

110085-EI

Marguerite McLean

From: Joe [attorneyjoe@aol.com]
Sent: Friday, April 29, 2011 4:50 PM
To: Filings@psc.state.fl.us
Subject: Electronic Filing - Mediterranean Manors/Progress Energy
Attachments: AmendedPetitionfor DeclaratoryStatement.pdf

Please see attached Amended Petition for Declaratory Statement. Thank you.

Sincerely,
Dan Greenberg, Esq.

LAW OFFICES OF CIANFRONE & DE FURIO
A Partnership of Professional Associations
Joseph R. Cianfrone, P.A.
1964 Bayshore Boulevard, Suite A
Dunedin, FL 34698
(727) 738-1100/(727) 733-0042 fax

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DOCUMENT NUMBER-DATE

02976 APR 29 =

FPSC-COMMISSION CLERK

4/29/2011

MEDITERRANEAN MANORS ASSOCIATION, INC.
a Florida not-for-profit corporation,
Petitioner,

11 0085-EI

vs.

PROGRESS ENERGY FLORIDA, INC., a Florida corporation,
Respondent.

**AMENDED PETITION FOR DECLARATORY
STATEMENT BEFORE THE PUBLIC SERVICE COMMISSION**

Petitioner, MEDITERRANEAN MANORS ASSOCIATION, INC., ("Petitioner" or "Mediterranean Manors") a Florida not-for-profit corporation, by and through its undersigned counsel, files this Amended Petition for Declaratory Statement Before the Public Service Commission against Respondent, PROGRESS ENERGY FLORIDA, INC., ("Respondent" or "Progress Energy") a Florida corporation and alleges as follows:

JURISDICTION

1. This is a complaint seeking a declaratory statement from the Public Service Commission concerning Respondent's responsibilities under Florida Administrative Code and its Tariff.

2. Pursuant to Florida Administrative Code Section 25-6.033(1):

Each utility may adopt such additional non-discriminatory rules and regulations governing its relations with customers as are necessary and which are not inconsistent with these rules or orders of the Commission. Such rules and regulations shall constitute an integral part of the utility's tariffs and shall be filed with them.

3. Pursuant to Florida Administrative Code Section 25-6.037:

Each utility, unless specifically relieved in any case by the Commission from such obligations, shall operate and maintain in safe, efficient, and proper condition, pursuant to the standards referenced herein, all of the facilities and equipment used in connection with the production transmission, distribution, regulation, and delivery of electricity to any

DOCUMENT NUMBER-DATE

02976 APR 29 =

FPSC-COMMISSION CLERK

customer up to the point of delivery. The utility is also responsible for the safe, efficient measurement of electrical consumption consistent with test procedures and accuracies prescribed by the Commission.

4. The Public Service Commission has jurisdiction under Florida Administrative Code Section 25-6.004 to adjudicate a dispute concerning the above-referenced Code sections.

THE PARTIES

5. Petitioner, MEDITERRANEAN MANORS ASSOCIATION, INC., is a not-for-profit corporation incorporated under the laws of the State of Florida and doing business in Pinellas County, Florida, located at 2700 Bayshore Boulevard, Dunedin, FL 34698.

6. Petitioner is being represented by the law office of Joseph R. Cianfrone, P.A. 1964 Bayshore Boulevard, Suite A, Dunedin, FL 34698.

7. Respondent, PROGRESS ENERGY FLORIDA, INC., is a corporation incorporated under the laws of the State of Florida and doing business in Pinellas County, Florida, with its corporate office located at P.O. Box 1551, Raleigh, NC 27602-1551.

8. Respondent is being represented by Attorney Blaise Huhta of the law office of Carlton Fields, 4221 West Boy Scout Boulevard, Suite 1000, Tampa, FL 33607.

FACTUAL ALLEGATIONS

9. Mediterranean Manors is comprised of eleven Condominiums located in Dunedin, Florida, with a total of twenty-seven buildings that house four hundred units.

10. To the Associations best knowledge and belief, the construction permit for electrical facilities was first issued in and around September 1974.

11. Florida Power & Light, now known as Progress Energy Florida, installed the cables running from the pad-mount transformer to the service entrance to buildings five and six of Mediterranean Manors Condominium IX that are the subject of this Petition.

12. Respondent currently provides utility services to Mediterranean Manors pursuant to the Tariff that is at issue in this Petition. Copies of electric bills furnished by Respondent covering the time periods of March 2006, September 2009 and March 2011 are attached hereto as Exhibit "A."

13. In and around January 2006, Respondent undertook to repair a set of underground electrical cables running from a pad-mount transformer to the service entrance on buildings five and six of Mediterranean Condominium IX, which collectively house seventy-two units.

14. During the course of the 2006 repair, Respondent spliced and repaired the cable in question.

15. At the time of the 2006 repair, Respondent did not disclaim responsibility for maintaining or repairing the underground cable. Subsequent to the 2006 repair, Respondent has not provided any indication to Petitioner that it was not responsible for the underground cables.

16. Respondent continued to provide uninterrupted utility services to Mediterranean Manors after the 2006 repair, and neither Respondent nor any third party, including Petitioner, touched or disturbed the underground cables in any way.

17. On or about August 26, 2009, an electrical explosion occurred at the exact location of the 2006 repair. A jet of fire approximately five feet tall shot out of the ground.

18. Witnesses called 911 and the Dunedin Fire Department was dispatched to the scene. The Fire Department called Respondent and instructed them to shut the power off to the affected cable. It took Respondent approximately one hour to show up to the property, and approximately another two hours to shut the power off at the affected area.

19. On or about August 26, 2009, Petitioner and Respondent examined the cables, and three noticeable splices were observed in the cables in the immediate area of the explosion.

At that time, Respondent informed Petitioner that Progress Energy was no longer responsible for the damaged cables.

20. As a result of Respondent disclaiming responsibility for its previous repair, Petitioner engaged Dunedin Electric to assume control of the situation.

21. Working through August 27, 2009, Dunedin Electric was able to make the necessary repairs, replacing the cables between the transformer and the meters and bringing the system up to code.

22. The total cost of the services performed by Dunedin Electric was approximately \$70,057.00.

23. Subsequently, a series of letters were exchanged between Mediterranean Manor's attorney, Respondent and the Public Service Commission (PSC). The message received from Respondent has been inconsistent at best. Respondent first categorized Mediterranean Manors in an October 13, 2009 letter as a commercial entity for purposes of interpreting the tariff. The PSC seemed to accept Respondent's characterization, as evidenced in its February 5, 2010 letter in which it refers to tariff section 1.1 for "underground service other than residential" and makes reference to the fact that Respondent "does not maintain existing, or run new underground commercial and industrial services." Respondent subsequently has classified Mediterranean Manors as a multiple-occupancy residential building in a letter dated February 5, 2010. Copies of the referenced letters are attached as collective Exhibit B.

RELIEF REQUESTED

24. A formal declaration from the Public Service Commission to resolve the following issues:

- a. How should Mediterranean Manors be classified under Respondent's Tariff?

b. What is the appropriate point of delivery, with respect to the Mediterranean Manors buildings at issue in this Petition, under Respondent's Tariff?

c. Is Respondent responsible for maintenance of the underground electrical cables running from the pad-mount transformer to Petitioner's service entrance? Specifically, assuming that Petitioner is classified as a multiple-occupancy residential building under Tariff section 11.06, would not the application of section 11.06(4)(a)(iv), particularly when read in conjunction with Section 11.01(6), hold Respondent responsible for all of its facilities, including the underground cables at issue?

d. Considering that Respondent undertook repairs to the cables in 2006, what duty did Respondent have to notify Petitioner that it would no longer be responsible for maintenance of the cables.

DATED this 29 day of April, 2011.

JOSEPH R. CIANFRONE, P.A.

By:



Joseph R. Cianfrone, Esq./FBN 248525
Stephan C. Nikoloff, Esq./FBN 56592
Tiffany A. Grant, Esq./FBN 40100
Daniel J. Greenberg, Esq./FBN 74879
1964 Bayshore Boulevard, Suite A
Dunedin, Florida 34698
(727) 738-1100 FAX (727) 733-0042
Attorneys for Petitioner

EXHIBIT "A"



STATEMENT OF ELECTRIC SERVICE

ACCOUNT NUMBER
35911 77386

MARCH 2006

FOR CUSTOMER SERVICE OR
PAYMENT LOCATIONS CALL
1-877-372-0077
WEB SITE: www.progress-energy.com
TO REPORT A POWER OUTAGE:
1-800-228-0485

MEDITERRANEAN MANORS ASSOC
670 INNOVATIVE COMMUNITY HST
905 E HILKING DR DRIVE
SITE 370
TARPON SPRINGS FL 34689
SERVICE ADDRESS:
2700 BAYSHORE BLVD HSE 15
DUNEDIN FL 34698

DUE DATE	TOTAL AMOUNT DUE
MAR 27 2006	422.03
NEXT READ DATE ON OR ABOUT	DEPOSIT AMOUNT ON ACCOUNT
MAR 20 2006	NONE

PH: 072416647

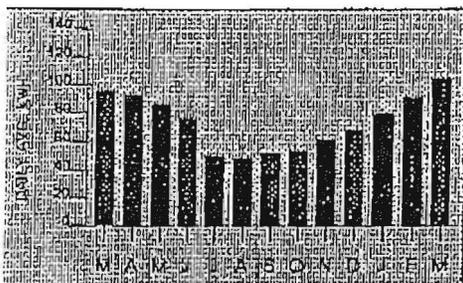
METER READINGS

METER NO.	002530328
PRESENT (ACTUAL)	003307
PREVIOUS (ACTUAL)	099917
DIFFERENCE	003390
TOTAL KWH	3390
PRESENT KW (ACTUAL)	0019.72
BASE KW	20
LOAD FACTOR	22.1%

PAYMENTS RECEIVED AS OF FEB 08 2006 347.53 THANK YOU

GS-1 060 GENERAL SERVICE - NON DEMAND SEC	
BILLING PERIOD .01-26-06 TO 02-27-06 32 DAYS	
CUSTOMER CHARGE	10.62
ENERGY CHARGE 3390 KWH @ 5.10400¢	173.03
FUEL CHARGE 3390 KWH @ 5.32900¢	180.65
<hr/>	
*TOTAL ELECTRIC COST	364.30
GROSS RECEIPTS TAX	9.34
MUNICIPAL FRANCHISE FEE	24.29
MUNICIPAL UTILITY TAX	24.10
<hr/>	
TOTAL CURRENT BILL	422.03
TOTAL DUE THIS STATEMENT	\$422.03

Phase 9



ENERGY USE
DAILY AVG USE 138 KWH/DAY
USE ONE YEAR AGR 3521 KWH/YR
DAILY AVG ELECTRIC COST \$0.1735

Payment of your bill prior to the above due date will avoid a late payment charge of \$5.00 or 1.5% whichever is greater. Easy, Efficient, Eco-friendly. Receive and pay your bill online at progress-energy.com/ebill

MARCH 2006

36016 90110

 FOR CUSTOMER SERVICE OR
 PAYMENT LOCATIONS CALL
 1-877-872-8477

 WEB SITE: www.progress-energy.com

 TO REPORT A POWER OUTAGE
 1-800-228-8485

 MEDITERRANEAN MANORS ASSOC
 C/O INNOVATIVE COMMUNITY MGT
 905 E HL KING JR DRIVE
 STE 870
 TARPON SPRINGS FL 34689
 SERVICE ADDRESS
 2700 BAYSHORE BLVD HSE 5
 DUNEDIN FL 34698

 DUE DATE TOTAL AMOUNT DUE
 MAR 23 2006 287.79

 NEXT READ DEPOSIT AMOUNT
 DATE ON OR ON ACCOUNT
 ABOUT
 MAR 29 2006 NONE

PIN: 072416647

METER READINGS

METER NO.	002530309
PRESENT (ACTUAL)	055881
PREVIOUS (ACTUAL)	053690
DIFFERENCE	002191
TOTAL KWH	2191
PRESENT KW (ACTUAL)	0015.94
BASE KW	16
LOAD FACTOR	17.8%

PAYMENTS RECEIVED AS OF FEB 08 2006 203.38 THANK YOU

RS-1 001 RESIDENTIAL SERVICE

BILLING PERIOD 01-26-06 TO 02-27-06 32 DAYS

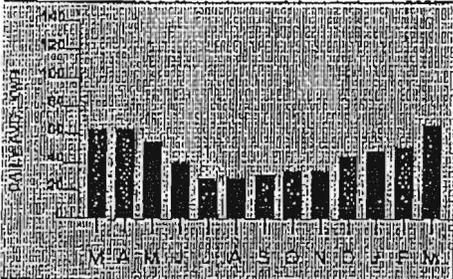
CUSTOMER CHARGE		8.03
ENERGY CHARGE		
FIRST 1000 KWH	1000 KWH @ 4.90000¢	49.00
ABOVE 1000 KWH	1191 KWH @ 5.90000¢	70.27
FUEL CHARGE		
FIRST 1000 KWH	1000 KWH @ 4.97900¢	49.79
ABOVE 1000 KWH	1191 KWH @ 5.97900¢	71.21

*TOTAL ELECTRIC COST	248.30
GROSS RECEIPTS TAX	6.37
MUNICIPAL FRANCHISE FEE	16.56
MUNICIPAL UTILITY TAX	16.56

TOTAL CURRENT BILL 287.79

 TOTAL DUE THIS STATEMENT **\$287.79**

Phase 9



ENERGY USE	
DAILY AVG. USE	68 KWH/DAY
USE ONE YEAR AGO	68 KWH/DAY
DAILY AVG. ELECTRIC COST	\$7.75

Payment of your bill prior to the above due date will avoid a late payment charge of \$5.00 or 1.5% whichever is greater.
 Easy, Efficient, Eco-friendly. Receive and pay your bill online at progress-energy.com/EBB

EXHIBIT “B”



(Writer's Direct Dial No. 727-820-5787)
Email Address: larry.mazer@pgenmail.com

◆ LAWRENCE F. MAZER
Associate General Counsel - Florida

February 5, 2010

Joseph R. Cianfrone, Esquire
Cianfrone & De Furio
1964 Bayshore Blvd.
Dunedin, FL. 34698

Re: Your Client: Mediterranean Manor

Dear Mr. Cianfrone:

I have now completed my legal analysis of Progress Energy's duty to serve your client. Progress Energy's service to its customers is governed by a tariff approved by the Public Service Commission. This tariff has the force and effect of law. (See Landrum vs. Florida Power & Light Co., 505 So.2d 552 (Fla. App.1987)). Your client's building is characterized in Progress Energy's tariff as a Multiple-Occupancy Residential Building. I refer you to Section 11.06 (3) (c) (ii) of the tariff (enclosed.) This section allows Progress Energy to choose its point of delivery "at or near the building." In this instance Progress Energy has determined that its point of delivery is the transformer. The applicant (in this instance Mediterranean Manor) is responsible for connecting its own service equipment to the point of delivery specified by Progress Energy. As a consequence, Progress Energy correctly determined that the cost to run underground service from its transformer to Mediterranean Manor's service equipment was properly paid by the customer.

I understand from your letter dated January 29, 2010 that you contemplate filing suit. Since you also provided me with a copy of a letter you sent the Public Service Commission I believe you understand that the proper venue for disputing Progress Energy's position is the State of Florida Public Service Commission. Progress Energy will move to dismiss any complaint filed in civil court on the grounds that it does not have subject matter jurisdiction over this issue.

In the letter sent to the Public Service Commission you note a repair alleged to have been made by Progress Energy to this line in 2006. We have not corroborated your assertion. Regardless, this event occurred due to a lightning strike and not due to any fault on Progress Energy's part.



Mr. Cianfrone
Page 2
February 5, 2010

I am certainly available to discuss this matter with you should you wish.

I am,

Sincerely,

A handwritten signature in black ink, appearing to read 'Lawrence F. Mazer', written over a large, circular scribble.

Lawrence F. Mazer

LFM/sc

Progress Energy Service Company, LLC
P. O. Box 14042
St. Petersburg, FL 33733
727-820-5041 (Fax)

COMMISSIONERS:
NANCY ARGENZIANO, CHAIRMAN
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

STATE OF FLORIDA



DIVISION OF SERVICE, SAFETY &
CONSUMER ASSISTANCE
DANIEL M. HOPPE, DIRECTOR
(850) 413-6480

Public Service Commission

February 5, 2010

Mr. Joseph R. Cianfrone
Law Offices of Cianfrone & De Furio
1964 Bayshore Boulevard
Dunedin, FL 34698

RE: PSC Inquiry 892296E
Mediterranean Manors Association, Incorporated

Dear Mr. Cianfrone:

This is a follow up to your January 29, 2010, correspondence to the Florida Public Service Commission (PSC) regarding Progress Energy Florida, Incorporated (Progress Energy). You requested reimbursement incurred by Mediterranean Manors Association for repairs and replacement of equipment and property.

On September 30, 2009, we filed inquiry 892296E on behalf of Mediterranean Manors Association. We previously learned from Progress Energy that on August 26, 2009, the company responded to a 6:15 p.m. call from the Dunedin Fire Department about an underground fire resulting from a lightning strike. The company determined that the underground cable was nicked and subsequently burned from the installation of the sewer line tap/pipe. After completing repairs, Progress Energy restored the electric service at 8:28 p.m.

Progress Energy's tariff, section I.1, indicates that for underground service other than residential, the customer's service entrance includes conductors, and the raceway to a point designated by the company, which is generally the pad-mount transformer closest to the building. In addition, Progress Energy's Requirements for Electric Service and Meter Installations indicates that the company does not maintain existing, or run new underground commercial and industrial services.

According to Progress Energy, Mediterranean Manors Association's service begins at the pad-mount transformer closest to the building served. Since the company reports the customer's side of the service begins at the pad-mount transformer and the company does not maintain existing or run new underground commercial and industrial services, Progress Energy declined Mediterranean Manors Association's request for reimbursement. I have enclosed a copy of the company's tariff and report for your review.

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

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PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

Mr. Joseph R. Cianfrone

Page 2

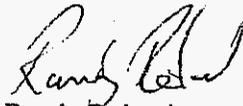
February 5, 2010

Please be advised that although the PSC has regulatory authority over the rates and services pursuant to Chapter 366, Florida Statutes, the PSC does not have the legal authority to award relief in the form of monetary damages. In dismissing a complaint for lack of subject matter jurisdiction by Order No. PSC-99-1054-FOF-EI, issued May 24, 1999, in Docket No 981923-EI, the PSC noted that it may not award monetary damages in resolving utility related disputes. In so doing, the PSC cited to Southern Bell Tel. Co. v. Mobile America Corp., Inc., 291 So.2d 199, 202 (Fla. 1974), in which the Florida Supreme Court decreed that "[n]owhere 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, §5(b), Fla. Const." Similarly, Chapter 366, Florida Statutes, does not grant the PSC the authority to enter an award of money damages for past failures to provide natural gas service meeting the statutory standards. I have enclosed copies of the orders cited herein for your reference.

Complaints serve as a valuable source of information; therefore, your complaint will remain on file with the PSC. We monitor complaints very closely and track any trends which indicate there may be a problem and further action is needed.

If you have any questions or concerns please contact Ellen Plendl at 1-800-342-3552 or by fax at 1-800-511-0809.

Sincerely,



Randy Roland
Regulatory Program Administrator
Division of Service, Safety &
Consumer Assistance

RR:mep

Enclosures (3)

C: Progress Energy Florida, Incorporated



FPSC RESPONSE FORM

ORIGINAL

FPSC Inquiry Number: 892296E

Complainant's Name: Joseph Ciantrone

Customer of Record's Name: Mediterranean Manors Association

Service Address: 2700 Bayshore Blvd. Hse. 3 Dunedin, FL 34698

Telephone Number(s): (727) 734-8090

Account Number: 30286-74323

Date Received from FPSC: September 30, 2009

Restate Customer's Concern: *(Verbatim from FPSC)*



Document.pdf

Actions Taken to Satisfy Customer:

On September 30, 2009, Progress Energy Florida (PEF) received Mr. Ciantrone's complaint from the FPSC. Ms. Vicky Howe, Senior Consumer Affairs Associate, attempted to contact Mr. Ciantrone to acknowledge receipt of his complaint. Ms. Howe left a message requesting a return call.

On October 1, 2009, Ms. Howe received a message from Mr. Ciantrone. Ms. Howe attempted to return Mr. Ciantrone's call and received a message that he would be out of the office until October 5, 2009. Ms. Howe left a message requesting a return call.

Ms. Howe contacted Mr. Tom Currier, Claims Investigator, and requested assistance with Mr. Ciantrone's complaint.

On October 6, 2009, Ms. Howe spoke to Mr. Ciantrone and advised that she was investigating his complaint and would contact him with her findings.

Mr. Currier contacted Ms. Howe and explained that the incident that occurred on August 26, 2009, was due to a failed commercial customer owned underground cable.

PEF received a call on August 26, 2009, from the Dunedin Fire Department to report an underground fire due to a lightning strike. The incident was reported at 6:15pm. PEF arrived at 6:32pm. The electric service was restored at 8:28pm. Mediterranean Manors contacted their electrician (Dunedin/Palm Harbor Electric), who was unable to locate the bad underground cable. PEF assisted in locating the portion of the malfunctioning underground cable. The service was burned from the installation of a sewer line tap/pipe. Upon investigation, PEF noted that the installation of the sewer line tap/pipe, the underground wire had been nicked.

Per Section 1.01, Section 7, Point of Delivery: *The point of attachment, where the Company's service drop is connected to the Customer's service entrance. For underground service other than residential, the Customer's service entrance shall include conductors and raceway to a point designated by the Company, generally the pad-mount transformer closest to the building.*

PEF's Requirements for Electric Service and Meter Installations Page 21, #3d states: The Company does not maintain existing, or run new underground commercial and industrial services.

On October 13, 2009, Mr. Larry Mazer, Associate General Counsel, spoke to Mr. Ciantrone and denied his claim.

On October 15, 2009, Ms. Howe left a message for Mr. Ciantrone. Mr. Ciantrone's voicemail stated that he would not return to the office until October 19, 2009.

On October 21, 2009, Ms. Howe attempted to contact Mr. Ciantrone. Ms. Howe left a message requesting a return call.

On October 21, 2009, PEF sent a copy of the complaint response to Mr. Ciantrone.

Date Submitted: October 21, 2009

Attachments (specify): Claims Denial Letter

ORIGINAL

PART I

DEFINITIONS AND CLASSIFICATIONS

1.01 Definitions:

The following definitions set forth standard interpretations of certain terms used in these Rules and Regulations:

- (1) **Company:** Progress Energy, Florida Inc.
- (2) **Customer:** The user of the Company's electric service.
- (3) **Service:** The supply by the Company of electricity to the Customer, including the readiness and availability of electrical energy at the Customer's Point of Delivery at the required voltage and frequency whether or not utilized by the Customer.
- (4) **Service Drop:** That portion of the Company's facilities, between the pole or underground cable and the point of attachment at the service entrance, which brings the service from the Company's supply lines to the Customer.
- (5) **Service Entrance:** Wires and enclosures owned by the Customer and connecting the Customer's installation to the service drop.
- (6) **Customer's Installation:** Wires, enclosures, switches, appliances and other apparatus, including the service entrance, forming the Customer's facilities utilizing service for any purpose on the Customer's side of the point of delivery.
- (7) **Point of Delivery:** The point of attachment where the Company's service drop is connected to the Customer's service entrance. For underground service other than residential, the Customer's service entrance shall include conductors and raceway to a point designated by the Company generally the pad-mount transformer closest to the building.
- (8) **Connected Load:** The total rated capacity in horsepower (H.P.), and/or kilowatts (kW), and/or kilovolt amperes (kVA), of all electric equipment, appliances, apparatus and other current consuming devices which are connected in and to the Customer's installation and which may utilize service.
- (9) **Maximum Demand:** Highest integrated reading of Customer's electrical power requirements measured in kilowatts during the interval of time specified in the Rate Schedules.
- (10) **Temporary Service:** The supply of electricity by the Company to the Customer for construction purposes; or for fairs, displays, exhibits and similar services; and for other services which will be in use for less than a year.
- (11) **Rate Schedules:** The applicable schedules of rates and charges for service rendered which, from time to time, are on file with and approved by the Florida Public Service Commission having jurisdiction thereover, and under which service is rendered by the Company.

1.02 Service Classifications:

Service is classified for rate application purposes according to one of the following which best describes the Customer's electric service requirements:

- (1) **Residential:** Residential customers have the option of being served under one of the following rate schedules:
 - A. **Residential Service (RS-1):** Applicable to residential customers in a single dwelling house, a mobile home, or individually metered single apartment unit or other unit having housekeeping facilities, occupied by one family or household as a residence. The premises of such single dwelling may include an additional apartment with separate housekeeping facilities, as well as a garage and other separate structures when they are occupied or used solely by the members or servants of such family or household.

3. COMMERCIAL-INDUSTRIAL SERVICES

- a. All commercial and industrial underground services shall be installed under the terms of the Company's "Commercial-Industrial Underground Service Policy."
- b. Normal service voltages are: 120/240 volt, single phase, 3 wire; 120/208 volt, 3-phase, 4 wire; and 277/480 volt, 3-phase, 4 wire. In Network areas and certain established industrial parks, 120/208 volt, single phase, 3 wire service may be available. Service voltage of 120/240 volt, 3-phase, 4 wire, shall not normally be available with underground service. **It is important that the Customer contact the Company to determine the voltage that is available at a desired service location before construction is started.**
- c. All services in a Network shall receive 120/208 volt, 3-phase, 4 wire service.
- d. The designated Point of Delivery may be in a Company-owned distribution box or in a padmount transformer. The Customer shall leave a minimum of five (5) feet of the Service Entrance conductors in position for connection by the Company, unless a shorter length is approved for a specific installation. The conductors shall be marked for phase identification both at the end of the conductors and at a point 12" outside of the conduit or 12" above pad/pedestal base. **The Company does not maintain existing, or run new underground commercial and Industrial services.** See Section III-A-12 for marking requirements. Refer to **Figure 50** for connection diagrams.
- e. Cogeneration Interconnections to secondary Networks shall not be permitted where the Customer's generator shall deliver energy in excess of the Customer's requirements at any time. Special control equipment may be required to prevent backflow of current through the Interconnection.

7 of 16 DOCUMENTS

In re: Complaint and petition of John Charles Heckin against Florida Power & Light
Company

DOCKET NO. 981923-EI; ORDER NO. PSC-99-1054-FOF-EI

Florida Public Service Commission

1999 Fla. PUC LEXIS 922

99 FPSC 5:324

May 24, 1999

PANEL: [*1]

The following Commissioners participated in the disposition of this matter: JOE GARCIA, Chairman, J. TERRY DEASON, SUSAN F. CLARK, JULIA L. JOHNSON, E. LEON JACOBS, JR.

OPINION: ORDER DENYING COMPLAINT AND DISMISSING PETITION

BY THE COMMISSION:

On December 22, 1998, Mr. John Charles Heckin (Mr. Heckin, Petitioner) filed a formal complaint pursuant to Rule 25-22.036(4)(b) and (5), Florida Administrative Code, against Florida Power & Light Company (Company, FPL) alleging that FPL violated the following:

*Section 810.02, F.S. (burglary); Section 810.115, F.S. (breaking a fence); Fla.R.Civ.P. 1.280 (scope of discovery); Fla.R.Civ.P. 1.410 (subpoenas to non-parties); FAC 25-6.094 (full and prompt investigation of customer complaints); FAC 25-6.021 (records of complaints); Sections 934.01(4), F.S. (interception of oral communications prohibited); Section 810.14 F.S. [*2] (voyeurism prohibited). (Petition at 4).*

The Petitioner further alleged that:

The actions which constitute the violation are set forth in the preceding paragraphs. To summarize, they are eavesdropping, voyeurism, breaking the fence and thereby forcibly entering the curtilage of the dwelling of the Petitioner and bad faith games-playing in the defense of the civil litigation, all of which are charged to the rate-paying public rather than to the tortfeasor.

FPL responded to Petitioner on February 8, 1999, by filing a Motion to Dismiss and a Motion for More Definite Statement. Petitioner filed a response to these motions on February 19, 1999. This Order grants the Motion to Dismiss the Complaint and Petition.

For ease in referring to the various complaints put forth by Petitioner, they will be referred to as follows: Count One, alleged violation of Section 810.02, Florida Statutes, burglary; Count Two, alleged violation of Section 810.115, Florida Statutes, maliciously breaking a fence; Count Three, alleged violation of Section 810.12, Florida Statutes [*3], trespass; Count Four, alleged violation of Section 810.14, Florida Statutes, voyeurism prohibited; Count Five, Section 934.01(4), Florida Statutes, interception of oral communications prohibited; Count Six, Section 934.03, Florida Statutes, interception of oral communications prohibited; Count Seven, Fla.R.Civ.P. 1.280, scope of discovery; Count Eight, Fla.R.Civ.P. 1.410, Subpoena of non parties; Count Nine, Rule 25-6.021, Florida Administrative Code, requirement to keep records of written complaints; and, Count Ten, Rule 25-6.094, Florida Administrative Code, requirement to promptly respond to substantial objections of customers as to charges, facilities or service.

I. FPL'S MOTION TO DISMISS THE COMPLAINT AND PETITION OF JOHN CHARLES HECKIN

In its Motion to Dismiss, FPL alleged that we should dismiss with prejudice counts one through eight of the petition, regarding criminal activity allegedly [*4] engaged in by FPL's employees ranging from eavesdropping, interception of oral communications, and voyeurism to burglary, maliciously breaking fences and unauthorized entry on land, for failure to state a cause of action and lack of subject matter jurisdiction. FPL asserted that the Petitioner's request for attorney's fees be dismissed with prejudice for failure to state a cause of action and lack of subject matter jurisdiction. FPL's motion also stated that the request for rate relief in the petition should be dismissed with prejudice for failure to state a cause of action. FPL finally stated that the petition's claims that FPL has violated Rules 25-6.021 and 25-6.094, *Florida Administrative Code*, relating to the handling of customer complaints, should be dismissed without prejudice in order to allow the Petitioner to handle the complaint under Rule 25-22.032, *Florida Administrative Code*.

FPL also filed a Motion for More Definite Statement in this docket. Our decision to grant the Motion to Dismiss renders the Motion for More Definite Statement moot.

[*5]

II. RESPONSE TO MOTION TO DISMISS AND FOR MORE DEFINITE STATEMENT

Mr. Heckin responded to both FPL's Motion to Dismiss and Motion for a More Definite Statement in one response. The attachment to this response was filed by FPL in the civil action between FPL and Mr. Heckin. Mr. Heckin, in his response, states that FPL represented to the civil court that the civil court did not have jurisdiction over the facts involved in this case because this Commission granted FPL the right to trespass by approving FPL's fifth revised tariff sheet number 6.020.2.1. Mr. Heckin states that the same jurisdictional argument is being made by FPL to the Commission, that the Commission does not have jurisdiction over the instant facts because it lacks the legislative authority.

III. LEGAL STANDARD FOR MOTIONS TO DISMISS

A motion to dismiss raises as a question of law whether the petition alleges sufficient facts to state a cause of action. *Varnes v. Dawkins*, 624 So.2d 349, 350 (Fla. 1st DCA 1993). *Varnes v. Dawkins* describes the standard for disposing of motions to dismiss as whether, with all allegations in the petition assumed to be true, the petition [*6] states a cause of action upon which relief may be granted. *Id.* When making this determination, the tribunal must consider only the petition. All reasonable inferences drawn from the petition must be made in favor of the petitioner. *Id.*

In order to determine whether the petition states a cause of action upon which relief may be granted, it is necessary to examine the elements needed to be alleged under the substantive law on the matter. All of the elements of a cause of action must be properly alleged in a pleading that seeks affirmative relief. If they are not, the pleading should be dismissed. *Kislak v. Kredian*, 95 So.2d 510, (Fla. 1957).

IV. SUBJECT MATTER JURISDICTION AS TO COUNTS ONE THROUGH EIGHT AND TEN

The substantive law governing the causes of action set forth in counts one through eight and ten is found outside of Chapter 366, Florida Statutes, which is that portion of the Florida Statutes from which we derive our authority over FPL.

Because we do not believe that counts one through eight and ten of the petition come under the subject matter jurisdiction vested in this Commission, we dismiss these counts for lack of subject matter [*7] jurisdiction. "Jurisdiction over the subject matter refers to a court's power to hear and determine a controversy... Generally, it is tested by the good faith allegations, initially pled, and is not dependent upon the ultimate disposition of the lawsuit." *Calhoun v. New Hampshire Ins. Co.*, 354 So.2d 882, 883 (Fla. 1978). "Jurisdiction of the subject matter does not mean jurisdiction of the particular case but of the class of cases to which the particular controversy belongs." *Lusker v. Guardianship of Lusker*, 434 So.2d 951, 953 (Fla. 2d DCA 1983). In any cause of action, a court must not only have jurisdiction over the parties but must also be vested with subject matter jurisdiction in order to grant relief. *See Keena v. Keena*, 245 So.2d 665 (Fla. 1st DCA 1971). Subject matter jurisdiction arises by virtue of law only; it is conferred by constitution or statute and cannot be created by waiver or acquiescence. *See Board of Trustees of Internal Improvement Trust Fund of State v. Mobil Oil Corp.*, 455 So.2d 412 (Fla. 2d DCA 1984), quashed in part on other grounds [*8] by *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So.2d 339 (Fla. 1986). The Commission may not award monetary damages in resolving utility related disputes. *Southern Bell Tel. Co. v. Mobile America Corp., Inc.*, 291 So.2d 199 (Fla. 1974). The Supreme Court of Florida has decreed that "Nowhere . . . is the PSC granted authority to enter an award of money damages . . . ; this is a judicial function within the jurisdiction of the circuit court pursuant to Art. V, s 5(b), Fla. Const." *Southern Bell* at 202.

We believe that if counts one through eight and ten of the petition are taken in the light most favorable to the Petitioner, they do not state a cause of action for which we may grant relief. *Varnes v. Dawkins*, at 350. It appears that counts one through eight and ten involve a claim for monetary damages, an assertion of tortious liability or of criminal activity, any and all of which are outside this Commission's jurisdiction.

For the foregoing reasons, we grant FPL's Motion to Dismiss as to counts one through eight and ten for lack of subject matter jurisdiction.

V. ALLEGED VIOLATION OF RULE 25-6.021, FLORIDA ADMINISTRATIVE CODE [*9].

Count Nine alleges that FPL violated Rule 25-6.021, *Florida Administrative Code*, by failing to keep a record of the complaint. Petitioner's Complaint and Petition fails to assert that he filed a written complaint with the company which the company upon request was unable or unwilling to produce. We believe, therefore, that the Petition has failed to state a cause of action by failing to state the elements necessary to show the company violated Rule 25-6.021, *Florida Administrative Code*, by failing to keep a written copy of the complaint.

Though it may be good business practice to make a notation of each verbal complaint received, the company is not required by rule to do so and has not violated this rule. We, therefore, dismiss Count Nine of the Petition for failure to state a cause of action.

VI. ALLEGED VIOLATION OF RULE 25-6.094, FLORIDA ADMINISTRATIVE CODE

The Petitioner alleged that FPL did not make a "full and prompt" investigation of his complaint as required under this rule. However, this rule only applies when there has been a "substantial [*10] objection made to a utility by a customer as to its charges, facilities, or service." We believe that the Petitioner's complaint appears to be an objection to the allegedly tortious, criminal behavior of FPL's agent(s) resulting in a claim for damages to a gate, rather than a "substantial objection made to a utility by a customer as to its charges, facilities, or service."

Under *Lusker*, jurisdiction over the subject matter means jurisdiction over the particular class of cases to which the particular controversy belongs." *Lusker*, at 953. Ultimately, as a claim for damages, Count Ten resides outside of the subject matter jurisdiction of this Commission because the Commission may not award monetary damages in resolving utility related disputes. *Southern Bell*, at 202. Because Petitioner's complaint does not constitute a "substantial objection made to a utility by a customer as to its charges, facilities, or service," Rule 25-6.094, *Florida Administrative Code*, is not applicable, and FPL is under no requirement to investigate the complaint.

In *Trawick v. Florida Power & Light Company*, 700 So.2d 772 (Fla. 2d DCA 1997), [*11] petitioners sought declaratory relief and an injunction against FPL for trimming their live oak trees. As in the instant case, the Trawicks asserted that FPL should desist from having its agents come on the Trawick's land and destroy their property, in the Trawick's case, the live oak trees, in Petitioner's case, the gate. The trial court dismissed the Trawick's petition, insisting that the PSC had exclusive jurisdiction. On appeal the 2d DCA reversed and remanded, stating:

We conclude that courts are not precluded from determining whether a utility company, in serving a customer, has acted arbitrarily to the detriment of that customer or in a manner that results in unnecessary damage to the customer's property. Neither are courts precluded, in such situations, from fashioning a remedy to prevent future damage. *Trawick 700 So.2d 772 (Fla. 2d DCA 1997)*

The 2d DCA, therefore, recognized that in instances where judicial relief or damages are plead, the judicial system is the proper location for the complaint. The instant complaint as a claim for damages and not for charges, facilities, or service, therefore, fails to state a cause of action. [*11] As a result, we grant FPL's Motion to Dismiss as to Count Ten both for lack of subject matter jurisdiction and for failure to state a cause of action.

VII. CONCLUSION

Therefore, FPL's Motion to Dismiss Complaint and Petition of John Charles Heckin is granted as to Counts One through Eight and Ten because the petition requests relief that is beyond the jurisdiction of the Commission to grant. Count Nine is dismissed because there was no violation of Rule 25-6.021, *Florida Administrative Code*, and the count therefore fails to state a cause of action. Count Ten is dismissed because the complaint is for damages and, therefore, is outside the jurisdiction of the Commission and, for the same reason, the complaint fails to state a cause of action under Rule 25-6.094, *Florida Administrative Code*.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Motion to Dismiss Complaint and Petition of John Charles Heekin is granted for the reasons stated herein. Our decision renders Florida Power & Light Company's Motion for More Definite Statement [*13] moot. It is further

ORDERED that this order shall be closed and become final when the time for filing an appeal has run.

By ORDER of the Florida Public Service Commission this 24th day of May, 1999.

BLANCA S. BAYO, Director

Division of Records and Reporting

LEXSEE 291 SO. 2D 199

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, Petitioner, v.
MOBILE AMERICA CORPORATION, INC., Respondent.

No. 44384

Supreme Court of Florida

291 So. 2d 199; 1974 Fla. LEXIS 4355

February 27, 1974

COUNSEL: [**1]

Harold B. Wahl, of Loftin & Wahl, Nathan H. Wilson, Jacksonville, John A. Boykin, Jr., Atlanta, Georgia, Walter H. Alford, Jacksonville, and William D. Goddard, Atlanta, Georgia, for Petitioner.

Hugh M. Davenport, of Greene, Greene, Smith & Davenport, Jacksonville, for Respondent.

Edwin L. Mason, of Mason & Erwin, Tallahassee, D. Fred McMullen and Lee L. Willis, of Ausley, Ausley, McMullen, McGehee & Carothers, Tallahassee, and Hugh C. Macfarlane, of Macfarlane, Ferguson, Allison & Kelly, Tampa, for Amicus Curiae.

J. Thomas Gurney, Jr., of Gurney, Gurney & Handley, Orlando, for Amicus Curiae-Florida Telephone Corp.

M. W. Wells, of Maguire, Voorhis & Wells, Orlando, for Amicus Curiae-The Winter Park Telephone Co., Orange City Telephone Co., Inc. and Quincy Telephone Co.

JUDGES:

Dekle, Justice. Carlton, C.J., and Ervin, Boyd and McCain, JJ., concur.

OPINION BY:

DEKLE

OPINION:

[*101] This cause is before us by virtue of the action of the *First District Court of Appeal*, at 282 So.2d 181, certifying the case as one involving a matter of great public interest; we have jurisdiction pursuant to Art. V, § 3(b)(3), Fla. Const., F.S.A.

Respondent, plaintiff in the trial court, is a corporation [**2] in the business of providing financing for mobile home sales, and brought action against

petitioner, a public utility providing telephone service, in the circuit court, alleging in its complaint that it had been damaged by the petitioner's negligent failure to comply with its statutory duty to provide efficient telephone service. The complaint alleged that in November and December of 1971 the telephone service furnished by petitioner failed to meet the standards set forth in F.S. § 364.03, F.S.A., in various respects; money damages were sought for the alleged past inadequacies of service.

The complaint was dismissed by the circuit court on the theory that the Florida Public Service Commission that exclusive jurisdiction in exercising the various functions described in F.S. Ch. 364, F.S.A. This dismissal was without leave to amend, but was expressly stated to be without prejudice to respondent proceeding before the PSC. Appeal was taken to the district court of appeal which reversed and remanded on the basis that the PSC was not authorized to adjudicate damages for the telephone company's negligent failure to meet the statutory standard, noting that respondent would not be required [**3] to pursue administrative remedies where such remedies would be of no avail. In an opinion on rehearing, the DCA specifically stated that primary jurisdiction in a tort action does not rest with the PSC and that the PSC does not have authority to award damages for past failures to meet service standards.

Petitioner has now conceded that the PSC does not have exclusive jurisdiction over claims of this nature. Petitioner has also apparently conceded that the doctrine of exhaustion of administrative remedies is not applicable in this situation; in any event, it is clear that pursuit of an administrative remedy by respondent would be to no avail, since the PSC does not have any authority to award money damages, as the able district court opined. One is not required to pursue administrative remedies where such remedies would be of no avail. *City of Holly Hill v. State ex rel. Gem Enterprises, Inc.*, 132 So.2d 29 (Fla. App. 1st 1961).

Petitioner now takes the position that the circuit court does have jurisdiction over a claim sounding in tort and seeking money damages for past failures to comply

with the standards of service set forth in *F.S. § 364.03, F.S.A.*, but that the circuit [**4] court must obtain the benefit of PSC findings as to whether the applicable standards have been met.

We take the view that while it may be desirable, depending upon the complexity of the issue, for the circuit court to utilize the expertise of the PSC regarding statutory compliance as to service; nevertheless, the circuit judge is not required to do so. Furthermore, we hold that such PSC findings, where sought, are not conclusive but should be considered together with any other evidence before the court on the issue of liability, and on the issue of [**20] damages if applicable to that issue. The judge should consider the total evidence in arriving at his conclusions and a jury should be similarly governed by the weight of all of the evidence before it. The PSC findings in such a case would be much like that of the report of a referee or special master which the court, or jury, could act upon as all of the evidence might indicate.

If a complaint raises intricate problems of a technical nature requiring an expert determination of whether the standards set by statute and implemented by more detailed regulations have been met in a particular instance, the court should be [**5] free, though not required, to refer such matters to the PSC for its findings, in order to obtain the benefit of the state regulatory agency's specialized expertise in the field.

The PSC is uniquely qualified to determine difficult technical questions regarding the adequacy of telephone service, and has a technical staff whose functions include dealing with such difficult issues. The parties would of course be entitled to be heard and to cross-examine witnesses before the PSC in event of such a reference by the trial court to that body. The ultimate issues raised in a suit for money damages for a completed, past failure to meet the statutory standards are, however, a matter of judicial cognizance and determination. Whether the

circumstances of a particular case are such as to indicate that the circuit court should refer the matter to the PSC for findings is a determination resting solely within the sound discretion of the circuit court.

Here the trial court did not so rule; it stated that the circumstances of the cause indicated that a referral to the PSC was in order, and then held that the matter was one within the exclusive jurisdiction of the PSC; hence, it impliedly [**6] held that the circuit court was without jurisdiction. This was in error. Although such a determination is understandable in view of the provisions of *F.S. § 364.01(2), F.S.A.* granting exclusive jurisdiction of all matters set forth in Parts 1 and 2 of Ch. 364 to the PSC, we agree with the district court that the circuit court was not without jurisdiction in the matter. 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, § 5(b), Fla. Const.

Accordingly, the order of the First District Court of Appeal is modified to provide that the circuit court may, in its discretion, refer questions of statutory compliance to the Florida Public Service Commission for the benefit of its determination of whether the utility has failed to comply with the standards set forth in *F.S. § 364.03, F.S.A.*, which determination shall not be binding on the circuit court, or upon a jury, if there be contradictory evidence sufficient to support a contrary verdict.

The opinion of the district [**7] court is accordingly Affirmed as modified.

CARLTON, C.J., and ERVIN, BOYD and McCAIN, JJ., concur.



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LAWRENCE F. MAZER
Associate General Counsel - Florida

October 13, 2009

Joseph Cianfrone, Esquire
1964 Bayshore Blvd.
Dunedin, FL 34698

Re: Your Client: Mediterranean Manor

Dear Mr. Cianfrone:

This letter is in response to your September 24 letter to Progress Energy and our call on October 13. I am enclosing Progress Energy Florida's tariff as approved by the Public Service Commission. Please note that 1.01(7) defines the point of delivery for underground service other than residential which includes a large residential complex such as your client's. Your client's electric service begins at the pad-mount transformer closest to the building served. Thus it is Progress Energy's position that the line you claim was damaged belongs to your client not Progress Energy. The tariff has the full force and effect of law. I have enclosed a copy of Landrum v. Florida Power & Light Co., 505 So.2d 552 (FL Ct. App. 1987) to support this proposition.

I understand that there are additional issues you wish for Progress Energy to appreciate and address. I will be your contact for that discussion to take place.

I am,

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence F. Mazer", written over a circular scribble.

Lawrence F. Mazer

LFM/sc
Enclosures

Progress Energy Service Company, LLC
P. O. Box 14042
St. Petersburg, FL 33733
727-820-5041 (Fax)