



Public Service Commission

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

-M-E-M-O-R-A-N-D-U-M-

DATE: SEPTEMBER 24, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: GENERAL COUNSEL (ROBERT D. VANDIVER) *R*

RE: DOCKET NO. 981216-EI - COMPLAINT BY MR. PAUL LEON AND MR. JOSEPH OLAZABAL AGAINST FLORIDA POWER & LIGHT COMPANY REGARDING MOVING ELECTRIC LIGHT POLES.

AGENDA: 10/06/98 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE - PROPOSED AGENCY ACTION

CRITICAL DATES: NONE

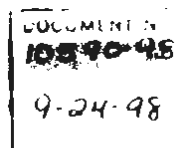
SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\981216.RCM

CASE BACKGROUND

This dispute relates to application of Florida Power and Light Company's (FPL) tariff concerning moving electric light poles. The complainants are Mr. Paul Leon and Mr. Joseph Olazabal. Mr. Olazabal has been the owner of the property in question since 1994. Mr. Olazabal is currently building a residence on the property which is located at 2430 S. Miami Avenue, Coral Gables, Florida. The design of the house coupled with local government restrictions have resulted in the necessity of moving an FPL electrical pole which has been in place since 1968.

The FPL estimate to move the pole is \$6,894. This price includes moving the pole and the City light attached to the pole and FPL's electrical fixtures. This pole also supports a traffic signal and Southern Bell wires. The homeowner has obtained a price of approximately \$3,000 from a private contractor to move the traffic signal. Southern Bell is being contacted but has not yet provided an estimate.



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An informal conference pursuant to Rule 25-22.032, Florida Administrative Code, was held on September 14, 1998. The complainants and FPL appeared via video conference at the PSC Miami offices. FPSC staff appeared via video conference in the PSC Tallahassee office. No resolution was reached during this conference. At the conference, the parties discussed the materials appearing as Attachment I. Attachment I consists of the complainant's summary of the case, the FPL estimate, the FPL summary of the case, Twelfth Revised Sheet No. 6.040, provision 5.3, Section 366.03, Florida Statutes and two 1993 Orders of this agency dealing with relocation of company facilities.

ISSUE 1: Did FPL properly apply its tariff provision in the present case?

RECOMMENDATION: Staff believes FPL properly applied the tariff as explained below.

DISCUSSION: The tariff at issue reads as follows:

5.3 Relocation of Company's Facilities - When there is a change in the customer's operation or construction which, in the judgment of the company, makes the relocation of facilities necessary, or if such relocation is requested by the customer, the Company will move such facilities at the customer's expense to a location which is acceptable to the company.

In staff's view, the real issue here is whether the complainant solely benefit from this change. If this is so, then pursuant to the nondiscrimination provision of Section 366.03, Florida Statutes, the general body of ratepayers should not pay for the change in location.

The complainants argued that the addition of a customer benefited the entire community. I believe that additional load is not necessarily a public benefit per se. The principal reason for moving this pole and associated facilities is the construction of the residence as presently designed.

I believe this case very similar to facts contained in Order No. PSC-93-1029-FOF-EI which appears in Attachment I. There the complainants lacked proper clearance on their house under construction to the FPL facilities. There the Commission stated:

It has long been a Commission policy where practical to place additional costs on those customers who cause them,

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so other ratepayers who do not request special services such as facilities relocation are not required to subsidize those who do. In this case, only the complainants benefitted from the relocation of FPL's existing facilities. Therefore, we find that FPL acted properly in accordance with its tariff in billing the complainants for the work.

Order PSC-93-1029-FOF-EI at page 3.

As stated earlier, I do not accept the argument of an additional customer to FPL being a public benefit. This relocation is being done for the construction of the residence as proposed. The fact that FPL will serve the new load is an incidental factor that does not change the underlying character of this relocation.

The complainants were surprised by the amount of the relocation. FPL has a standardized computer format for estimates. The number of fixtures on this pole also add to the cost. The Commission staff reviewed the FPL estimate and found it to be reasonable. See Attachment 2. Complainants also questioned the time to complete the job (6-8 weeks) as well as paying the amount in a lump sum. FPL pledged to work with the complainants on the time issue. The tariff has no provision for some sort of extended payments. The general body of ratepayers would have to pay the costs of such a program were it available, including any carrying costs associated with the loan, and additional billing and recordkeeping.

In summary, FPL properly applied its tariff to the instant case. The Commission should issue a PAA order dismissing this complaint for the foregoing reasons as discussed above.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: This docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period.

RDV/jb

FLORIDA PUBLIC SERVICE COMMISSION

**CLARABEL/LEON AND FLORIDA POWER & LIGHT COMPANY
INFORMAL HEARING
SEPTEMBER 14, 1998****COMPOSITE EXHIBIT**

1. Issues statement of Mr. Leon.
 - (a) Attached letter of April 29, 1998 to Mr. Leon from Mr. Gongorra, FPL.
 - (b) FPL cost estimate dated April 28, 1998.
2. Issues statement of FPL.
 - (a) Copy of FPL Tariff Sheet 6.040, §5.3.
 - (b) Copy of Florida Statutes, §366.03.
3. Copy of FPSC Orders.
 - (a) FPSC Order #PSC-93-1029-POF-EI
Issued July 13, 1993.
 - (b) FPSC Order #PSC-93-1375-POF-EI
Issued September 20, 1993.

P. Leon

3461 Shedd Avenue #20-01
Miami, FL 33138
USA

305-888-8470

September 10, 1998

Mr. Rob Vandiver
Public Service Commission
2540 Sharnard Oak Boulevard
Tallahassee, Florida 32309-0830

Dear Mr. Vandiver,

To prepare for our informal meeting with FFL on September 14, 1998 at 2:00 p.m.
I would like to state my position on the matter of an FFL post that is encroaching on the egress of my property.

First I must make reference to the letter sent to me by Jose R. Gonzalez on April 29, 1998, after many months of phone conversations and a meeting with him at the site in February with the Architect, Mr. Jorge Pedraza. I am enclosing a copy of this letter for your reference. This letter is the only written communication I have received from FFL. The letter states their price, terms and even the expiration date of their terms. My position is that FFL is placing an enormous hardship on me as a customer of FFL, by not allowing me the use of my property as my living facility. FFL is interfering with my ability to use my property in accordance with City of Miami Building Code. The reason is that under the code, I have no other alternative means of entrance to my property. The cost of \$6394.00 for releasing the pole which FFL is mounting to me is burdensome to me and will prohibit me from building my home according to the code. FFL should pay for the relocation of the pole because it will benefit all the adjacent homeowners. FFL also states in their letter that I should also be responsible to coordinate and relocate the other utilities that are connected to this pole. I feel that FFL should coordinate the relocation if necessary, of the other utilities that are connected to the pole, because these other utilities share and have use of each other poles as common practice in the course of doing business with each other. At this time I would also like to point out that FFL also in their terms gave themselves six to eight weeks to schedule the job for construction when their bill was paid in full. This, in my mind shows their might as a monopoly that sets their terms with no consideration of the hardship they place on their clients. I'm sure if there was another company to compete with them they would go the distance to get our business.

In the process of investigating what governs FFL we were given one page of their tariff written by them. They cite that 5.5 of their tariff is when they lose their decision. I fail to see their point because this one is neither a change of operations or construction, or either the change is what this had was intended to be all along a habitable lot. I feel that transacting on FFL facility which directly interferes with a tax payer's right to use his property should be paid by FFL because the pole is for the benefit of all in the community and is built-in as one person that is installing a home in accordance to City of Miami Building Code. I encourage the opportunity to be before the commission to make my position and hope that all parties involved see the hardship placed on me. I strongly believe that relocating a utility pole when that pole is in direct interference with a homeowner's ability to use his property, is a burden and one that should be borne by FFL and not by a single owner. If I can be of any further help please contact me at your earliest convenience.

I remain yours truly,

Paul Leon

Florida Power & Light Company, 222 S.W. 1 Street, Miami, FL 33130



April 29, 1998

Mr Joseph S. Glaszabal.
2451 Brickell Avenue PH-8
(305) 461-6618PAX

RE: Relocation of FPL facilities @ 2430 S. Miami Ave.

The cost to relocate the FPL facilities is \$6894.00.

Total cost includes relocation of:

such as: An existing 48"/3 FPL pole with attached facilities

- 3-Phases of primary conductors.
- 1-set of 3 phases disconnect switches.
- 1-down guy w/anchor.
- 3-#2 secondaries conductors
- 1-street light bracket w/luminaire.

TRAFFIC CONTROL SIGNAL & SOUTHERN BELL RISERS TO BE RELOCATED BY OTHERS. It is your responsibility to coordinate this relocation.

This estimate is good for a period of six months from the date of this letter and then, it's subject to revision and updating to meet current economic conditions.

Send your check to:

FPL Co.
122 SW 3rd Street
Miami, FL 33130
ATTN: Jose H. Gengora.

After the check is received, it will take from six to eight weeks to schedule the job in construction.

If you have any further questions or concerns, please contact me at (305) 377-6063.

Sincerely,

Jose H. Gengora.
Distribution Designer.
Central Service Center

Post-Net Fax Note	7871	4-29-98	1
To: Joseph Glaszabal		Jose Gengora	
From:		FPL	
Phone:		305-661-6618	
Fax:		305-377-6018	

an FPL Group company

Printed Date: 4/28/98 System Improvement Order: ORIGINAL
 Descriptive Title: REL FL ON SW 25RD 1P W/O S MIAMI AVE
 Location: A-2430 S MIAMI AVE. (CLEAR
 DCOE Work Order Name: CLEAR DWY-04-883
 ABM Code Description:

Country (Form): DADE (10)
 WO Reg. Date: 4/28/98
 Work Order No: [blank]
 Engineer: EHE Originator: EHE URD Lot: 0
 Last Estimate Date: 04/28/98 01:25 pm

Item	Install	Quantity	Removal	Pole Line Ft. Data Poles	Pole Line Ft. Trench Poles	Trench Feet	Dug Bank Feet	Neutral Cable Feet
Poles:	1	1	1	0	0	0	0	0
Anchor:	1	1	1					
Transformer:	0	0	0					
Wire (feet):	300	0	0					
Authorized Man Hours	FPL Crews	Contractors	Not Changes Street Lights	Other Labor Rate	Customer Contribution			
Total	53	0	FPL	0	reimbursable Cash \$ 0			
OH	53	0	Cust	0	Material & Labor \$ 0			
DU	0	0			Total \$ 0			
BU	0	0						
No. of Cmt.	0	EAR Amount	0	Coordinate With WO ER LEAD	Total Amt. All WOs	0	Total Cost of Job	6,894
			0000 00 000		Rate	0%	SALVAGE	439
							Authorized Amount	7,333

ESTIMATE OF COST					Property Additions, Operations & Maintenance				
Original Cost	Salvage	Removal Cost	Description	ASSET No.	Vehicle & Misc.	AMOUNT (Dollars only)	Materials	Other	Total
Acct. 108.2	Acct. 108.3	Acct. 108.3							
86	195	362	POLES & FIXTURES	364	1,219		383		1,602
319	244	507	OH COND & DEVICES	365	1,549		1,015		2,564
13		12	OH SERVICE-THIS WO	369.1	62		5		67
			ST LIGHT & SIG SYST	373	9		1		10
			ENGR & OVERHEAD	399.2				1,035	1,035
418	439	881	SUBTOTAL		1,839		1,404	1,035	5,378
			REMOVAL COSTS	108.3				881	881
			SALVAGE/RECOVERIES	108.49			-439		-439
			TOTAL CHARGE TO ER		3,720		965	1,035	5,720
			MAINT OVERHEAD LINES	393.1	923		158		1,081
			MNT ST LT SIG SYST	396	93				93
			TOTAL OPERN & MAINT		1,016		158		1,174
			TOTAL CHARGE TO WO		4,736		1,123	1,035	6,894
			TOTAL COST OF JOB						6,894

APPROVED / AUTHORIZED

1 Approved _____ Date _____ 2 Approved _____ Date _____
 3 Approved _____ Date _____ 4 Authorized _____ Date _____

Post-It® Fax Note	7871	Date	4/28/98
To	Debtors Self	From	Lee Davis
Co/Dept		Ca	
Phone #		Phone #	317-6108
Fax #		Fax #	

08

Composite Exhibit 1 (b)

Work Order Face - WO/Name: CLEAR DWY-04-883 Printed: April 28 1998 at 1:41:53 pm

RECEIVED TIME JUN 5 3:58M

305 562 4153

FILE No. 273 09/14 '98 11:40 ID:FP 2 L LEGAL DEPT



Florida Power & Light Company, P.O. Box 623102, Miami, FL 33162-0102

(305) 552-3929

September 10, 1998

Via Facsimile (850) 413-6077

Robert D. Vandiver, General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Informal Hearings, 215254R
Mr. Paul Leon and FPL

FPL Matter No. 27897

Dear Mr. Vandiver:

Enclosed please find Florida Power & Light Company's one page summary on the above referenced matter.

Respectfully submitted,

Joan G. Howard

Joan G. Howard
Senior Attorney

JGH:gr

Enclosure

cc: C. Diaz
W. Feaster

09

RI: Informal Hearings, 215254R
Mr. Paul Leon and Florida Power & Light Company

Summary of Facts

Mr. Leon, on behalf of the landowner Mr. Joseph Olazabal, requested that FPL relocate an FPL pole approximately 25 feet within the existing public right-of-way to accommodate Mr. Olazabal's plans to build a home and driveway. The pole is a 45 foot wood feeder pole supporting 3 phases of primary conductor, 3 disconnect switches, 3 open wire secondary conductors, a down guy and anchor, a street light, and attachments of BellSouth, cable TV, and traffic control. The pole has been in place since approximately 1968. Mr. Olazabal purchased the property in 1994.

FPL explained to Mr. Olazabal that because the relocation was at his request and solely for the purpose of accommodating his construction plans, he was required to pay for the relocation costs. Mr. Olazabal requested an estimate of the relocation charges. FPL, using its standard procedure, estimated FPL's cost of relocation at \$6,894. FPL provided Mr. Olazabal with a copy of that estimate. Mr. Olazabal objected and filed a complaint with the Commission

Issues

Q. Whether the FPL Tariff, Sheet 6.040, paragraph 5.3, applies?

A. Yes. The FPL Tariff has the force and effect of law for both FPL and the customer. Mr. Leon's desire that FPL relocate a pole in order to accommodate his private plans for a driveway falls squarely within this Tariff provision that when a relocation of existing facilities is requested by a customer for the benefit of that customer, that the customer must pay for such relocation. FPL is required to abide by the Tariff and by §366.03 the Florida Statutes which provides that FPL can give no unreasonable preference to person or locality. The FPSC and FPL have consistently interpreted this statute to mean that the utility may not give preference to an individual by, in effect, subsidizing his private development by paying for such pole relocations.

Q. Whether FPL's relocation cost estimate is reasonable.

A. Yes. FPL's determination of relocation reimbursement costs for all customers is based on the relocation formula adopted by the Federal Highway Administration and the state Department of Transportation. Cost estimates are calculated by an established computer estimating program.

Recommendation

The landowner should pay FPL's full estimated cost of relocation as required by the FPL Tariff and section 366.03, Florida Statutes. FPL finds no uncertainty in this case and believes that failure of the customer to pay the full amount would result in an illegal preference.

5 COMPANY'S INSTALLATIONS

5.1 Protection of Company's Property. The Customer shall properly protect the Company's property on the Customer's premises, and shall permit no one but the Company's agents, or persons authorized by law, to have access to the Company's wiring, meters, and apparatus.

5.2 Damage to Company's Property. In the event of any loss or damage to property of the Company caused by or arising out of carelessness, neglect or misuse by the Customer, the cost of making good such loss or repairing such damage shall be paid by the Customer.

5.3 Relocation of Company's Facilities. When there is a change in the Customer's operation or construction which, in the judgment of the Company, makes the relocation of Company's facilities necessary, or if such relocation is requested by the Customer, the Company will move such facilities at the Customer's expense to a location which is acceptable to the Company.

5.4 Attachments to Poles. The use of the Company's poles, wires, towers, structures or other facilities for the purpose of fastening or supporting any radio or television aerials or other equipment, or any wires, ropes, signs, banners or other things, not necessary to the supplying by the Company of electric service to the community, or the locating of same in such proximity to the Company's property or facilities as to cause, or be likely to cause, interference with the supply of electric service, or a dangerous condition in connection therewith, is prohibited, and the Company shall have the right forthwith to remove same without notice. The violator of these rules is liable for any damage resulting therefrom.

5.5 Interference with Company's Facilities. The Customer should not allow trees, vines and shrubs to interfere with the Company's adjacent overhead conductors, service wires, pole mounted transformers and meter. Such interference may result in an injury to persons, or may cause the Customer's service to be interrupted. In all cases the customer should request the Company to trim or remove trees and other growth near the Company's adjacent overhead wires, and under no circumstances should the Customer undertake this work himself, except around service cables when specifically authorized by and arranged with the Company.

5.6 Unobstructed Access to Company's Facilities. The Company shall have perpetual unobstructed access to its overhead and underground facilities such as poles, underground cables, pole mounted transformers and meters in order to perform repair and maintenance in a safe, timely and cost-efficient manner. The Customer is responsible for contacting the Company for guidance before constructing any items which may obstruct the Company's access. Such items include, but are not limited to, building additions, docks, patios, pools, fences or pavings. Relocation of the Company's facilities, as provided in Section 5.3 of these Rules and Regulations, may be necessary. Should an item interfere with access to Company facilities requiring repair or maintenance, the Company will explore with the Customer all alternatives deemed feasible by the Company to determine the method of repair most acceptable to the Customer. When the most acceptable or only option involves the Customer removing the obstruction or the Customer taking other actions, the Customer shall accomplish the work within 20 working days. Should the Customer fail to accomplish said work within 20 working days or to make other satisfactory arrangements with the Company, the Company may elect to discontinue service to the Customer, pursuant to F.A.C. Rule 25-6.105 (5) (f). In all cases, the Customer will be responsible for all costs in excess of a standard, unobstructed repair.

6 SECURITY DEPOSITS/GUARANTIES**6.1 Security Deposit/Guaranty**

- (1) Before the Company renders service or upon termination of an existing Unconditional Guaranty Contract, etc., applicant will be required to provide
 - a) information which satisfies the Company's application requirements for no deposit; or
 - b) a Security Deposit consisting of cash, surety bond, or irrevocable bank letter of credit; or
 - c) a guaranty satisfactory to the Company to secure payment of bills.
- (2) Each guarantor must enter into a guaranty contract set forth as Tent Sheet No. 9.400 or 9.410. The amount of such Initial Security Deposit, if required, shall be based upon estimated billings for a period of two average months, but not less than \$25.00. Estimations shall be based on previous billings at the service address, and/or the equipment/appliances in service or to be put into service. After four (4) months history is recorded, the initial Security Deposit may be adjusted to compensate for over or under estimations. Such adjustment may consider seasonal factors. After twelve (12) months of billing history is recorded, the initial Security Deposit may again be adjusted to compensate for over or under estimations. The Company may require a subsequent Security Deposit from a Customer, including one whose initial Security Deposit was refunded/released. A Security Deposit/Guaranty may be held by the Company until refunded or released under the terms of rule 6.3.

CHAPTER 359

PUBLIC UTILITIES

- 359.01 Legislative declaration.
- 359.018 Interagency liaison.
- 359.02 Definitions.
- 359.03 General duties of public utility.
- 359.031 Definitions; preference relating to cable television prohibited; penalties.
- 359.04 Jurisdiction of commission.
- 359.041 Rate fixing; adequacy of facilities as criterion.
- 359.05 Powers.
- 359.051 Cogeneration; small power production; commission jurisdiction.
- 359.055 Availability of, and payment for, energy reserves.
- 359.06 Rates; procedure for fixing and changing.
- 359.07 Rates; adjustment.
- 359.071 Interim rates; procedure.
- 359.072 Rate adjustment orders.
- 359.075 Experimental and transitional rates.
- 359.076 Limited proceedings; rules on subsequent adjustments.
- 359.08 Investigations, inspections; power of commission.
- 359.09 Incrimination at hearing of commission.
- 359.093 Public utility records; confidentiality.
- 359.095 Penalties.
- 359.10 Judicial review.
- 359.11 Certain exemptions.
- 359.125 Natural gas jurisdiction limits.
- 359.13 Taxes, not affected.
- 359.14 Regulatory assessment fees.
- 359.20 Short title.
- 359.21 Legislative findings and intent.
- 359.22 Definition; goals; plans; programs; annual reports; energy audits.
- 359.225 Clean Air Act compliance; definitions; goals; plans.
- 359.2255 Environmental cost recovery.
- 359.23 Certain laws not applicable; saving clause.
- 359.25 Responsibilities of Division of Consumer Services.

359.01 Legislative declaration.—The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

History.— s. 1, ch. 2628, 1951; s. 2, ch. 70-102, s. 1, ch. 77-427, s. 1, ch. 80-26; s. 2, ch. 81-319, ss. 22, 23, ch. 82-222; s. 2, ch. 81-429

359.018 Interagency liaison.—The commission is directed to provide for, and assume primary responsibility for, establishing and maintaining continuous liaison with all other appropriate state and federal agencies whose policy decisions and rulemaking authority affect those utilities over which the commission has primary regulatory jurisdiction. This liaison shall be conducted at the policymaking levels as well as the depart-

ment, division, or bureau levels. Active participation in other agencies' public hearings is encouraged to transmit the commission's policy positions and information requirements, in order to provide for more efficient regulation.

History.— s. 2, ch. 70-102, s. 2, ch. 70-102, s. 1, ch. 77-427, s. 1, ch. 80-26; s. 2, ch. 81-319, ss. 22, 23, ch. 82-222; s. 4, ch. 81-429

359.02 Definitions.—As used in this chapter:

(1) "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; any dependent or independent special natural gas district; any natural gas transmission pipeline company making only sales or transportation delivery of natural gas at wholesale and to direct industrial consumers; any entity selling or arranging for sales of natural gas which neither owns nor operates natural gas transmission or distribution facilities within the state; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, or owning or operating facilities beyond the outlet of a meter through which natural gas is supplied for compression and delivery into motor vehicle fuel tanks or other transportation containers, unless such person also supplies electricity or manufactured or natural gas.

(2) "Electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

(3) "Commission" means the Florida Public Service Commission.

History.— s. 2, ch. 2628, 1951; s. 2, ch. 70-102, s. 1, ch. 77-427, s. 1, ch. 80-26; s. 2, ch. 81-319, ss. 1, 22, 23, ch. 82-222; s. 4, ch. 81-429; s. 14, ch. 82-784

359.03 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. No public utility shall be required to furnish electricity or gas for resale except that a public utility may be required to furnish gas for containerized resale. All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

History.— s. 2, ch. 2628, 1951; s. 2, ch. 70-102, s. 1, ch. 77-427, s. 1, ch. 80-26; s. 2, ch. 81-319, ss. 1, 12, ch. 82-784, ss. 20, 22, ch. 82-222; s. 4, ch. 81-429

359.031 Definitions; preference relating to cable television prohibited; penalties.—

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Rich and
Carol Samale against Florida
Power and Light Company
regarding utility pole
relocation charges.

DOCKET NO. 930361-EI
ORDER NO. PSC-93-1039-POF-EI
ISSUED: July 13, 1993

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LOUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING COMPLAINT BY RICH AND CAROL SAMALE
AGAINST FLORIDA POWER AND LIGHT COMPANY

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
adversely affected files a petition for a formal proceeding,
pursuant to Rule 28-22.029, Florida Administrative Code.

On November 30, 1992, the Samales (complainants) contacted the
Division of Consumer Affairs, stating that their new home was
determined by the electrical inspector to be too close to Florida
Power & Light Company's (FPL) power line. The complainants were
informed by FPL that facility relocation would cost in the vicinity
of \$2,000. The complainants asked for reconsideration of having to
pay the cost to relocate FPL's facilities.

According to FPL's report dated December 11, 1992, the house
under construction at 1856 Bayshore Road, Englewood, was in
violation of the National Electric Code. FPL stated that the roof
overhang on the north side of the house did not have the proper
clearance from the existing electric facilities. In early
November, 1992, FPL notified Jeff Hutchinson, the complainant's
building contractor, and Marshal Dixon, Sarasota County electrical
inspector, of the violation. FPL gave a job design and cost
estimate for relocating FPL's facilities to Mr. Hutchinson and the
complainants.

ORDER NO. PSC-93-1829-POP-RI
DOCKET NO. 930361-RI
PAGE 2

FPL further stated that since neither Mr. Hutchinson nor the complainants paid the relocation costs, and the construction of the home continued, Mr. Henry Vartanian with the Occupational Safety & Health Administration was notified November 20, 1992, about what FPL considered a dangerous situation. FPL reported that Mr. Hutchinson, the building contractor, then agreed to pay the cost of \$1,849 to relocate FPL's facilities. FPL then shortened the appropriate lateral by 20 to 30 feet, removed one pole, and installed a new pole.

The complainants filed a formal complaint with the Commission, asserting that FPL did not remove the pole and the total bill was \$9 more than stated in FPL's February 23, 1992, enumeration of the involved costs. The complainants requested that the \$393 for removal of the pole be refunded and that the \$9 overcharge be refunded. The complainant also requested that a partial refund of the remaining charges be made, alleging that FPL had previously planned on installing a new transformer on the old pole at no cost.

FPL responded that the old pole could not be removed until the local cable television company removed its attachment on the old pole. Once the cable company had removed its attachment, the pole was then removed. FPL further stated that the complainants were not overcharged \$9; instead, the total of \$1849 shown in the cost enumeration was a typographical error. All of the listed costs of the bill actually totaled \$1849. Even though it was not required, FPL refunded the \$9 to the complainants by May 18, 1993.

FPL also explained that the \$1849 paid by the complainants included only the costs for relocating FPL's existing facilities. Some of the costs associated with installing a new transformer were included in the total cost of \$1849.

We find that FPL was proper in requiring the complainants to pay for relocating its existing facilities. FPL's tariff, Eighth Revised Sheet No. 6.040, paragraph 8.3 entitled "Relocation of Company's Facilities," which is approved by the Commission, provides that

"When there is a change in the Customer's operation or construction which, in the judgment of the Company, makes the relocation of Company's facilities necessary, or if such relocation is requested by the Customer, the Company will move such facilities at the Customer's expense to a location which is acceptable to the Company."

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It has long been a Commission policy where practical to place additional costs on those customers who cause them, as other ratepayers who do not request special services such as facilities relocation are not required to subsidize those who do. In this case, only the complainants benefitted from the relocation of FPL's existing facilities. Therefore, we find that FPL acted properly in accordance with its tariff in billing the complainants for the work.

We find that the billing of \$1849 was proper and reasonable. We note that the old pole was not moved until April 20, 1993, two weeks after this case was docketed and that perhaps this should have been expeditious. FPL has refunded \$9 since the complainants believed that they were overcharged, which brought the disputed amount to \$1840. Consequently, we do not find that any adjustment in the billing should be ordered.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that no adjustments shall be made in the billing of facility relocation costs to the Service, as discussed in the body of this Order. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0470, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By **ORDER** of the Florida Public Service Commission this 11th day of July, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
NAA:umi

by: Karen Hagan
Chief, Bureau of Records

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Catalpa Cove against Florida Power and Light Company regarding the cost of removal of facilities not on an easement.

DOCKET NO. 930789-EI
ORDER NO. PSC-93-1375-PDF-EI
ISSUED: September 20, 1993

The following Commissioners participated in the disposition of this matter:

- J. TERRY DEACON, Chairman
SUSAN P. CLARK
JULIA L. JOHNSON
LEWIS J. LAWRENCE

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING RELIEF TO COMPLAINANT AGAINST FLORIDA POWER AND LIGHT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 28-22.030, Florida Administrative Code.

Iona Development Corporation (Catalpa Cove) filed this consumer complaint against the Florida Power and Light Company (FPL or utility), regarding the cost of relocating electrical facilities. Catalpa Cove has paid the relocation costs under protest and now seeks a refund of those costs. The facilities in question are an underground multi-family service, including six pad-mounted transformers located aboveground.

The electrical facilities are located on property which was under development in 1984 by Iona Point Limited (a separate entity unrelated to Catalpa Cove). At that time, FPL had an existing overhead line, with an easement, which ran through the center of the property to serve a customer located at the other end of the parcel.

After its plans were approved by Leon County, Iona Point Limited was permitted to construct roads, docks, water and sewer lines, a sewer lift station, and a sewage treatment plant. These facilities were installed and the developer requested installation of underground electric facilities to serve the multiple occupancy

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residential units planned for the development. Iona Point provided FPL plan drawings showing all facilities that had been constructed and easements to be platted. The developer also requested removal of the overhead line which ran down the center of the property.

Pursuant to its tariff 18.6, FPL installed the underground multi-family service, which included six pad-mounted transformers aboveground. The utility also relocated the existing overhead line to the east boundary of the property to serve the sewage treatment plant and to continue to serve the customer at the end of the property.

FPL did not record easements for the new overhead line location or for the underground service. Neither did it vacate the easement which existed for the line which had run through the center of the property. FPL states that easements were not obtained prior to the installation of the facilities because the original developer must survey the underground facilities after installation to establish the actual easement locations. FPL asserts that this is not uncommon in multiple occupancy developments, due to meandering cable routes and lack of established inner lot lines.

FPL further explained it will not always require advance easements if the utility is dealing with a reputable developer, a letter of intent is supplied, or easements are platted in the documents. FPL states that easements are recorded and unused easements are released when the property is platted and a final development order is issued.

After FPL installed facilities at the request of Iona Point Limited, FPL reported that the developer and Lee County entered into a conflict over the building density of the parcel, and the final development order was never issued. Iona Point, in turn, did not or could not plat the parcel. Consequently, no easements were ever recorded or released. The property was subsequently involved in bankruptcy proceedings between Iona Point Limited and Gold Dome Savings Bank.

Catalpa Cove entered into a contract for purchase of the property on November 16, 1990. Closing for purchase was executed on December 26, 1990. Catalpa Cove stated that prior to purchase a visual inspection of the property was made, a title search was performed, an environmental audit was conducted, and a zoning and permitting review was done. Catalpa Cove further states that,

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after closing, a boundary survey was done to confirm the exact boundary and a second survey was done to determine encroachment of FPL poles. No survey was done prior to closing. Catalpa Cove states it was unaware of the existence of FPL facilities since they were not on recorded easements and therefore were not a matter of public record.

When Catalpa Cove began its development of the property, it became clear that the current facilities would need to be reconfigured and relocated. Catalpa Cove also needed removal of an existing aboveground pole, which was in the planned roadway, and the unused existing easement down the center of the property relinquished. FPL needed an easement on the east boundary for the poles which had been moved to the location from the easement in the center of the property. The parties entered into an agreement to remove the pole in question, and FPL filed a quit claim deed for the existing easement. In turn, Catalpa Cove granted an easement for the poles on the east boundary and FPL placed these lines underground.

FPL records indicate the six pad-mounted transformer boxes on the property were 3 1/3 by 3 feet by 20-25 inches high and were set on 4 1/3 by 3 feet concrete pads. FPL says the boxes were not covered with trash or brush, and that five of the six could be seen from the road. FPL also said the transformers were visited periodically and serviced during the period the property was vacant.

Remaining in dispute is the relocation cost for the multi-family underground facilities. Pursuant to an agreement executed in November, 1993, Catalpa Cove paid under protest for the relocation and reconfiguration of the existing multi-family underground facilities in order to expedite the work. The agreement calls for refund of the disputed amount plus 6.99 interest if the Commission or a court determines the charges were not due.

Catalpa Cove seeks a refund of \$38,134 paid to FPL for the removal and reconfiguration of the multi-family underground service and transformers. The cost of underground service for the existing 79 homesites is not in dispute and would have been paid if there had been no existing facilities on the property. This undisputed cost totals \$38,961, less a credit of \$1,364 for work performed by Catalpa Cove.

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FPL's tariff 8.3 Relocation of Customer's Facilities, states that "when there is a change in the Customer's operation or construction which, in the judgement of the Company, makes the relocation of Company's facilities necessary, or if such relocation is requested by the Customer, the Company will move such facilities at the Customer's expense to a location which is acceptable to the Company." The purpose of this tariff is to assure that the customer causing a cost bears the burden of that expense, rather than the expense being passed on to the general body of ratepayers. We find that the tariff was properly applied to Catalpa Cove's situation, and the charges paid were due and proper.

Catalpa Cove argues that FPL had no recorded easement for the facilities, therefore Catalpa had no knowledge of the facilities and FPL had no right to have the facilities on the property. FPL counters by stating that FPL obtained consent to place the facilities on the property from the prior landowner. FPL argues that the real issue is whether Catalpa Cove knew or should have known of the physical presence of the facilities on the property, asserting that the facilities were visible or because Catalpa knew that the original landowner was a failed developer who had made some improvements to the land.

We find that this controversy presents issues of property law which do not fully lie within the Commission's jurisdiction. The Commission lacks the power to issue and enforce the appropriate remedial action which would resolve the easement dispute. Consequently, any examination of the factual issues or the legal arguments relating to the easement dispute would be futile. We believe the easement dispute must be addressed by a court of competent jurisdiction, should the parties wish to pursue the matter.

We have been advised by other investor-owned utilities that they would not normally install primary service, either single-family or multi-family, to a subdivision before proper easements are recorded. We find that FPL should revise its internal procedures to adopt a similar policy so that future problems and conflicts of this nature are avoided.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Florida Power and Light Company has not violated its tariff in charging the costs of electrical facility relocation to Catalpa Cove. It is further

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ORDERED that all other issues of this controversy are dismissed, as more appropriate to adjudication by a court of law. It is further

ORDERED that the Florida Power and Light Company review and revise its internal procedures with regard to obtaining easements. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0070, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission this 20th day of September, 1993.


STEVE TRINKLE, Director
Division of Records and Reporting

(S E A L)
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Commissioner Luis Laurodo dissented as follows:

Commissioner Laurodo concurs with the Commission's finding that the Florida Power and Light Company shall review and revise its internal procedures with regard to obtaining easements. Commissioner Laurodo dissents from the Commission's decisions on all other issues in this docket.

Commissioners:
 JULIA L. JOHNSON, CHAIRMAN
 J. TERRY DEASON
 SUSAN F. CLARK
 JOE GARCIA
 E. LEON JACOBS, JR.



DIVISION OF ELECTRIC & GAS
 JOSEPH D. JENKINS
 DIRECTOR
 (850) 413-6700

Public Service Commission

July 27, 1998

Mr. Paul Leon
 Olazabo
 180 Aragon Avenue
 Coral Gables, Florida 33134

Dear Mr. Leon:

This is in reference to your telephone call on May 29, 1998, regarding the cost of moving a power pole. Florida Power and Light (FPL) provided an itemized cost estimate of charges to relocate the pole. The estimate was \$6,894.00, a large part of the cost is for labor and equipment use. The reason for the high labor cost is the number of facilities located on the pole. In order to move the pole a new pole must be set and the existing facilities transferred to it. The facilities that must be transferred includes a three-phase feeder, secondary conductors, street light, telephone, and traffic control equipment.

Mr. Ed Gross, of the Commission's Miami Office, visited the site to verify the facilities that must be transferred to the new pole. Mr. Gross reviewed the estimate of cost provided by FPL and determined that the estimate was reasonable. After reviewing the estimate of cost and talking to Mr. Gross, I agree with his conclusion. Since moving the pole is for the benefit of one customer, that customer must pay the cost of moving the pole.

Unless you have additional concerns, we will consider this investigation closed. Please note that if you object to the resolution of your inquiry/complaint proposed in this letter, you may request an informal conference on the matter, pursuant to Rule 25-22.032(4), Florida Administrative Code. Should you wish to request an informal conference, please send your request in writing, to Coverlee DeMello, Director, Division of Consumer Affairs, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within 30 days after the date of this letter.

If you have any questions, please call me at (850)413-6694.

Sincerely,

James Ruhl, Engineer Supervisor
 Bureau of Conservation/Systems Planning
 and Electric Safety

JR:kt