

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Initiation of Formal Proceedings)
Pursuant to Rule 25-22.036, F.A.C. by)
Devonson Walker)

Docket No. 170138-EI
Filed: June 16, 2017

**FLORIDA POWER & LIGHT COMPANY'S
MOTION TO DISMISS COMPLAINT**

Florida Power & Light Company (“FPL” or the “Company”) hereby files, pursuant to Rule 28-106.204, Florida Administrative Code, this Motion to Dismiss the Complaint filed by Petitioner Devonson Walker in this docket. For the reasons set forth below, the Florida Public Service Commission (“Commission” or “FPSC”) should dismiss the Petitioner’s Complaint.

I. INTRODUCTION

The Petitioner, Devonson Walker, at all times relevant to this action was the customer of record of an FPL electric account for electric service provided at 7751 Hood Street, Hollywood, Florida 33024, since January 6, 2015. Mr. Walker’s claim is that FPL improperly billed and over-billed him for electrical services not rendered during a vague and unspecified time period. Mr. Walker also alleges that FPL entered his property illegally and without an “ease of access permit” with the assistance of law enforcement although there was no Company equipment on said property.

Pursuant to an investigation, FPL remotely disconnected service to the Petitioner’s location on March 7th, 2016. As a result of the FPL smart meter detecting possible meter tampering, an FPL meter man responded on March 14, 2016 to the location to conduct an investigation and found the lights on at the property. Due to a person at the residence refusing access to the meter enclosure, FPL subsequently returned with law enforcement to the subject location in an effort to disconnect service. Upon entry to the premise, the FPL crew documented unauthorized jumper equipment in the meter enclosure providing unmetered electric service to

the residence. FPL reviewed the Petitioner's account and billed the Petitioner \$284.17 for investigative charges. There was no kWh back-billed since the regular bill was estimated. A final bill of \$578.28 was issued to the Petitioner and the account was closed on April 4, 2016. On September 12, 2016, the final bill amount of \$578.28 was received from an Assist Agency commitment. Additionally, the investigative charges were removed from the Petitioner's account. On May 26th, 2017, the Petitioner filed a complaint for formal proceedings on this matter. (Exhibit "A")

FPL asserts that Petitioner's Complaint should be dismissed because it falls below the well-established pleading requirements that a Complaint must meet to be deemed sufficient. As discussed below, the Complaint should be dismissed because it fails to: 1) contain the rule, order, or statute that has been allegedly violated by FPL, and 2) state any cause of action for which relief could be granted by the Commission. For the reasons discussed below, the Complaint should be dismissed as a matter of law.

II. ARGUMENT

A. Standard for Motion to Dismiss

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, this Commission must assume all of the allegations of the complaint are 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. Connolly v. Sebeco, Inc., 89 So. 2d 482, 483 (Fla. 1956). The Fourth District Court of Appeal has held that "a court's gaze is limited to the four corners of the complaint." Provence v. Palm Beach Taverns, Inc., 676 So. 2d 1022 (Fla. 4th DCA 1996). The standard in reviewing a motion to dismiss, this Commission should take all allegations in the petition as though true, and

consider the allegations in the light most favorable to the petitioner in order to determine whether the petition states a cause of actions upon which relief may be granted. Ralph v. City of Daytona Beach, 471 So. 2d 1, 2 (Fla. 1983). If the Commission cannot grant the relief, the Complaint must be dismissed. 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 9th, 2008).

B. Petitioner’s Complaint Fails to Meet the Well-Established Pleading Requirements

Florida Administrative Code Rule 25-22.036 provides in pertinent part 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.

Petitioner’s Complaint fails to satisfy the requirements of Rule 25-22.036, F.A.C. A pleading that does not meet these requirements does not satisfy the Rule. In re Complaint of Rosario Rojo Against Florida Power & Light Co. for Violation of Rule 25-6.105, F.A.C. Docket No. 110069-EI, Order No. PSC-11-0285-FOF-EI (June 29th, 2011). In Rojo, the Petitioner submitted a single page complaint, vaguely alleged bad faith and malice by FPL, and broadly reference certain statutes and administrative rules. Id. Additionally, the complaint failed to allege specific actions by FPL or substantive requirements that FPL violated. Id. The Commission granted FPL’s Motion to Dismiss the complaint with prejudice finding that there was no assertion of FPL’s act or omission that resulted in a violation affecting the petitioner’s substantive interest. Id.

In the instant case, Mr. Walker’s Complaint fails to identify, cite or reference with specificity any rule, order, or statute which FPL has allegedly violated as required by the rule.

FPL is severely prejudiced in the preparation of its defense by not knowing what rules, orders, or statutes FPL is purported to have violated. Moreover, the complaint does not state any elements of a cause of action or duties to which FPL allegedly owes to the Petitioner. This Commission has held in numerous orders that to sustain a motion to dismiss, the moving party must demonstrate, taking all allegations in the petition as correct, that the petition states a cause of action upon which relief can be granted. In re: Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc., F.A.C. Docket No. 941121-WS, Order No. PSC-95-0614-FOF-WS (May 22, 1995). First, the complaint filed before this Commission merely alleges that the Petitioner "subscribed only to self-powered electric energy" at his residence and that "FPL's services were no longer required thus FPL should remove its meter." Second, the complaint makes allegations that FPL and law enforcement entered onto the Petitioner's property for some unknown purpose. The instant complaint suffers from greater deficiencies in the pleading requirements regarding the rules, orders, or statutes violated than this Commission found in Rojo where that complaint broadly referenced certain statutes and rules. As such, the complaint should be dismissed with prejudice.

The complaint fails to allege what actions FPL did or did not perform that constitute a violation. In addition, the complaint merely disagrees with FPL's billing of his account, but fails to state the reasons why he believes he was billed or over-billed for services not rendered. The complaint doesn't give a time frame for when this billing took place in relation to his allegations. Because the complaint fails to allege what actions FPL potentially did or failed to do, the Petitioner has not met his burden of satisfying the requirements of the Rule.

Finally, the complaint fails to state a specific requested relief and/or penalty allegedly caused by FPL. The complaint states no wherefore clause, request for reimbursement, or any

other relief. The complaint fails to specify with enough sufficiency what said relief and/or penalty the Petitioner is seeking from the Commission as required by the Rule.

III. CONCLUSION

Petitioner's complaint fails to properly allege each of the required elements as required by 25-22.036, F.A.C., to state a cause of action. The lack of sufficiency in the pleadings leaves FPL to speculate on 1) what actions took place, 2) whether any actions violated a specific rule, order, or statute, and 3) how FPL would defend this matter. Therefore, the Petitioner's complaint must be dismissed as being legally and factually deficient.

WHEREFORE, based upon the foregoing, Florida Power & Light Company requests that the Commission enter an order dismissing Petitioner's complaint.

Respectfully submitted this 16, day of June, 2017.

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By: s/ Kevin I.C. Donaldson
Kevin I.C. Donaldson
Florida Bar No. 0833401

**CERTIFICATE OF SERVICE
DOCKET NO. 170138-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S.

Mail or electronic delivery this 16, day of June, 2017 to the following:

Devonson Walker
P.O. Box 848241
Pembroke Pines, Florida 33084

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By: s/ Kevin I.C. Donaldson
Kevin I.C. Donaldson, Esq.
Florida Bar No. 0833401

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DEVONSON A. WALKER, et al.,
Petitioners,

Vs.

INITIATION OF FORMAL PROCEEDINGS FOR RELIEF
AGAINST FLORIDA POWER AND LIGHT COMPANY

FLORIDA POWER AND LIGHT COMPANY,
Respondent,

COMES Now, the Petitioners before this Honorable, body and Complaint the following: This action is been brought before the Commission Pursuant to the laws of Florida, and the United States, that at a period in Time the Petitioner subscribed only to self Powered Electric Energy at a Resident located at 751 Hood Street Hollywood, Florida and did Notified FPL that the Services were no longer required and to remove their Meter that on Three separate occasions without any service or any of the Companies equipment property located on my Property FPL did Illegally entered the Petitioners property without provocation or probable cause that on one of these occasions they did used the help on LAWENFORCEMENT that at no TIME did FPL have an EASE of Access Permits to enter My property in Violation of the Fourth Amendment to the Constitutions of USA and State .

Then FPL Billed and over Billed for Services not rendered.

Devonson A. Walker
Devonson A, Walker
Post Office Box 848241
Pembroke Pines FL 33084

HEREBY Certify that a Copy of the Foregoing has been forward to FPL Juno Beach, Florida

EXHIBIT A