

Ruth Nettles

From: Jessica_Cano@fpl.com
Sent: Tuesday, February 05, 2008 3:54 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing for Docket No. 080039-EI / FPL's Motion to Dismiss the Complaint of Sallijo A. Freeman
Attachments: Motion to Dismiss Complaint of Sallijo A. Freeman.doc

Electronic Filing

a. Person responsible for this electronic filing:

Jessica A. Cano, Esq.

700 Universe Boulevard

Juno Beach, FL 33408

561-304-5561

Jessica_Cano@fpl.com

b. Docket No. 080039-EI

In re: Complaint of Sallijo A. Freeman Against Florida Power & Light Company for Violation of Rule 25-6.105

c. Documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of 4 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Motion to Dismiss the Complaint of Sallijo A. Freeman

(See attached file: Motion to Dismiss Complaint of Sallijo A. Freeman.doc)

Jessica Cano
Attorney
Law Department

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5226
Jessica_Cano@fpl.com

DOCUMENT NUMBER-DATE

00925 FEB-5 08

2/5/2008

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of)
Sallijo A. Freeman Against)
Florida Power & Light Company)
for Violation of Rule 25-6.105)

Docket No. 080039-EI

Filed: February 5, 2008

**FLORIDA POWER & LIGHT COMPANY'S
MOTION TO DISMISS THE COMPLAINT OF SALLIJO A. FREEMAN**

Pursuant to Rule 28-106.204(2), Florida Administrative Code, Florida Power & Light Company ("FPL") files this Motion to Dismiss Sallijo A. Freeman's request for a hearing and complaint against FPL, alleging improper discontinuance of service without notice ("the Complaint") filed on December 20, 2007, and in support states as follows:

1. A motion to dismiss raises as a question of law whether, accepting all allegations in the complaint as true and not looking beyond the complaint, the complaint alleges sufficient facts to state a cause of action upon which relief may be granted. *See Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). A pleading should be dismissed unless all of the elements of a cause of action are properly alleged. *See Kislak v. Kredian*, 95 So. 2d 510 (Fla. 1957). The Complaint filed by Ms. Freeman must be dismissed as a matter of law because Ms. Freeman has not alleged sufficient facts to support the claimed violation of Rule 25-6.105, Florida Administrative Code, and provides no basis upon which the Florida Public Service Commission ("the Commission") can grant the requested relief.

2. The Uniform Rules of Procedure that apply to a request for a hearing require that petitions initiating proceedings specifically state the facts, rules and laws that warrant relief. *See* Rule 28-106.201(2), (d)-(g), Fla. Admin. Code. Ms. Freeman's complaint does not state any specific facts supporting the claimed violation of Rule 25-6.105, Florida Administrative Code. Ms. Freeman alleges generally that FPL disconnected her service without the five days notice

that is required by Rule 25-6.105, without providing any factual support. A complaint must state some factual basis for the assertion made by the complainant – otherwise, customers could force regular hearings on unsubstantiated claims. The Uniform Rules of Procedure are intended in part to eliminate such frivolous claims. The Complaint filed by Ms. Freeman should therefore be dismissed for failing to comply with Rule 28-106.201(2), Florida Administrative Code.

3. In the alternative, FPL requests that Ms. Freeman’s request for a hearing be denied and the Complaint be dismissed on the merits. It is evident from correspondence between the Commission Staff (“Staff”) and Ms. Freeman, documented during the informal complaint process, that Ms. Freeman not only received several notices of disconnection for non-payment, but that she acknowledged receipt of those notices to Staff. It is also evident that Ms. Freeman has repeatedly been informed by Staff that her request for restitution in the form of replaced computer and other equipment is outside the jurisdiction of this Commission. This has also been acknowledged by Ms. Freeman. Because Ms. Freeman has acknowledged that she received several disconnection notices leading up to her disconnection and acknowledged that her request for restitution is outside the jurisdiction of this Commission, it is apparent that her Complaint lacks merit.

Conclusion

4. The Complaint filed by Ms. Freeman must be dismissed because it is completely lacking in factual support for the one jurisdictional issue raised. Additionally, the Complaint lacks merit because Ms. Freeman has acknowledged receipt of disconnection notices to Staff and has been informed that her restitution claim is outside the jurisdiction of the Commission.

WHEREFORE, for the above and foregoing reasons, FPL respectfully requests that the Commission dismiss, or in the alternative deny, Ms. Freeman's request for a hearing and complaint.

Respectfully submitted,

R. Wade Litchfield, Vice President
and Associate General Counsel
Jessica A. Cano
Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408

By: /s/ Jessica A. Cano
Jessica A. Cano
Florida Bar No. 0037372

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically and by U.S. mail this 5th day of February, 2008 to the following:

Lisa Bennet, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399

Sallijo A. Freeman
1830 S. Park Avenue
Titusville, FL 32780

By: /s/ Jessica A. Cano
Jessica A. Cano
Florida Bar No. 0037372