

ORIGINAL

MEMORANDUM

September 9, 2005

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COMMISSION
CLERK

TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

FROM: OFFICE OF THE GENERAL COUNSEL (GERVASI) *GG*

RE: DOCKET NO. 040208-EI Consumer complaint against Florida Power & Light Company by Leticia Callard.

Please file the attached document in the above-referenced docket.

DATE DOCUMENT SENT TO CCA 9/9/05

RG
Attachment

I:2004/040208.reconsiderFO.rg.doc

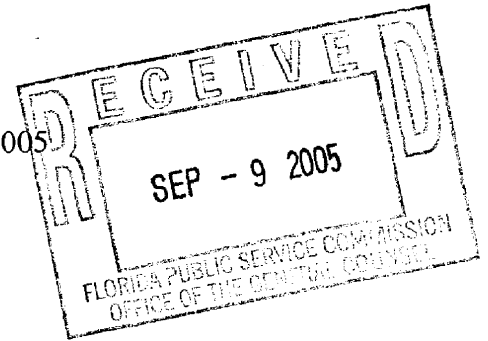
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- OTH _____

DOCUMENT NUMBER-DATE

08562 SEP-9 05

Rosanne Gervasi, Esq.
Office of the General Counsel
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, Fl. 32399-0850

September 06, 2005



In re: To Florida Power & Light Co.'s request for opposing reconsideration
Of the August 5th final order of the Public Service Commission
2005

In my my request of August 15, 2005 I do not cite any statutes as so
stated by Mr David Lee esq. because I am not an attorney. My motions
are based on the same facts that were presented at the hearing before
the ALJ and are now pointed out to the PSC because I do not believe
that they were taken into consideration upon making a final order.

These are not new claims or new arguments as Mr Lee stated. These
facts that are on record.

Wherefore I Leticia Callard respectfully request that the PSC
reconsider the final order dated August 05, 2005.

Cc David M. Lee Esq.
Florida Power & Light Co.
P.O Box 14000
Juno Beach, Fl. 33408-0420

Richard D. Melson
General Counsel
Public Svc Comm.
Capital Circle Office Ctr.
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Ms. Leticia Callard
7860 SW 18th Ter
Miami, FL 33155-1339

Docket # 040208-

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Mrs. Leticia Callard) Docket No. 040208-EI
against Florida Power & Light Company)
regarding backbilling.)
_____) Filed August 29, 2005

FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO
LETICIA CALLARD'S REQUEST FOR RECONSIDERATION
OF THE AUGUST 5, 2005 FINAL ORDER OF THE FLORIDA
PUBLIC SERVICE COMMISSION

Florida Power & Light Company ("FPL") submits the following Response to Leticia Callard's Request for Reconsideration of the August 5, 2005 Final Order of the Florida Public Service Commission ("PSC"), and in support thereof would state as follows:

On August 5, 2005, the PSC issued its' Final Order Denying Exceptions to the Recommended Order and Adopting Recommended Order (Order No. PSC-05-0806-FOF-EI). In a letter stamped received August 22, 2005 by the PSC, Leticia Callard asks the PSC to reconsider its order. Mrs. Callard's request is legally insufficient and, therefore, should be denied¹.

On a motion for reconsideration "is whether the motion identifies point of fact or law which was overlooked or which this Commission failed to consider in rendering its Order." See In re: Supra Telecommunications and Information Systems, Inc., Docket No. 040301-TP, Order No. PSC-04-0942-FOF-TP (PSC September 23, 2004) (*citing* Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA

¹ It should be noted that Leticia Callard did not send a copy of the letter (Requesting reconsideration) to FPL. FPL first received notice of this letter on August 24, 2005, when it was forwarded to FPL by PSC staff.

1981). In her August 15, 2005 letter requesting reconsideration, Mrs. Callard does not cite to any statutes, administrative code provisions, or opinions which were overlooked or neglected by the PSC in rendering its Final Order. Therefore, Mrs. Callard's motion for reconsideration must be denied as to any mistake of law.

This leaves Mrs. Callard to request the PSC to reconsider based upon a mistake of fact. However, as this Commission has pointed out in the past, "a motion for reconsideration should not be granted 'based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible for review.'" Id., and Stewart Bonded Warehouse, Inc., 294 So. 2d at 317. Although Mrs. Callard's two page letter, dated August 15, 2005, requesting reconsideration makes numerous unsubstantiated claims, none of her claims are set forth in the record. She fails to point to any evidence presented to Administrative Law Judge John Van Laningham or the record before the PSC. Rather, Mrs. Callard makes a series of new claims with no basis contained in the record. It would be error for the PSC to consider such claims which are outside of the record. See In re: Review of Tampa Electric Company's 2004-2008 Waterborne Transportation Contract with TECO and Associated Benchmark, Docket No. 031033-EI, Order No. PSC-05-0312-FOF-EI (PSC March 21, 2005).

To the extent her letter contains new arguments, "it is well established that it is inappropriate to raise new arguments in a motion for reconsideration." See In re: Supra Telecommunications and Information Systems, Inc., Docket No. 040301-TP, Order No. PSC-04-0942-FOF-TP (PSC September 23, 2004). Furthermore, in most instances, the only way for FPL to respond the new claims made by Mrs. Callard, would be to also go

outside the record. If the PSC allowed such activity to occur, there would never be finality to matters brought before the Commission. As Mrs. Callard's Motion for Reconsideration is legally insufficient, it should be denied.

WHEREFORE Florida Power & Light Company respectfully requests that the Florida Public Service Commission deny Leticia Callard's Request/Motion for Reconsideration of the Florida Public Service Commission's August 5, 2005 Final Order.

Respectfully submitted,

David M. Lee, Esquire
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Florida Power & Light Company
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By: 

David M. Lee, Esquire
Fla. Bar No.: 0103152

CERTIFICATE OF SERVICE

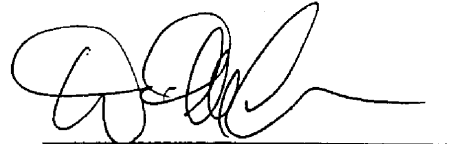
I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Response to Leticia Callard's Request for Reconsideration of the August 5, 2005 Final Order of the Florida Public Service Commission has been furnished by United States Mail this 29th day of August, 2005, to the following:

Leticia Callard
7860 SW 18th Terrace
Miami, Florida 33155

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By:



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