

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-

DATE: August 21, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Corbari) *KCC AT*
Office of Consumer Assistance and Outreach (Forsman) *NEA*
Division of Engineering (Graves) *PEG*

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.

RECEIVED-FPSC
17 AUG 21 AM 10:25
COMMISSION
CLERK

AGENDA: 09/04/14 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On December 5, 2013, Mr. Ricca filed a formal complaint against Florida Power & Light (FPL) and requested a formal hearing. On January 7, 2014, FPL filed a Motion to Dismiss the complaint with prejudice. On January 8, 2014, Mr. Ricca filed his response to FPL's Motion to Dismiss.

On April 23, 2014, the Commission issued Order No. PSC-14-0191-FOF-EI, dismissing without prejudice the petition for failure to state a cause of action upon which relief can be granted and for its nonconformance with either Rules 25-22.036 or 28-106.201, Florida Administrative Code (F.A.C.). In its Order, the Commission granted Mr. Ricca the opportunity to file an amended complaint, provided the amended complaint "conform[s] to the pleading

requirements of Rule 28-106.201, F.A.C., and seek[s] relief within the Commission's jurisdiction."

On May 5, 2014, Mr. Ricca filed an Amended Complaint for a formal hearing in response to the Commission's order dismissing his pleading.¹ On May 27, 2014, FPL filed its Motion to Dismiss with Prejudice requesting dismissal of the amended petition.² Mr. Ricca did not file a response to FPL's motion to dismiss.

Neither party requested oral argument; however, pursuant to Rule 25-22.0022, F.A.C., the Commission has the discretion to hear from the parties, if it so desires.

The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.).

¹ See, Document No. 02097-14, in Docket No. 130290-EI, Mr. Ricca's amended request for formal hearing, dated May 4, 201, lodging violation and complaint against FPL.

² See, Document No. 02533-14 in Docket No. 130290-EI, FPL's Motion to Dismiss Amendment to Complaint of Brian J. Ricca with Prejudice, dated May 27, 2014.

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 with prejudice because the complaint again fails to state a cause of action upon which relief can be granted, does not substantially comply with Rules 25-22.036 and 28-106.201, F.A.C., and fails to cure the deficiencies identified in the initial complaint. (Corbari, Forsman, Graves).

Staff Analysis:

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.³ Rules 25-22.036 and 28-106.201, F.A.C., outline the procedure for filing a formal complaint. A pleading that conforms to the rules provides the act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought.⁴

Section 120.569(2)(c), F.S., provides:

Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition.

(emphasis added).

By Order No. PSC-14-0191-FOF-EI, issued on April 23, 2014, the Commission dismissed Mr. Ricca's complaint and request for formal hearing in this matter without prejudice. In its Order, the Commission stated that Mr. Ricca's complaint failed to state a cause of action upon which relief can be granted and did not conform with the pleading requirements of Rules 25-22.036 or 28-106.201, F.A.C. The Order permitted Mr. Ricca the opportunity to file an amended complaint, provided the amended complaint "conform[s] to the pleading requirements

³ 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).

⁴ 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.

of Rule 28-106.201, F.A.C., and seek[s] relief within the Commission’s jurisdiction.”⁵ Staff recommends that Mr. Ricca’s amended complaint fails to comply with the rules referenced in the Commission’s Order.

In his Amended Complaint, Mr. Ricca asks the Commission to review his complaint and “offer any relief available under the FPSC jurisdiction,” to help Mr. Ricca “keep costs down to a reasonable level.” Specifically, Mr. Ricca petitions the Commission to request that FPL (1) offer Mr. Ricca a payment plan for the CIAC installation charges; (2) provide Mr. Ricca with a more detailed cost estimate; (3) perform the new installation at lesser cost, if a lower cost estimate is provided by a “certified Florida utility engineer;” (4) permit a private contractor to perform the overhead installation; and/or (5) only charge Mr. Ricca one-third ($\frac{1}{3}$) of the CIAC installation costs.

Mr. Ricca argues that FPL violated Section 366.03, F.S., by providing “inefficient service due to internal errors within the original quote for CIAC charges” and other violations “including FPL’s ability to prove their quote is valid.” Mr. Ricca reasons that, because he discovered a shorter and cheaper route for providing service to his home, FPL’s original quote contained errors and was not valid. Mr. Ricca argues that the “law requires the utility to provide reasonable efficient service which would not only mean the shortest route but also timely service,” and FPL’s large delay in providing service and the risk of overpayment for new service is not reasonably efficient service. However, as FPL correctly argues, Petitioner has failed to present any legal or factual claim upon which this Commission can grant relief and FPL’s Motion to Dismiss should be granted and the Amended Complaint dismissed with prejudice.

Staff observes that, as in his original complaint, Mr. Ricca provides no specific facts or evidence in his Amended Complaint of how FPL violated Section 366.03, F.S. Rather, Mr. Ricca broadly 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.” As stated in the Commission’s Order dismissing Mr. Ricca’s original complaint, 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.⁶ Section 366.03, F.S., does not require utilities to install new service free of charge or at a reduced cost; nor does it require that a utility take “the shortest or cheapest” route when installing new electrical service. Rather, the statute only requires the service be sufficient, adequate, and efficient, and comply with Commission requirements.⁷

⁵ See, Order No. PSC-14-0191-FOF-EI, issued April 23, 2014, in 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, p. 8.

⁶ See, Order No. PSC-14-0191-FOF-EI, issued April 23, 2014, in 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, p. 6.

⁷ Id.

Given staff's concern for Mr. Ricca's circumstances, despite the lack of legally sufficient pleading in the Amended Complaint and Response, staff has attempted to determine whether any facts within the Amended Complaint could lead to a situation where the Commission would have jurisdiction to grant Mr. Ricca some relief. As a result, staff has conducted significant research into the substance of the Amended Complaint's allegations. Staff cannot identify any situation in which Mr. Ricca's alleged facts and legal arguments constitute a claim within the Commission's statutory jurisdiction to resolve. After a thorough review of the facts, it is clear that Mr. Ricca's Amended Complaint fails to state any claim upon which this Commission can grant any relief. Moreover, staff does not believe FPL violated any statute, rule, tariff or other Commission requirement in its dealings with Mr. Ricca regarding CIAC estimates for providing new electrical service to the partially constructed residence in North Port, Florida.

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 in estimating the total amount of annual revenues" that the new "facilities are expected to produce."⁸ When estimating the annual revenues likely to be produced by installing electrical service to a new area, a utility will usually estimate the direction of development an area is likely to take and formulate an installation plan along the "route" most likely to provide future customers with the most "sufficient, adequate and efficient" service in accordance with Commission requirements. As outlined in the Commission's prior Order, staff reviewed all of the CIAC estimates provided by FPL at Mr. Ricca's request, pursuant to Rule 25-6.064(9), F.A.C., and believed FPL's estimates were calculated in accordance with Commission rules and FPL's Commission-approved, tariff provision.⁹ Although Mr. Ricca asserts FPL's CIAC estimates contain errors and/or are invalid, Mr. Ricca provides no specific facts or evidence that illustrate that any of FPL's three CIAC estimates were erroneous or invalid. Without evidence to suggest a utility's installation plan is insufficient, inadequate, inefficient, or fails to comply with Commission requirements, the Commission cannot order a utility to install new electrical service along the "shortest or cheapest route."

Under the circumstances, staff recommends that the Commission grant FPL's motion to dismiss because Mr. Ricca's Amended Complaint is not in substantial compliance with either Rules 25-22.036 or 28.106.201(2), F.A.C., which require that a written petition contain a statement of all issues of material fact, a concise statement of the ultimate facts alleged, a statement of the specific rules or statutes that apply, an explanation of how the alleged facts relate to the specific rules and statutes, and a statement of the relief sought by the petitioner stating precisely the action the petitioner wishes the agency to take. 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 Amended Complaint fails to state a cause of action that would invoke the Commission's jurisdiction or permit the Commission to grant the relief requested. Thus, pursuant to Section 120.569(2)(c), F.S., staff recommends that Mr. Ricca's Amended Complaint should be dismissed.

⁸ See Rule 25-6.064(6), F.A.C.

⁹ Id.

While staff is sensitive to Mr. Ricca's circumstances, and despite the lack of a legally sufficient pleading, staff found no evidence that FPL or its CIAC estimates, violated any statute, rule, tariff or other Commission requirement, nor found any situation where the Commission would have jurisdiction to grant Mr. Ricca relief. While staff does not believe the Commission may grant any of the possible relief requested by Mr. Ricca, staff would urge the parties to continue negotiating regarding payment of CIAC costs.

Conclusion

Staff recommends that the Commission grant FPL's Motion to Dismiss and dismiss the complaint with prejudice because the complaint again fails to state a cause of action upon which relief can be granted, does not substantially comply with Rules 25-22.036 and 28-106.201, F.A.C., and fails to cure the deficiencies identified in the initial complaint.

Issue 2: Should the docket be closed?

Recommendation: Yes. If the Commission agrees with staff regarding Issue 1, then Mr. Ricca's amended complaint and request for formal hearing complaint should be dismissed with prejudice. (Corbari)

Staff Analysis: If the Commission agrees with staff regarding Issue 1, then Mr. Ricca's amended complaint and request for formal hearing complaint should be dismissed with prejudice.