

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Initiation of formal proceedings of Complaint No. 1115382E of Brian J. Ricca against Florida Power & Light, for failing to provide reasonable service

Docket No. 130290-EI

Filed: May 27, 2014

FLORIDA POWER & LIGHT COMPANY'S MOTION TO DISMISS AMENDMENT TO COMPLAINT OF BRIAN J. RICCA WITH PREJUDICE

Florida Power & Light Company, Inc. ("FPL") hereby files, pursuant to Rule 28-106.204, Florida Administrative Code, this Motion to Dismiss the Amendment to Complaint ("Amended Complaint") filed by Brian J. Ricca ("Complainant") in this docket. As discussed in more detail below, the Amended Complaint falls far short of the well-established pleadings requirements that a complaint must meet in order to be deemed sufficient. The Amended Complaint fails to identify, with any specificity, the rule, order, or statute that allegedly has been violated or the actions that constitute the alleged violation; nor does it provide any statement, or include any documentation that shows an act or omission on FPL's part that violates any requirement, whether it be statutory, rule, or order based. Additionally, the Amended Complaint fails to allege any injury suffered as a result of any actions or omissions by FPL. Furthermore, the Amended Complaint is so vague as to both the operative facts and the law for which Petitioner seeks relief that it would be impossible for the Commission to properly issue a decision on the Amended Complaint, and makes it impossible for FPL to adequately respond without engaging in a substantial amount of conjecture as to any alleged violation. Finally, the Amended Complaint fails to identify relief which is available or can be granted by the Commission. Accordingly, the Complaint should be dismissed.

Chapter 120.569(2)(c), F.S. provides, "Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it

conclusively appears from the face of the petition that the defect cannot be cured.” Complainant’s Original Complaint was dismissed by the Commission without prejudice for failure to state a cause of action that would invoke Commission’s jurisdiction or permit the Commission to grant the relief requested. The Amended Complaint fails to raise any new information which states a cause of action upon which relief can be granted. Because the Amended Complaint has not been, and cannot be re-plead in a way that states a cause of action for which such relief can be granted, the Florida Public Service Commission (“Commission”) should dismiss the Amended Complaint as a matter of law, with prejudice.

I. INTRODUCTION

1. In May, 2013, Complainant contacted FPL in order to request that FPL extend service to an isolated rural property Complainant had purchased. In mid-May, 2013, FPL provided an informal, non-binding “ball park” estimate of \$60,000 for the Complainant’s Contribution in Aid of Construction (“CIAC”) to pay for the extension. On July 11, 2013, FPL provided Complainant with a binding estimate of \$55,325.59 for the Complainant’s CIAC, as required by, and in accordance with, Rule 25-6.064, F.A.C., and FPL’s Commission-approved CIAC Tariff, Tariff Sheet Nos. 6.199 to 6.200 (the “CIAC Tariff”).

2. Over a period of several weeks, FPL and Complainant had numerous communications regarding the proposed extension of service. After working with Complainant to explore a number of options, on August 5, 2013, FPL provided the Complainant with additional estimates of the CIAC for alternative options, in addition to the original route option. FPL provided an estimate for a second overhead route of \$40,705.59. FPL also provided an estimate for a route involving underground trenching by the customer, with a credit to the Complainant for customer trenching and PVC installation upon completion of work, for a final total of \$31,850.85.

3. The CIAC amounts for each of these alternative options were calculated in accordance with Rule 25-6.064, F.A.C., and the CIAC Tariff. Apparently unsatisfied with the options provided by FPL, Complainant requested that FPL further reduce or waive the CIAC, which neither the Rule nor the CIAC Tariff requires. FPL therefore has declined this request.¹

4. On December 6, 2013, Complainant filed the original Request for Formal Hearing (“Original Complaint”), asserting that the CIAC should be “waived or drastically reduced.” On January 7, 2014, FPL filed a Motion to Dismiss the Original Complaint. FPL asserted that the Original Complaint should be dismissed because it:

- fell far short of the well-established pleadings requirements that a complaint must meet in order to be deemed sufficient;
- failed to identify, with any specificity, the rule, order, or statute that allegedly has been violated or the actions that constitute the alleged violation;
- provided no statement, and included no documentation that shows an act or omission on FPL’s part that violates any requirement, whether it be statutory, rule, or order based;
- failed to allege any injury suffered as a result of any actions or omissions by FPL;
- was so vague as to both the operative facts and the law for which Petitioner seeks relief that it would be impossible for the Commission to properly issue a decision on the Original Complaint, which made it impossible for FPL to adequately respond without engaging in a substantial amount of conjecture as to any alleged violation; and
- failed to state any cause of action for which relief could be granted. Accordingly, FPL argued that the Original Complaint should be dismissed.

¹ Complainant purchased the property in May 2013 for \$18,000. The property did not have, prior to purchase, and still does not have, electric service extended to it. Complainant is now attempting to obtain the extension of electric service for free or at a significantly reduced cost at the expense of FPL shareholders or customers.

5. On April 23, 2014, the Commission issued Order PSC-14-0191-FOF-EI granting FPL's motion to dismiss, without prejudice. In the Order granting the Motion to Dismiss, the Commission stated:

“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 complaint fails to state a cause of action that would invoke our jurisdiction or permit us to grant the relief requested. Mr. Ricca has not plead specific facts or produced documentation to support FPL violated any statute, rule or order. In addition, Mr. Ricca requested relief that cannot be granted by this Commission.”

6. On May 5, 2014, Complainant filed the Amended Complaint. As demonstrated below, the Amended Complaint should be dismissed for the same fundamental reason as the Original Complaint: it falls far short of the well-established pleadings requirements that a complaint must meet to be deemed sufficient. The Amended Complaint's deficiencies cannot be cured by further amendment and, therefore, it should be dismissed with prejudice.

II. MOTION TO DISMISS STANDARD

7. A motion to dismiss questions whether the complaint alleges sufficient facts to state a cause of action as a matter of law. *Varnes v. Dawkins*, 624 So.2d 349, 350 (Fla. 1st DCA 1993). In disposing of a motion to dismiss, the Commission must assume all of the allegations of the complaint to be true. *Id.* In determining the sufficiency of a complaint, the Commission should limit its consideration to the complaint and the grounds asserted in the motion to dismiss. *Flye v. Jeffords*, 106 So.2d 229 (Fla. 1st DCA 1958). 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). If the Commission cannot grant the relief, the Complaint must be

dismissed. *Id.* In considering a motion to dismiss, the Commission is confined to an examination of the complaint and any attached documents. *In re Verizon Florida Inc.*, Docket No. 030869-TL, Order No. PSC-03-1172-FOF-TL (Fla. P.S.C. October 20, 2003) (citing *Posigan v. American Reliance Ins. Co. of New Jersey*, 549 So. 2d 751, 754 (Fla. 3d DCA 1989)).

III. THE COMPLAINT FAILS TO MEET THE WELL ESTABLISHED PLEADING REQUIREMENTS FOR A COMPLAINT

8. Rule 25-22.036, F.A.C., provides that each complaint must contain:

1. The rule, order, or statute that has been violated;
2. The actions that constitute the violation;
3. The name and address of the person against whom the complaint is lodged;
4. The specific relief requested, including any penalty sought.

A pleading does not meet the requirements of this rule unless it outlines the act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought. *In re: Complaint of Rosario Rojo against Florida Power & Light Company*, Docket No. 110069-EI, Order No. PSC-11-0285-FOF-EI (Fla. P.S.C. June 29, 2011). In *Rojo*, the Petitioner submitted a single page complaint, vaguely alleging bad faith and malice on the part of FPL, and only broadly referenced Chapter 120, F.S., Chapter 28-106, F.A.C., and Rule 25-22.036, F.A.C. No specific actions by FPL were described, nor was there any reference to any substantive requirement that had been violated by FPL. The Commission granted FPL's Motion to Dismiss the complaint with prejudice, holding that there was no assertion of FPL's act or omission that resulted in a violation affecting Ms. Rojo's substantive interest. In addition, the Commission held that Ms. Rojo did not allege any injury suffered or seek a remedy for which the Commission could grant relief.

9. Here, as was the case in *Rojo*, the Amended Complaint lacks the requisite specificity. It broadly states:

“The primary violation that I believe occurred is as follows: *Florida law 366.03 General duties of public utility.—Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission.*” (emphasis in original)

...

“The action that constitutes the violation is inefficient service due to internal errors within the original quote for CIAC Charges. FPL originally quoted my home CIAC charges at a price of \$60,000 and repeatedly assured me both verbally and literally that the most efficient route had been taken to the home. FPL also notified me that no other viable options existed which would lower the amount owed for service. Due to my own efforts and diligence, 84 calendar days later FPL finally acknowledged that the most efficient route had in fact NOT been taken to the home and the new price was to be approx. \$45,000. If I had paid the original quote, I would have overpaid by a large sum, and this error is unacceptable. The company is claiming that there was no error, but rather a change in route as a courtesy. Also, the company is claiming that a longer route was chosen because future homes were more likely to be built along the longer route. Please note in my previous correspondence, the utility company dodged my requests for details, request for a supervisor, and told me that no other options existed. The utility never originally mentioned anything about homes being more likely built along the longer route, but instead chose to cite this reason at a later date causing even further confusion. The law requires the utility to provide reasonably efficient service which would not only mean the shortest route, but also timely service. There is no way that such a large delay and the risk of overpayment can be considered reasonably efficient. Several other violations appear to have occurred as well including FPL’s ability to prove their quote is valid.”

These assertions fail to satisfy Rule 25-22.036 in several respects.

A. The Complaint fails to identify, with any specificity, the rule, order, or statute that has been violated, and the actions that constitute the violation.

10. “A petitioner must show the elements of the substantive law violated and properly allege the cause of action.” *Rojo* at p.4. See also Order No. PSC-99-1054-FOF-EI, issued May 24, 1999, in Docket No. 981923-EI, *In re: Complaint and petition of John Charles Heekn against Florida Power & Light Co.*, (noting that a determination of a petition's cause of action requires examining the substantive law elements and stating that the improper allegation of the elements of the cause of action that seeks affirmative relief is sufficient grounds for dismissal, citing

Kislak v. Kredian, 95 So. 2d 510 (Fla. 1957)). While the Amended Complaint generally refers to “Florida law 366.03” (sic), this general reference is not sufficient to meet the pleading requirements of Rule 25-22.036, F.A.C. The Amended Complaint does not identify any specific requirement within Section 366.03, F.S., which has been violated. Nor is a broad allegation that FPL violated Section 366.03, F.S., sufficient to state a cause of action requiring reduction or waiver of a CIAC. As stated in the header to Section 366.03, F.S., the Statute provides for the “General duties of public utility.” This Section does not provide the requirements for implementation of the CIAC, nor does it provide for any actions related to CIAC charges. Similarly, vague statements that, “[t]he action that constitutes the violation is inefficient service due to internal errors within the original quote for CIAC Charges” and that “[s]everal other violations appear to have occurred as well including FPL’s ability to prove their quote is valid” are not sufficient to state a cause of action. In fact, the Amended Complaint closely mirrors the Original Complaint, which stated:

“Florida law 366.03 General duties of public utility.-Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission.

The action that constitutes the violation is inefficient service due to internal errors within the original quote for CIAC charges. The company originally quoted the CIAC charges at a price of \$60,000 and *assured me both verbally and literally* that the shortest route had been taken to the home and no other viable options existed. 84 calendar days later the company acknowledged that the shortest route had not in fact been taken and the new price was to be approx. \$45,000. If I had paid the original quote, I would of overpaid by a large sum and this error is unacceptable. The company is claiming there was no error, but rather a change in route as a courtesy. The law requires the utility to provide reasonably efficient service which would not only mean the shortest route but also timely service. There is no way that such a large delay and the risk of overpayment can be considered reasonable.” (italics in original)

While the Amended Complaint adds some discussion suggesting that FPL “dodged” Complainant’s request for details, this language is almost identical to the Original Complaint

language, which was dismissed by the Commission for failure to state a cause of action upon which relief can be granted, and similarly should be dismissed here for the same reasons.

11. The Amended Complaint then vaguely references five additional provisions of the Florida Statutes, the Florida Administrative Code, or FPL's tariffs. The provisions listed include: Rule 25-6.002, F.A.C., "FPL Tariff: 2.2" (apparently in reference to FPL's Tariff Sheet 6.020, Section 2.2.), S. 366.955, F.S., Rule 25-6.093, F.A.C., and Rule 25-6.064, F.A.C. The Amended Complaint does not identify any of these provisions as a rule, order, or statute that has been violated. Rather, this section of the Amended Complaint appears only to be saying that these provisions provide the relief sought. As further discussed below, these sections in fact do not provide the relief sought by Complainant, but for present purposes it is fatally deficient for the Amended Complaint simply to recite them with no explanation of how the Complainant asserts that they have been violated. Their mere recitation is clearly insufficient to state a cause of action upon which relief can be granted.

B. The Complaint does not provide any statement, or include any documentation whatsoever that shows in any way an act or omission on FPL's part that violates any requirement, whether it be statutory, rule, or order based

12. The Amended Complaint references "internal errors within the original quote for the CIAC", and suggests that that "[s]everal other violations appear to have occurred as well including FPL's ability to prove their quote is valid," but does not describe what errors occurred, what other violations appear to have occurred, or provide any documentation of such errors or violations and how those violated any requirement. Such broad and vague claims fail to meet the requirements of Rule 25-22.036 because it provides no specific description or documentation whatsoever of the alleged violations. Simply put, the Amended Complaint does not provide any statement, or include any documentation whatsoever that shows in any way an act or omission on

FPL's part that violates any requirement, whether it be statutory, rule, or order based.

13. The Amended Complaint implicitly acknowledges the Complainant's inability to identify and articulate any violations by FPL. It asks that the Commission conduct its own review of FPL's actions to determine whether there has been any violation. It states, "I would like to ask that the FPSC further review my case to determine if any violation of any utility laws, rules or tariffs has occurred. If such errors have in fact occurred, I would like for the commission to order any relief available under its jurisdiction to help me keep costs down to a reasonable level." This request for relief fails on its face to meet the pleading requirements of Rule 25-22.036, F.A.C. The complaint itself must allege the rule, order, or statute that has been violated, and must identify the specific relief requested, including any penalty sought. No specific rule, order, or statute upon which the Commission can grant relief is identified. The Amended Complaint references Rule 25-6.002, F.A.C., however that rule is a general rule setting out the application of the PSC's rules under Chapter 25, F.A.C. It does not provide for any specific relief.²

C. The Complaint fails to show any injury suffered as a result of the alleged actions or omissions by FPL

14. The Amended Complaint fails to make the necessary showing of an injury suffered as a result of the alleged actions or omissions by FPL. In fact, Complainant has not only failed to allege any harm, in Complainant's own words he shows how he actually *benefited* from FPL's

² Despite the inadequacy of this request, it is worth noting that the Commission did perform a thorough review of FPL's CIAC charges for extension of service to Complainant's property. In Order No. PSC-14-0191-FOF-EI, the Commission found that, based on its review, no violations had been identified, stating, "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 . . .'. Per Mr. Ricca's request and pursuant to Rule 25-6.064(9), F.A.C., our staff reviewed all the CIAC estimates provided by FPL and believed the estimates were calculated in accordance with our rules and FPL's Commission-approved, tariff provision. In addition, both Rule 25-6.064(6), F.A.C., and FPL's Tariff provide for a true-up procedure for determining the actual CIAC costs. Rule 25-6.064(6), F.A.C., and FPL's Tariff permit a customer to request a review of CIAC costs paid for new or upgraded service within 12 months following the in-service date of the new or upgraded facilities. FPL's Tariff Sheet 6.199, Section 11.1.2, provides that 'if the true-up calculation result is different from the paid CIAC amount, the Company will either issue a refund or an invoice for the difference.'"

work to provide alternative options. Again, this is fatally deficient. See *Rojo* at p.4.

D. The Amended Complaint is vague as to the operative facts and the law

15. The Amended Complaint is so vague as to both the operative facts and the law for which Complainant seeks relief that it would be impossible for the Commission to properly render a decision on the Amended Complaint. Simple references to “internal errors within the original quote for the CIAC”, and that “[s]everal other violations appear to have occurred as well including FPL’s ability to prove their quote is valid,” are so vague it makes it impossible for FPL to adequately respond without engaging in a substantial amount of conjecture.

16. For all of these reasons, the Amended Complaint falls well short of satisfying the pleading requirements of Rule 25-22.036, and it should be dismissed.

IV. THE COMPLAINT MUST BE DISMISSED FOR FAILURE TO IDENTIFY RELIEF WHICH IS AVAILABLE OR CAN BE GRANTED BY THE COMMISSION

17. As noted above, 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).³ If the Commission cannot grant the relief requested, a complaint must be dismissed. *Id.*

18. The Amended complaint asks that the Commission request FPL to offer a payment plan to Complainant. However, the Complaint cites no statute, rule, or order that requires FPL to offer payment plans for a CIAC. The Amended Complaint references “FPL Tariff:2.2”, which is

³ The *Freeman* proceeding similarly involved a complaint against FPL. There, the complaint in part sought monetary damages which the Commission could not grant because the Commission lacked the subject matter jurisdiction to award the requested relief.

apparently in reference to FPL Tariff Sheet 6.020, Section 2.2. Nothing in Section 2.2, (or any other statute, rule, or order) requires FPL to offer a payment plan for the costs of extension of services, nor does it provide the Commission the authority to require FPL to offer a payment plan. Section 2.2 of Tariff Sheet 6.020 provides:

2.2 Availability of Service. The Company will supply electric service to any applicant for service throughout the territory it serves, subject to the following conditions: should an extension of the Company's facilities be required, the Company will pay for the cost where justified, in the Company's opinion, by revenues to be secured; however, the Company may require monthly or annual guarantees, cash contributions in aid of construction, and/or advances for construction, when in the Company's opinion, the immediate or potential revenues do not justify the cost of extension. If facilities are requested that are not usual and customary for the type of installation to be served, the Company may require a contribution in aid of construction based upon the incremental cost of the requested facility. All contributions in aid of construction will be calculated in accordance with applicable rules and regulations of the Florida Public Service Commission. If the installation of facilities is justified based on the Customer's estimates for electric power but there is reasonable doubt as to level of use or length of use of such facilities, the Customer, when mutually agreeable with the Company, may contract for a minimum Demand or monthly payment sufficient to justify the Company's investment. Upon request, written information will be supplied by the Company concerning the availability and character of service for any desired location. The Company will not be responsible for mistakes of any kind resulting from information given orally.

(Emphasis added). While this section contemplates an option for monthly payments for facilities installation costs, it does so only when “there is reasonable doubt as to level of use or length of use of such facilities” and only “when mutually agreeable with the Company”. Complainant has not alleged that there is any reasonable doubt as to its level or length of use of the facilities. But even if Complainant had made such allegations, the monthly-payment option is permissive rather than mandatory for FPL. If FPL decides – as it has done here -- not to offer that option, its discretionary decision cannot be considered a violation of Section 2.2.

19. The Amended Complaint then asks that the Commission request transparency from FPL, including but not limited to “costs of labor, man hours, materials involved, costs of materials, breakdown of the quote.” There is no statute, rule, or tariff that requires FPL to provide the level

of detail sought by Complainant, and the Amended Complaint does not cite any authority for its “transparency request.” As a courtesy, FPL provided to Complainant (and later to Staff during the Commission’s review of FPL’s CIAC charges for Complainant) a quote containing cost information for each of the routes FPL made available to Complainant, including: the number of poles, down guys, anchors and feet of conductor required; the total capital cost which includes materials and labor; cost for engineering and overhead, O&M, and plant (a single transformer). This level of detail is the same level of detail FPL provides as a courtesy with all customer cost estimates for CIAC charges.

20. Complainant’s request for further “breakdown of the quote” goes well beyond both what is required by statute and what FPL customarily provides as a courtesy. The CIAC is calculated in accordance with the specific requirements of Rule 25-6.064, F.A.C., and FPL Tariff Sheet 6.199, Section 11.1. Neither the rule nor the tariff requires the provision of this information at the level of detail sought. The Amended Complaint cites to section 366.955(4), F.S. Section 366.955 does not exist, but it appears that Complainant may have been referring to section 366.055, F.S. If so, the reference is well off target. Section 366.055 governs energy reserves, and is not relevant to the extension of services to a retail customer. The Amended Complaint also cites Rule 25-6.093, F.A.C., and specifically quotes the language from the rule requiring that the utility, “assist the customer in obtaining the rate schedule which is most advantageous to the customer's requirements.” This requirement relates to the utility’s rate schedules for electric service adopted by tariff, and not the calculation of CIAC. The remainder of Rule 25-6.093, F.A.C. contains other requirements for the provision of information to the customer, but again nothing therein requires FPL to provide costs of labor, man hours, materials involved, costs of materials, and breakdown of the quote for a CIAC calculation.

21. In the same section, the Amended Complaint requests that the Commission require FPL to “meet the quote or standards of a third party engineer review.” Again, there is no statute, rule, or order that requires FPL to meet the quote or standards of a third party in calculating a CIAC.

22. Finally, the Amended Complaint asks that FPL allow the Complainant to pay only 1/3 of the quote up front “due to being the only customer involved.” However, the Amended Complaint cites no statute, rule, or order that requires FPL to reduce or waive the CIAC and, in fact, there is no such statute rule or tariff. The Amended Complaint refers to Rule 25-6.064. Rule 25-6.064(6)(b) provides:

In cases where more customers than the initial applicant are expected to be served by the new or upgraded facilities, the utility shall prorate the total CIAC over the number of end-use customers expected to be served by the new or upgraded facilities within a period not to exceed 3 years, commencing with the in-service date of the new or upgraded facilities. The utility may require a payment equal to the full amount of the CIAC from the initial customer. For the 3-year period following the in-service date, the utility shall collect from those customers a prorated share of the original CIAC amount, and credit that to the initial customer who paid the CIAC. The utility shall file a tariff outlining its policy for the proration of CIAC.

(Emphasis added). As is clearly shown in the underlined section of the rule language above, FPL is permitted under the rule to require full payment for the full amount of the CIAC from the initial applicant (here, the Complainant). If additional customers are served by the facilities within the first three years of service, FPL will prorate the CIAC charges and credit the initial applicant the amount collected from the new customers. Nothing in Rule 25-6.064 requires FPL to collect prorated charges from the initial applicant, and, rather, the Rule clearly allows FPL to collect the full charges for the CIAC.⁴

⁴ Rule 25-6.064 also only allows FPL to prorate CIAC charges when more customers than the initial applicant are expected to be served by the new or upgraded facilities. At this time, FPL has no indication that additional customers are expected to be served within three years of the in service date of facilities.

V. THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE

23. This is Complainant's second attempt to seek a determination by the Commission that FPL violated a statute, rule, or order, and second attempt to seek relief. As noted above, much of the Amended Complaint is nearly identical to the Original Complaint, and it again fails to meet the well-established pleadings requirements that a complaint must meet in order to be deemed sufficient; continues to fail to identify, with any specificity, the rule, order, or statute that allegedly has been violated or the actions that constitute the alleged violation; continues to fail to provide any statement, or include any documentation that shows an act or omission on FPL's part that violates any requirement, whether it be statutory, rule, or order based; continues to fail to allege any injury suffered as a result of any actions or omissions by FPL; and continues to fail to identify relief available. This is, simply put, Complainant's second attempt to obtain the extension of electric service either for free or at a significantly less than the actual cost to FPL and its customers. The Amended Complaint's deficiencies cannot be cured by further amendment, because its fundamental focus and rationale is on seeking relief that it demonstrably unavailable. Therefore, the Amended Complaint's dismissal should be with prejudice. See *Rojo* at p.4. (finding that the underlying factual and legal deficiencies of the complaint could not be cured, and therefore the complaint was dismissed with prejudice).

VI. CONCLUSION

The Amended Complaint 1) falls far short of the well-established pleadings requirements that an Amended Complaint must meet to be deemed sufficient; 2) fails to identify, with any specificity, the rule, order, or statute that has been violated, and the actions that constitute the violation; 3) does not provide any statement, or include any documentation whatsoever that shows in any way an act or omission on FPL's part that violates any requirement, whether it be statutory, rule, or order based; 4) fails to show any injury suffered as a result of any actions or

omissions by FPL; 5) is so vague as to both the operative facts and the law for which Petitioner seeks relief that it would be impossible for the Commission to properly render a decision on the Amended Complaint or for FPL to adequately respond without engaging in a substantial amount of conjecture; and 6) fails to state identify any relief which is available or could be granted by the Commission. Accordingly, the Amended Complaint should be dismissed. Furthermore, because the Amended Complaint cannot be re-plead in a way that states a cause of action for which relief can be granted, it should be dismissed with prejudice.

WHEREFORE, based upon the foregoing, FPL requests that the Commission enter an order dismissing the Amended Complaint with prejudice.

Respectfully submitted this 27th day of May, 2014.

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By: /s/ Scott A. Goorland
Scott A. Goorland
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion To Dismiss the Amended Complaint with Prejudice has been furnished to following persons via electronic delivery and U.S. Mail this 27th day of May, 2014.

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