

Eric Fryson

From: Moncada, Maria [Maria.Moncada@fpl.com]
Sent: Monday, March 05, 2012 3:58 PM
To: Filings@psc.state.fl.us
Cc: Charles Murphy; 'Edwardgrossman@comcast.com'; 'brucehkaplan@gmail.com'; Butler, John
Subject: Electronic Filing / Dkt 120040-EI / FPL's Motion To Dismiss Complaint by Wellington A. Homeowners Association Or, Alternatively, For More Definite Statement

Attachments: FPL's Motion To Dismiss Complaint.pdf; FPL's Motion To Dismiss Complaint.docx
Electronic Filing

a. Person responsible for this electronic filing:

Maria J. Moncada, Esq.
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5795
maria.moncada@fpl.com

- b. Docket No. 120040 - EI
Complaint against Florida Power & Light Company, by Wellington A Homeowners Assoc., Inc., for alleged failure to properly supervise and inspect work to be, and performed, by Robert C. Ambrosius d/b/a One Call Property Service, Inc.
- c. The Document is being filed on behalf of Florida Power & Light Company.
- d. There are a total of 8 pages
- e. The document attached for electronic filing is Florida Power & Light Company's Motion To Dismiss Complaint By Wellington A. Homeowners Association or, Alternatively, For More Definite Statement

Maria J. Moncada, Esq.
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5795
maria.moncada@fpl.com

DOCUMENT NUMBER - DATE

01292 MAR -5 2012

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3/5/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint against Florida Power & Light Company, by Wellington A Homeowners Assoc., Inc., for alleged failure to properly supervise and inspect work to be, and performed, by Robert C. Ambrosius d/b/a One Call Property Service, Inc.

Docket No. 120040-EI

Filed: March 5, 2012

**FLORIDA POWER & LIGHT COMPANY'S MOTION
TO DISMISS COMPLAINT BY WELLINGTON A. HOMEOWNERS
ASSOCIATION OR, ALTERNATIVELY, FOR MORE DEFINITE STATEMENT**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby moves to dismiss the complaint filed by Wellington A. Homeowners Association, Inc. ("Wellington HOA") for failure to state a claim upon which relief can be granted. In support of dismissal, FPL states:

I. INTRODUCTION

The instant Complaint arises from a dispute between Wellington HOA and an independent contractor, One Call Property Services, Inc. ("One Call"). One Call is a Participating Independent Contractor (PIC) under FPL's Roof Savings Program, one of FPL's Demand Side Management Programs. Compl. ¶ 27. Wellington HOA states in its Complaint that it had several meetings with One Call, and, relying on One Call's promotional materials and warranties, ultimately engaged One Call to apply reflective roof coating on its property. Compl. ¶¶ 28-32. Wellington HOA alleges that the roof subsequently began to deteriorate, and, after several unsuccessful attempts to fix the problem, One Call refused to provide additional repair services in violation of its contractual warranties. Compl. ¶¶ 39-40. Wellington HOA now turns to FPL for relief. In short, Wellington HOA alleges that FPL failed to supervise One Call, and alleges that, as a result, it lost conservation benefits and will need to repair or replace the entire

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roof. Compl. ¶¶ 9, 45, 50, 55. FPL denies these allegations. Because this is a motion to dismiss, however, FPL does not address the merits of those allegations here.

As demonstrated below, Wellington HOA's Complaint must be dismissed for failure to state a claim upon which relief can be granted. The Commission cannot grant the relief requested because it lacks jurisdiction to award compensatory damages. Further, to the extent that Wellington HOA seeks something other than property damages, the allegations contained in the Complaint are far too vague and ambiguous for FPL to discern the nature of the claim or the relief requested. Accordingly, if Wellington HOA is allowed to proceed with its complaint, the Commission should order Wellington HOA to clarify its claim by providing a more definite statement.

II. WELINGTON HOA'S COMPLAINT MUST BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION

Standard for Motion To Dismiss

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action. *See Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is "whether, with all factual allegations in the petition taken as true and construed in the light most favorable to the petitioner, the petition states a cause of action *upon which relief may be granted.*" *In re Complaint of Sallijo A. Freeman Against Florida Power & Light Co. for Violation of Rule 25-6.105, F.A.C.*, Docket No. 080039-EI, Order No. PSC-08-0380-PCO-EI (June 9, 2008) (hereinafter "*In re Freeman*") (emphasis added). If the Commission cannot grant the relief, the Complaint must be dismissed. *Id.*

Wellington HOA's Complaint must be dismissed for failure to state a claim upon which relief can be granted because the Commission lacks jurisdiction to award compensatory damages.

The Commission Lacks Jurisdiction To Award Compensatory Damages

The Commission has jurisdiction pursuant to Chapter 366, Florida Statutes, to consider violations of its rules, statutes, and orders. *Id.* It is well settled, however, that the Commission lacks jurisdiction to award compensatory damages. *Southern Bell Telephone and Telegraph Co. v. Mobile Am. Corp.*, 291 So. 2d 199, 202 (Fla. 1974) ("Nowhere in [the enabling statutes] is the PSC granted authority to enter an award of money damages . . ."). This jurisdictional prohibition applies to contract disputes, torts and property damage claims. *Id.*; *In re Freeman* (Commission lacks jurisdiction to award monetary damages in negligence and contract disputes); *Florida Power & Light Co. v. Glazer*, 671 So. 2d 211 (Fla. 3d DCA 1996) (affirming the application of *Southern Bell* to a tort claim against FPL); *In re Complaint and petition of John Charles Heekin against Florida Power & Light Co.*, Docket No. 981923-EI, Order No. PSC-99-1054-FOF-EI (May 24, 1999) (finding that 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). The authority to award money damages is purely a judicial function within the jurisdiction of the circuit court pursuant to Article V, section 5(b) of the Florida Constitution. *Southern Bell*, 291 So. 2d at 202.

In re Freeman is illustrative. In that case, the petitioner alleged, among other things, that FPL was responsible for damages to her home, allegedly caused by an air-conditioning repairman selected from an FPL website. The petitioner requested that she be made whole for

the alleged damages to her appliances as well as purported spoilage to her food and medication. The Commission found that, even when construing the allegations in the light most favorable to the petitioner, the Commission could not grant her relief because it lacks jurisdiction to award monetary damages. Accordingly, the Commission dismissed the petitioner's Complaint.

Wellington HOA's Complaint Must Be Dismissed for Lack of Subject Matter Jurisdiction

To determine whether it has jurisdiction, the Commission must first look to the nature of the relief sought. *Ramos v. Florida Power & Light Co.* 21 So. 3d 91, 94 (Fla. 3d DCA 2009). It is "the nature of the relief sought, not the language of the complaint, that ultimately determines which tribunal has jurisdiction over the claim." *Id.*; see *Winter Springs Dev. Corp. v. Florida Power Corp.*, 402 So. 2d 1225, 1228 (Fla. 5th DCA 1981) ("Actually and essentially this is an action on a contract and not a claim that Florida Power failed to perform some duty placed by law on it as a public utility").

Here, the section of Wellington HOA's complaint entitled "Relief Requested" alleges that FPL failed to supervise and inspect One Call's roofing work. Compl. ¶ 55. According to the Complaint, the purported failure to inspect "caused loss of all demand conservation benefits anticipated" and "necessitated the roof's total replacement." Compl. ¶ 55. Wellington HOA also alleges that it has received estimates for the roof repair. Compl. ¶ 50. The Complaint references no other specific relief sought. Thus, construed as a whole, Wellington HOA's prayer for relief seeks compensation for lost conservation benefits and property damages. As explained above, however, the full weight of legal authority categorically establishes that the Commission lacks jurisdiction to award compensatory damages. *Southern Bell*, 291 So. 2d at 202; *In re Freeman, supra*; *Glazer*, 671 So. 2d at 211; *In re Heekin against Florida Power & Light Co., supra*. This is

so regardless of the theory or cause of action upon which Wellington HOA's complaint rests. Because the Commission cannot grant the relief requested, the Complaint must be dismissed.

III. MOTION FOR MORE DEFINITE STATEMENT

If the Commission does not dismiss the Petition for lack of subject matter jurisdiction, it should require Wellington HOA to provide a more definite statement identifying with specificity the relief it seeks.

A motion for more definite statement is directed to the vagueness and ambiguity of a pleading. *In Re: Complaint of N.P.B. Holdings, Inc. v. Seacoast Utilities for Failure to Refund Water and Sewer Line Installation Costs in Palm Beach County*, 88 FPSC 5:31 (F.P.S.C. 1988) (directing petitioner to "file a more definite statement of its case, which shall specify the nature and basis of its claims and the amount of a refund for which recovery is sought").¹ Thus, the function of a motion for a more definite statement is to require that a vague, indefinite, or ambiguous pleading be amended in order to enable the responding party to intelligently discern the issues to be litigated and to properly frame its answer or reply." *Conklin v. Boyd*, 189 So. 2d 401, 404 (Fla. 1st DCA 1966); *Miller v. Bill Rivers Trailers, Inc.*, 450 So. 2d 334, 334-35 (Fla. 1st DCA 1984) (more definite statement was proper vehicle to obtain necessary information where complaint failed to allege any specific amount as, or computational method for determining, the appropriate damages)

Rule 28-106.201(2), F.A.C., requires that the petitioner state "precisely the action petitioner wishes the agency to take with respect to the agency's proposed action." Wellington HOA's prayer for relief seek asks the Commission to "(a) exercise jurisdiction over this action and the parties thereto, (b) impose upon FP&L any fine, forfeiture, penalty, or other remedy

¹ See also Fla. R. Civ. P. 1.140(e) ("If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading.")

provided by statute, and (c) award such other and supplemental relief as may be just and necessary.”

The statement of relief sought in the Complaint is vague and broad. A reasonable interpretation of Wellington HOA’s allegations indicates that it demands compensation for the purported damages to its roof, which, as explained above, lies beyond this Commission’s statutory jurisdiction. If that is not what Wellington HOA seeks, however, the Complaint does not provide sufficient information from which FPL can discern the relief sought. Nor does the prayer for relief adequately advise this Commission “precisely the action” that Wellington HOA wishes the [Commission] to take.” Rule 28-106.201(2), F.A.C. Accordingly, if the Complaint survives, the Commission should order Wellington HOA to provide a more definite statement so that FPL can intelligently discern the issues to be litigated and properly frame its response.

IV. CONCLUSION

Wellington HOA’s Complaint fail to state any legally sufficient cause of action upon which this Commission can grant relief, and must therefore be dismissed. Alternatively, if permitted to proceed, the Commission should order Wellington HOA to clarify the nature of its claim and request for relief by filing a more definite statement.

WHEREFORE, based upon the foregoing, FPL requests that the Commission enter an order dismissing Wellington HOA's Complaint with prejudice.

Respectfully submitted this 5th day of March, 2012.

R. Wade Litchfield, Vice President and General Counsel

John T. Butler, Managing Attorney

Maria Jose Moncada, Principal Attorney

Attorneys for Florida Power & Light Company

700 Universe Boulevard

Juno Beach, Florida 33408-0420

Telephone: (561) 691-7101

Facsimile: (561) 691-7135

By: /s/Maria Jose Moncada

Maria Jose Moncada

Florida Bar No. 0773301

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion To Dismiss has been furnished to following persons via electronic delivery and U.S. Mail this 5th day of March.

Edward R. Grossman
102 Wellington A
Century Village
West Palm Beach, FL 33417
Telephone: (561) 471-3605
Edwardgrossman@comcast.com
Complainant, *Wellington A. Homeowner's Association*

Bruce H. Kaplan, Esq.
515 Madison Avenue, 22nd Floor
New York, NY 10022
Telephone: (212) 639-9000
Fax: (212) 658-9747
brucehkaplan@gmail.com
Qualified Representative for Wellington A. Homeowner's Association

Charles W. Murphy, Esq.
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
cmurphy@psc.state.fl.us

By: /s/Maria Jose Moncada
Maria Jose Moncada
Florida Bar No. 0773301