodging violation and complaint against FPL.

shorter and cheaper route for providing service to his home. Mr. Ricca claims that, had he not discovered the shorter and cheaper route and paid the original quote provided by FPL, he would have “overpaid by a large sum,” which is an unacceptable error.<sup>22</sup> Mr. Ricca argues the “law requires the utility to provide reasonable efficient service which would not only mean the shortest route but also timely service . . . [and] such a large delay and the risk of overpayment” is not reasonable.<sup>23</sup> Therefore, Mr. Ricca seeks “compensation such that the utility company’s requested CIAC charges be waived or drastically reduced.”<sup>24</sup>

#### FPL’s Motion to Dismiss with Prejudice

On January 7, 2014, FPL filed a motion to dismiss Mr. Ricca’s complaint, seeking dismissal of Mr. Ricca’s request for formal hearing with prejudice.<sup>25</sup> In its motion, FPL asserts several grounds for dismissing Mr. Ricca’s complaint.

First, FPL argues that Mr. Ricca’s complaint fails to meet the pleading requirements of a complaint, pursuant to Rule 25-22.036, F.A.C.<sup>26</sup> Specifically, FPL asserts that Mr. Ricca’s complaint: (1) “fails to identify, with any specificity, the rule, order, or statute that allegedly has been violated or the actions that constitute the violation;” (2) fails to “provide any statement, or include any documentation that shows an act or omission [by FPL] that violates any” statute, rule or order; (3) “fails to show any injury suffered as a result of the alleged actions or omissions by FPL;” and (4) is “vague as to both the operative facts and the law” for which relief is sought that it is impossible for FPL to formulate a response and “would be impossible for the Commission to properly render a decision on the complaint.”<sup>27</sup>

Second, FPL argues that Mr. Ricca’s complaint fails to state a cause of action upon which relief can be granted.<sup>28</sup> Specifically, FPL asserts that the relief sought by Mr. Ricca is not such that can be granted by the Commission. Mr. Ricca’s complaint requests that the Commission order FPL to drastically reduce or waive the CIAC cost that FPL has calculated, in accordance with Rule 25.6.064, F.A.C., and its CIAC Tariff, in order to extend service to Mr. Ricca’s home.

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<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> See, Document No. 00098-14, in Docket No. 130290-EI, Florida Power & Light Company’s Motion to Dismiss Request for Formal Hearing of Brian J. Ricca With Prejudice, filed January 7, 2014.

<sup>26</sup> FPL cites Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company.; and Rule 25-22.036, F.A.C., which states in part that each complaint must contain:

1. The rule, order, or statute that has been violated;
2. The actions that constitute the violation;
3. The name and address of the person against whom the complaint is lodged;
4. The specific relief requested, including any penalty sought.

<sup>27</sup> See, Florida Power & Light Company’s Motion to Dismiss Request for Formal Hearing of Brian J. Ricca With Prejudice, pgs. 3-6.

<sup>28</sup> FPL cites Order No. PSC-08-0380-PCO-EI, issued June 9, 2008, in Docket No. 080039-EI, In re: Complaint of Sallijo A. Freeman Against Florida Power & Light Co. for Violation of Rule 25-6.105, F.A.C.

FPL asserts Mr. Ricca's complaint does not cite any "statute, rule, or tariff that requires FPL to reduce or waive the CIAC" because there is "no such statute, rule or tariff."<sup>29</sup>

Finally, FPL argues that Mr. Ricca's complaint should be dismissed with prejudice because re-pleading could not state a cause of action for which relief could be granted.<sup>30</sup> FPL asserts that, because the relief sought by Mr. Ricca is not available, Mr. Ricca's complaint "cannot be re-plead in a way that states a cause of action for which such relief can be granted."<sup>31</sup>

#### Mr. Ricca's Response to FPL's Motion to Dismiss

On January 8, 2014, Mr. Ricca filed a response to FPL's motion to dismiss.<sup>32</sup> Mr. Ricca argues his complaint is sufficient based on "the docket being established" by the "PSC filing clerk . . . according to the law and their jurisdiction."<sup>33</sup> Mr. Ricca asserts that FPL told him that "if the PSC finds that a violation has occurred, and the PSC makes the recommendation for the ciac [sic] charges to be waived, they would likely comply."<sup>34</sup> Mr. Ricca claims FPL violated the law by providing estimates for new service that were "so outrageous and obviously incorrect" because FPL is required to provide service.<sup>35</sup> As a result of FPL's actions, Mr. Ricca has suffered "unnecessary hassle, loss of time and financial consequences within daily business activities . . . [and] took way from my family time and daily business routine."<sup>36</sup> Finally, Mr. Ricca argues the "FPSC is fully within their right and jurisdiction to hear cases in which excessive fees are being charged, and also to grant relief for such cases" because the "FPSC is in place for providing relief to the public amongst utility matters . . ."<sup>37</sup>

#### Analysis

The Commission grants a motion to dismiss upon a finding that the pleading failed to state a cause of action upon which relief can be granted.<sup>38</sup> Rule 25-22.036(2), F.A.C., outlines the procedure for filing a formal complaint.<sup>39</sup> A pleading that conforms to this rule outlines the

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<sup>29</sup> See, Florida Power & Light Company's Motion to Dismiss Request for Formal Hearing of Brian J. Ricca With Prejudice, pgs. 6-8.

<sup>30</sup> FPL cites Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company, p. 4.

<sup>31</sup> See, Florida Power & Light Company's Motion to Dismiss Request for Formal Hearing of Brian J. Ricca With Prejudice, p. 8.

<sup>32</sup> See, Document No. 00112-14, in Docket No. 130290-EI, Mr. Ricca's Response to Florida Power & Light's Motion to Dismiss Request, filed January 8, 2014.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> See Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company; and Order No. PSC-11-0117-FOF-PU, issued on February 17, 2011, in Docket No. 100312-EI, Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes (granting motion to dismiss with prejudice).

<sup>39</sup> See Rule 25-22.036, F.A.C., Initiation of Formal Proceedings; Complaints, states:

act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought.<sup>40</sup> Here, Mr. Ricca's complaint fails to comply with the requirements of Rule 25-22.036(2), F.A.C., as there was no assertion of an act or omission by FPL that resulted in a violation affecting Mr. Ricca's substantive interest.

Mr. Ricca asserts that FPL violated Section 366.03, F.S., by failing to provide him with efficient service "due to internal errors within the original quote for CIAC charges."<sup>41</sup> Section 366.03, F.S., provides for the "General Duties of Public Utility," requiring public utilities to furnish "reasonably sufficient, adequate, and efficient service upon terms as required by the commission" to each person applying for service.<sup>42</sup> The statute does not require utilities to install new service free of charge. The statute only requires the service be sufficient, adequate and efficient and comply with Commission requirements.

Commission Rule 25-6.064, F.A.C., outlines the procedures and terms utilities must follow in determining CIAC costs for providing new service. Subsection 6 provides that CIAC cost calculations are "based on estimated work order jobs" and "each utility shall use its best judgment . . . ." Per Mr. Ricca's request and pursuant to Rule 25-6.064(9), F.A.C., Staff reviewed all the CIAC estimates provided by FPL and believed the estimates were calculated in accordance with Commission rules and FPL's Commission-approved, tariff provision. Furthermore, staff notes that both Rule 25-6.064(6), F.A.C., and FPL's Tariff provide for a true-up procedure for determining the actual CIAC costs. Rule 25-6.064(6), F.A.C., and FPL's Tariff permit a customer to request a review of CIAC costs paid for new or upgraded service within "12 months following the in-service date of the new or upgraded facilities."<sup>43</sup> FPL's Tariff Sheet 6.199, Section 11.1.2, provides that "if the true-up calculation result is different from the paid CIAC amount, the Company will either issue a refund or an invoice for the difference."<sup>44</sup>

In Order No. PSC-99-1054-FOF-EI, this Commission determined that a petitioner must show the elements of the substantive law violated and properly allege the cause of action.<sup>45</sup>

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(2) Complaints. A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.

(3) Form and Content.

(a) Application. An application shall be governed by the statute or rules applicable to applications for authority. In the absence of a specific form and content, the application shall conform to this rule.

(b) Complaint. Each complaint, in addition to the requirements of paragraph (a) above shall also contain:

1. The rule, order, or statute that has been violated;
2. The actions that constitute the violation;
3. The name and address of the person against whom the complaint is lodged;
4. The specific relief requested, including any penalty sought.

<sup>40</sup> See Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company.

<sup>41</sup> See, Mr. Ricca's request for formal hearing, dated December 5, 2013.

<sup>42</sup> See, Section 366.03, F.S.

<sup>43</sup> See, Rule 25-6.064, F.A.C., and FPL Tariff Sheet 6.199, Section 11, attached hereto as Attachments 1 and 2.

<sup>44</sup> See, Attachment 2, FPL Tariff Sheet 6.199, Section 11.1.2.

<sup>45</sup> See Order No. PSC-99-1054-FOF-EI, issued May 24, 1999, in Docket No. 981923-EI, In re: Complaint and petition of John Charles Heekin against Florida Power & Light Co., (noting that a determination of a petition's cause of action requires examining the substantive law elements and stating that the improper allegation of the "elements

Here, Mr. Ricca states that FPL violated Section 366.03, F.S., by providing “inefficient service due to internal errors within the original quote for CIAC charges;” however, his complaint fails to describe or provide documentation of what errors occurred or describe how the errors violated any requirement. As a result, staff believes Mr. Ricca’s complaint fails to state the required elements of a cause of action.

Staff is sensitive to Mr. Ricca’s circumstances, and despite the lack of a legally sufficient pleading, has attempted to determine whether amendment of the complaint could lead to a situation where the Commission would have jurisdiction to grant Mr. Ricca some relief. Commission Rule 25-6.064, F.A.C., outlines the procedures and terms utilities must follow in determining CIAC costs for providing new service. In particular, subsection 7 provides that a utility “may elect to waive all or any portion of the CIAC for customers . . .” (emphasis added).<sup>46</sup> The Rule provides the utility with discretion to waive CIAC costs for a customer. While the Commission has authority under 366.03 and 366.05, F.S., to ensure that all rates and charges are fair and reasonable, there is no provision in Rule 25-6.064, F.A.C., or any other statute or rule that provides the Commission with authority to order a utility to waive CIAC costs for a customer. In this instance, staff believes that Mr. Ricca’s requested relief, of a waiver or “drastic” reduction of the CIAC costs as damages for the alleged violation and delay of service, is not within the Commission’s jurisdiction.<sup>47</sup> Finally, Rule 25-6.064, F.A.C., reflects the “Commission’s long-standing policy that, where practical, the person who ‘cause’ costs to be incurred should bear the burden of those costs.”<sup>48</sup> As a result, staff believes Mr. Ricca’s complaint seeks relief that is not within the Commission’s authority to grant.

Staff recommends that the Commission grant FPL’s motion to dismiss because when viewed within the “four corners of the complaint” exclusive of all affirmative defenses/responses, assuming all alleged facts are true, and in a light most favorable to Mr. Ricca, the complaint fails to state a cause of action that would invoke the Commission’s jurisdiction or permit the Commission to grant the relief requested. Mr. Ricca has not plead specific facts or produced documentation to support FPL violated any Commission statute, rule or order. In addition, Mr. Ricca requests relief that cannot be granted by the Commission.

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of the cause of action that seeks affirmative relief” is sufficient grounds for dismissal, citing Kislak v. Kredian, 95 So. 2d 510 (Fla. 1957)).

<sup>46</sup> See, Rule 25-6.064(7), F.A.C.

<sup>47</sup> See, Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, Inc., 291 So. 2d 199, 202 (Fla. 1974) [“Nowhere in Ch. 364 is the PSC granted authority to enter an award of money damages (if indicated) for past failures to provide telephone service meeting the statutory standards; this is a judicial function within the jurisdiction of the circuit court pursuant to Art. V, section 5(b), Fla. Const.”]; Florida Power & Light Company v. Glazer, 671 So. 2d 211 (3rd DCA 1996) (affirming the application of Southern Bell to a tort claim against FPL); Order No. PSC-99-1054-FOF-EI, issued May 24, 1999, in Docket No. 981923-EI, In re: Complaint and petition of John Charles Heekin against Florida Power & Light Company (finding that the Commission lacked subject matter jurisdiction to award monetary damages for alleged property damage to a customer’s gate, and therefore dismissal of the complaint was appropriate because the requested relief could not be granted by the Commission).

<sup>48</sup> See Order No. PSC-05-1033-PAA-EI, issued October 21, 2005, in Docket No. 040789-EI, In re: Complaint of Wood Partners against Florida Power & Light Company concerning contributions-in-aid-of-construction charges for underground distribution facilities (finding FPL properly charged Wood Partners the CIAC cost of facilities consistent with FPL’s approved tariff and Commission policy that cost causer pays cost of such facilities).



Docket No. 130290-EI

Date: March 27, 2014

Staff recommends, however, that Mr. Ricca's complaint be dismissed without prejudice in accordance Section 120.569(2)(c), F.S., and Mr. Ricca be permitted to file an amended complaint. Should Mr. Ricca choose to file an amended complaint, staff recommends that the complaint conform to the pleading requirements of Rule 28-106.201, F.A.C., and seek relief within the Commission's jurisdiction.

#### Conclusion

Staff recommends that the Commission grant FPL's Motion to Dismiss and dismiss the complaint without prejudice because the complaint fails to demonstrate a cause of action upon which relief can be granted.

**Issue 2:** Should the docket be closed?

**Recommendation:** No. If the Commission agrees with staff regarding Issue 1, then Mr. Ricca's request for formal hearing complaint should be dismissed without prejudice, and Mr. Ricca be permitted to file an amended complaint. Should Mr. Ricca fail to timely file an amended complaint, the docket should be closed, <sup>administratively</sup> ~~and a Consummating Order should be issued.~~ (Corbari)

**Staff Analysis:** If the Commission agrees with staff regarding Issue 1, then Mr. Ricca's request for formal hearing complaint should be dismissed without prejudice, and Mr. Ricca be permitted to file an amended complaint. Should Mr. Ricca fail to timely file an amended complaint, the docket should be closed, ~~and a Consummating Order should be issued.~~

administratively ~~and~~

**Rule 25-6.064, F.A.C. – Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities.**

(1) Application and scope. The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities calculate amounts due as contributions-in-aid-of-construction (CIAC) from customers who request new facilities or upgraded facilities in order to receive electric service, except as provided in Rule 25-6.078, F.A.C.

(2) Contributions-in-aid-of-construction for new or upgraded overhead facilities (CIAC<sub>OH</sub>) shall be calculated as follows:

CIAC <sub>OH</sub>	=	Total estimated work order job cost of installing the facilities	-	Four years expected incremental base energy revenue	-	Four years expected incremental base demand revenue, if applicable
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- (a) The cost of the service drop and meter shall be excluded from the total estimated work order job cost for new overhead facilities.
- (b) The net book value and cost of removal, net of the salvage value, for existing facilities shall be included in the total estimated work order job cost for upgrades to those existing facilities.
- (c) The expected annual base energy and demand charge revenues shall be estimated for a period ending not more than 5 years after the new or upgraded facilities are placed in service.
- (d) In no instance shall the CIAC<sub>OH</sub> be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities (CIAC<sub>UG</sub>) shall be calculated as follows:

CIAC <sub>UG</sub>	=	CIAC <sub>OH</sub>	+	Estimated difference between cost of providing the service underground and overhead
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(4) Each utility shall apply the formula in subsections (2) and (3) of this rule uniformly to residential, commercial and industrial customers requesting new or upgraded facilities at any voltage level.

(5) The costs applied to the formula in subsections (2) and (3) shall be based on the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm.

(6) All CIAC calculations under this rule shall be based on estimated work order job costs. In addition, each utility shall use its best judgment in estimating the total amount of annual revenues which the new or upgraded facilities are expected to produce.

- (a) A customer may request a review of any CIAC charge within 12 months following the in-service date of the new or upgraded facilities. Upon request, the utility shall true-up the CIAC to reflect the actual costs of construction and actual base revenues received at the time the request is made.
- (b) In cases where more customers than the initial applicant are expected to be served by the new or upgraded facilities, the utility shall prorate the total CIAC over the number of end-use customers expected to be served by the new or upgraded facilities within a period not to exceed 3 years, commencing with the in-service date of the new or upgraded facilities. The utility may require a payment equal to the full amount of the CIAC from the initial customer. For the 3-year period following the in-service date, the utility shall collect from those customers a prorated share of the original CIAC amount, and credit that to the initial customer who paid the CIAC. The utility shall file a tariff outlining its policy for the proration of CIAC.

(7) The utility may elect to waive all or any portion of the CIAC for customers, even when a CIAC is found to be applicable. If however, the utility waives a CIAC, the utility shall reduce net plant in service as though the CIAC had been collected, unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived CIAC. Each utility shall maintain records of amounts waived and any subsequent changes that served to offset the CIAC.

(8) A detailed statement of its standard facilities extension and upgrade policies shall be filed by each utility as part of its tariffs. The tariffs shall have uniform application and shall be nondiscriminatory.

(9) If a utility and applicant are unable to agree on the CIAC amount, either party may appeal to the Commission for a review.

*Specific Authority 366.05(1), 350.127(2) FS. Law Implemented 366.03, 366.05(1), 366.06(1) FS. History—New 7-29-69, Amended 7-2-85, Formerly 25-6.64, Amended 2-1-07.*

FLORIDA POWER & LIGHT COMPANY

Original Sheet No. 6.199

## 11.0 INSTALLATION OF NEW OR UPGRADED FACILITIES

### SECTION 11.1 GENERAL

In accordance with F.A.C. Rule 25-6.064 this tariff section applies to requests for new or upgraded facilities. Nothing herein shall alter the charges or provisions outlined in sections 10 and 13 of this tariff.

An Applicant can be any person, corporation, or entity capable of complying with the requirements of this tariff that has made a request for new or upgraded facilities in accordance with this tariff.

#### 11.1.1 CONTRIBUTION-IN-AID OF CONSTRUCTION (CIAC)

A CIAC shall be required from Applicants requesting new or upgraded facilities prior to construction of the requested facilities based on the formulas presented below.

(a) The CIAC for new or upgraded overhead facilities ( $CIAC_{OH}$ ) shall be calculated as follows:

$$CIAC_{OH} = \begin{array}{l} \text{Total estimated work} \\ \text{order job cost of} \\ \text{installing the facilities} \end{array} - \begin{array}{l} \text{Four years expected} \\ \text{incremental base} \\ \text{energy revenue} \end{array} - \begin{array}{l} \text{Four years expected} \\ \text{incremental base} \\ \text{demand revenue, if} \\ \text{applicable} \end{array}$$

(i) The cost of the service drop and meter shall be excluded from the total estimated work order job cost for new overhead facilities.

(ii) The net book value and cost of removal, net of the salvage value, for existing facilities shall be included in the total estimated work order job cost for upgrades to those existing facilities.

(iii) The expected annual base energy and demand charge revenues shall be estimated for a period ending not more than 5 years after the new or upgraded facilities are placed in service.

(iv) In no instance shall the  $CIAC_{OH}$  be less than zero.

(b) The CIAC for new or upgraded underground facilities ( $CIAC_{UG}$ ) shall be calculated as follows:

$$CIAC_{UG} = CIAC_{OH} + \begin{array}{l} \text{Estimated difference between the cost of providing} \\ \text{the service underground and overhead} \end{array}$$

#### 11.1.2 CIAC True-Up

An Applicant may request a one-time review of a paid CIAC amount within 12 months following the in-service date of the new or upgraded facilities. Upon receiving a request, which must be in writing, the Company shall true-up the CIAC to reflect the actual construction costs and a revised estimate of base revenues. The revised estimate of base revenues shall be developed from the actual base revenues received at the time the request is made. If the true-up calculation result is different from the paid CIAC amount, the Company will either issue a refund or an invoice for this difference. This CIAC review is available only to an initial Applicant who paid the original full CIAC amount, not to any other Applicants who may be required to pay a pro-rata share as described in section 11.1.3.

(Continued On Sheet No. 6.200)

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FLORIDA POWER & LIGHT COMPANY

Fourth Revised Sheet No. 6.200  
Cancels Third Revised Sheet No. 6.200

(Continued From Sheet No. 6.199)

11.1.3 Proration of CIAC

CIAC is prorable if more Applicants than the Initial Applicant are expected to be served by the new or upgraded facilities ("New Facilities") within the three-year period following the in-service date. The Company shall collect the full CIAC amount from the Initial Applicant. Thereafter, the Company shall collect, and pay to the Initial Applicant, a pro-rata share of the CIAC from each additional Applicant to be served from these New Facilities until the three-year period has expired, or until the number of Applicants served by the New Facilities equals the number originally expected to be served during the three-year period, whichever comes first. Any CIAC or pro-rata share amount due from an Applicant shall be paid prior to construction. For purposes of this tariff, the New Facilities' in-service date is defined as the date on which the New Facilities are installed and service is available to the Initial Applicant, as determined by the Company.

**SECTION 11.2 INSTALLATION OF UNDERGROUND ELECTRIC DISTRIBUTION FACILITIES  
FOR NEW CONSTRUCTION**

11.2.0 Distribution System

Electric service facilities consisting of primary and secondary conductors, service drops, service laterals, conduits, transformers and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage.

11.2.1 Application

This tariff section applies to all requests for underground electric distribution facilities where the facilities requested will constitute new construction, other than those requests covered by sections 10, 12 and 13 of this tariff. Any Applicant may submit a request as follows. Requests shall be in writing and must specify in detail the proposed facilities that the Applicant desires to be installed as underground electric distribution facilities in lieu of overhead electric distribution facilities. Upon receipt of a written request FPL will determine the non-refundable deposit amount necessary to secure a binding cost estimate and notify the applicant of said amount. Where system integrity would be compromised by the delay of a system improvement due to the time allowances specified below, said time allowances shall be reduced such that all terms and conditions of this tariff must be met 30 days prior to the date that construction must begin to allow the underground facility to be completed and operable to avert a system compromise.

11.2.2 Contribution-in-Aid-Of-Construction (CIAC)

Upon the payment of a non-refundable deposit by an Applicant, FPL shall prepare a binding cost estimate specifying the contribution-in-aid-of-construction (CIAC) required for the installation of the requested underground distribution facilities in addition to any CIAC required for facilities extension, where the installation of such facilities is feasible, and provide said estimate to the Applicant upon completion of the estimate along with an Underground Distribution Facilities Installation Agreement. The CIAC may be subject to increase or refund if the project scope is enlarged or reduced at the request of the Applicant, or the CIAC is found to have a material error prior to the commencement of construction. The binding cost estimate provided to an Applicant shall be considered expired if the Applicant does not enter into an Underground Distribution Facilities Installation Agreement and pay the CIAC amount specified for the installation of the requested underground electric distribution facilities within 180 days of delivery of the binding cost estimate to the Applicant by FPL.

11.2.3 Non-Refundable Deposits

The non-refundable deposit for a binding cost estimate for a direct buried cable in conduit underground electric distribution system shall be determined by multiplying the number of proposed trench feet for new underground electric distribution facilities to be installed by \$0.75. The deposit must be paid to FPL to initiate the estimating process. The deposit will not be refundable, however, it will be applied in the calculation of the CIAC required for the installation of underground distribution facilities. The deposit and the preparation of a binding cost estimate are a prerequisite to the execution of an Underground Distribution Facilities Installation Agreement. If the request for underground electric distribution facilities involves less than 250 proposed trench feet then no deposit will be required for a binding cost estimate, provided, however, that all other requirements of this tariff shall still apply.

(Continued on Sheet No. 6.210)

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