

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Rosario Rojo against
Florida Power & Light Company, Case No.
858880E.

DOCKET NO. 110069-EI
ORDER NO. PSC-11-0285-FOF-EI
ISSUED: June 29, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S
MOTION TO DISMISS COMPLAINT WITH PREJUDICE

I. Case Background

On March 15, 2011, Ms. Rosario Rojo (Ms. Rojo) filed a one page formal complaint (Complaint) against Florida Power & Light Company (FPL) alleging that FPL has created a financial burden on her emotionally and financially.

On April 4, 2011, FPL filed its Motion to Dismiss Complaint with Prejudice (FPL's Motion) asserting that the complaint failed to meet the established pleading requirements and states no cause of action for which relief can be granted.

On April 12, 2011, Ms. Rojo filed a Motion for Extension of Time to respond to FPL's Motion. Order No. PSC-11-0207-PCO-EI was issued on April 26, 2011, granting Ms. Rojo's Motion for Extension of Time. On April 12, 2011, Ms. Rojo also filed a single page Motion in Opposition (Rojo's Response) in response to FPL's dismissal motion. In her response, Ms. Rojo requested that FPL's Motion be denied because of alleged false allegations made with malice and bad faith.

On April 19, 2011, FPL filed its Reply asserting that Ms. Rojo's Motion to Oppose merely reiterates her accusations in her complaint of bad faith and malice and should be rejected.

We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.).

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II. Analysis

Standard of Review

A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action. Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000). The standard to be applied in disposing of a motion to dismiss is whether, with all the allegations in the petition assumed to be true, the petition states a cause of action upon which relief can be granted. Id. When making this determination, only the petition and documents incorporated therein can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993); Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DA 1958), overruled on other grounds, 153 So. 2d 759, 765 (Fla. 1st DCA 1963); and Rule 1.130, Florida Rules of Civil Procedure. When "determining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side." Varnes v. Dawkins at 350.

Ms. Rojo's Complaint

Ms. Rojo filed a one page complaint stating that she is seeking protection to seek relief from FPL, because FPL acted in bad faith and with malice while denying wrongdoing. Ms. Rojo also asserted that:

- FPL's actions created a financial burden on her, emotionally and financially;
- FPL has the power and resources to deny the complaint;
- She requests protection to seek relief from FPL's abusive practices, bad faith, and malice; and
- FPL denies wrongdoing but holds a monopoly that forces clients to accept its abuse.

FPL's Motion to Dismiss with Prejudice

FPL, in its response to Ms. Rojo's complaint, sought dismissal of the complaint with prejudice because:

- Ms. Rojo failed to state a cause of action upon which relief can be granted;¹

¹ FPL cited Order No. PSC-07-0332-PAA-TP, issued on April 16, 2007, in Docket No. 060640-TP, In re: Petition to investigate, claim, for damages, complaint and other statements against respondents Evercom systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation by Bessie Russ (citing In re: Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc. 95 FPSC 5:339 (1995)); and Varnes, at 50.

- Ms. Rojo did not comply with the established pleading requirements of Rule 25-22.036, Florida Administrative Code (F.A.C.), as the complaint lists procedural rules but alleges no violations that would invoke our jurisdiction;²
- The complaint's vagueness makes it impossible for FPL to formulate a response;
- Ms. Rojo has over four separate accounts with FPL and is attempting to avoid paying her outstanding balances;
- Ms. Rojo has filed multiple complaints and in each instance, we determined that FPL acted properly;³ and
- Ms. Rojo's current pleading and her past practice suggest re-pleading could not state a cause of action.⁴

Ms. Rojo's Motion in Opposition

In her response, Ms. Rojo repeated her accusations outlined in her complaint and stated as follows:

- FPL's dismissal motion was filed in bad faith and with malice;
- FPL's claims were false and unethical; and
- FPL's dismissal motion should be denied.

FPL's Reply to Ms. Rojo's Motion in Opposition

FPL's Reply reiterated Ms. Rojo's inability to show any violations by FPL that would invoke our jurisdiction. FPL declared that:

- Ms. Rojo's Motion to Oppose should be interpreted as an attempt at a response to FPL's dismissal motion; or

² FPL asserted that Ms. Rojo's complaint fails to meet any part of Rule 25-22.036, F.A.C., which states in 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.

³ FPL contended that numerous letters sent to Ms. Rojo dated October 8, 2009, November 24, 2009, August 18, 2010, and March 10, 2011, demonstrating that Ms. Rojo's concerns were adequately addressed and that no violations were found of any statutes, rules, or Orders.

⁴ FPL also stated that "[i]n order to determine whether the petition states a cause of action upon which relief may be granted, it is necessary to examine the elements needed to be alleged under the substantive law on the matter. All of the elements of a cause of action must be properly alleged in a pleading that seeks affirmative relief. If they are not the pleading should be dismissed." FPL cites Order No. PSC-99-1054-FOF-EI at 3, issued on May 24, 1999, in Docket No. 981923-EI, In re: Complaint and petition of John Charles Heekn against Florida Power & Light Co.

- Ms. Rojo's Motion to Oppose should be interpreted as a request for permission to reply to FPL's dismissal motion.

III. Decision

A motion to dismiss is granted upon a finding that the pleading fails to state a cause of action upon which relief can be granted.⁵ Rule 25-22.036(2), F.A.C., outlines the procedure for filing a formal complaint.⁶ A pleading that conforms to this rule outlines the act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought. We find that Ms. Rojo's complaint fails to comply with the requirements of Rule 25-22.036(2), F.A.C., as there was no assertion of FPL's act or omission that resulted in a violation affecting Ms. Rojo's substantive interest. Ms. Rojo also did not allege any injury suffered or sought a remedy for which we can grant relief.⁷

Additionally, we determined in Order No. PSC-99-1054-FOF-EI that a petitioner must show the elements of the substantive law violated and properly allege the cause of action.⁸ We find that Ms. Rojo did not demonstrate the required "elements of a cause of action" or provide supporting documentation of any violations.

We therefore find it appropriate to grant FPL's motion to dismiss with prejudice because 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 Ms. Rojo, the complaint fails to state a cause of action upon which relief can be granted. Furthermore, we

⁵ See Order No. PSC-11-0117-FOF-PU, issued on February 17, 2011, in Docket No. 100312-EI, Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes (granting motion to dismiss with prejudice).

⁶ See Rule 25-22.036(2), F.A.C., *Initiation of Formal Proceedings; Complaints*, states:

(2) Complaints. A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.

(3) Form and Content.

(a) Application. An application shall be governed by the statute or rules applicable to applications for authority. In the absence of a specific form and content, the application shall conform to this rule.

(b) Complaint. Each complaint, in addition to the requirements of paragraph (a) above shall also 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.

⁷ See Order No. PSC-10-0685-FOF-EQ, issued on November 15, 2010, in Docket No. 090372-EQ, Petition for approval of negotiated purchase power contract with FB Energy, LLC by Progress Energy Florida (granting motion to dismiss amended protest with prejudice); and Order No. PSC-08-0380-PCO-EI, issued on June 9, 2008, in Docket No. 080039-EI, Complaint of Sallijo A. Freeman against Florida Power & Light Company for violation of Rule 25-6.105, F.A.C. (granting motion to dismiss).

⁸ See 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)).

find that the underlying substance of Ms. Rojo's complaint has factual and legal deficiencies and that an amended complaint will not cure these deficiencies. Therefore, Ms. Rojo's complaint is dismissed with prejudice.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Motion to Dismiss is granted, with prejudice. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 29th day of June, 2011.



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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.