

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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
ORDER NO. PSC-14-0475-FOF-EI
ISSUED: September 8, 2014

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 WITH PREJUDICE

BY THE COMMISSION:

CASE BACKGROUND

On December 5, 2013, Mr. Ricca filed a formal complaint against Florida Power & Light (FPL) and requested a formal hearing. On January 7, 2014, FPL filed a Motion to Dismiss the complaint with prejudice. On January 8, 2014, Mr. Ricca filed a response to FPL's Motion to Dismiss.

On April 23, 2014, we issued Order No. PSC-14-0191-FOF-EI, dismissing without prejudice the petition for failure to state a cause of action upon which relief can be granted and for its nonconformance with either Rules 25-22.036 or 28-106.201, Florida Administrative Code (F.A.C.). In our Order, we granted Mr. Ricca the opportunity to file an amended complaint, provided the amended complaint "conform[ed] to the pleading requirements of Rule 28-106.201, F.A.C., and [sought] relief within the Commission's jurisdiction."¹

On May 5, 2014, Mr. Ricca filed an Amended Complaint for a formal hearing in response to our order dismissing his pleading.² On May 27, 2014, FPL filed a Motion to Dismiss with Prejudice, requesting dismissal of the amended petition.³ Mr. Ricca did not file a response to FPL's motion to dismiss. Neither party requested oral argument.

¹ See, Order No. PSC-14-0191-FOF-EI, issued April 23, 2014, in Docket No. 130290-EI – Initiation of formal proceedings of Complaint No. 1115382E of Brian J. Ricca against Florida Power & Light, for failing to provide reasonable service, p. 8.

² See, Document No. 02097-14, in Docket No. 130290-EI, Mr. Ricca's amended request for formal hearing, dated May 4, 201, lodging violation and complaint against FPL.

³ See, Document No. 02533-14 in Docket No. 130290-EI, FPL's Motion to Dismiss Amendment to Complaint of Brian J. Ricca with Prejudice, dated May 27, 2014.

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

DECISION

A motion to dismiss is granted upon a finding that the pleading failed to state a cause of action upon which relief can be granted.⁴ Rules 25-22.036 and 28-106.201, F.A.C., outline the procedure for filing a formal complaint. A pleading that conforms to the rules provides the act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought.⁵

Section 120.569(2)(c), F.S., provides:

Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition.

(emphasis added).

By Order No. PSC-14-0191-FOF-EI, issued on April 23, 2014, we dismissed Mr. Ricca's original complaint and request for formal hearing without prejudice, finding that the complaint failed to state a cause of action upon which relief could be granted and did not conform to the pleading requirements of Rules 25-22.036 or 28-106.201, F.A.C. The Order, however, permitted Mr. Ricca the opportunity to file an amended complaint, provided the amended complaint "conform[ed] to the pleading requirements of Rule 28-106.201, F.A.C., and [sought] relief within the Commission's jurisdiction."⁶

In his Amended Complaint, Mr. Ricca asked us to review his complaint and "offer any relief available under the FPSC jurisdiction," to help him "keep costs down to a reasonable level." Specifically, Mr. Ricca requested that FPL (1) offer Mr. Ricca a payment plan for the

⁴ See, Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company; and 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).

⁵ See, Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company.

⁶ See, Order No. PSC-14-0191-FOF-EI, issued April 23, 2014, in Docket No. 130290-EI – Initiation of formal proceedings of Complaint No. 1115382E of Brian J. Ricca against Florida Power & Light, for failing to provide reasonable service, p. 8.

CIAC installation charges; (2) provide Mr. Ricca with a more detailed cost estimate; (3) perform the new installation at lesser cost, if a lower cost estimate is provided by a “certified Florida utility engineer;” (4) permit a private contractor to perform the overhead installation; and/or (5) only charge Mr. Ricca one-third ($\frac{1}{3}$) of the CIAC installation costs.

Mr. Ricca argued that FPL violated Section 366.03, F.S., by providing “inefficient service due to internal errors within the original quote for CIAC charges” and other violations, “including FPL’s ability to prove their quote is valid.” Mr. Ricca reasoned that, because he discovered a shorter and cheaper route for providing service to his home, FPL’s original quote contained errors and was not valid. Mr. Ricca argued that the “law requires the utility to provide reasonable efficient service which would not only mean the shortest route but also timely service,” and FPL’s large delay in providing service and the risk of overpayment for new service is not reasonably efficient service. As FPL correctly argued, however, Mr. Ricca failed to present any legal or factual claim upon which we may grant relief, thus, FPL’s Motion to Dismiss should be granted and the Amended Complaint dismissed with prejudice.

We observe that, as in his original complaint, Mr. Ricca provided no specific facts or evidence in his Amended Complaint of how FPL violated Section 366.03, F.S. Rather, Mr. Ricca broadly asserted that FPL violated Section 366.03, F.S., by failing to provide him with efficient service “due to internal errors within the original quote for CIAC charges.” As stated in our prior Order dismissing Mr. Ricca’s original complaint, Section 366.03, F.S., provides for the “General Duties of Public Utility,” and requires public utilities to furnish “reasonably sufficient, adequate, and efficient service upon terms as required by the commission” to each person applying for service.⁷ Section 366.03, F.S., does not require utilities to install new service free of charge or at a reduced cost; nor does it require that a utility take “the shortest or cheapest” route when installing new electrical service. Rather, the statute only requires the service be sufficient, adequate, and efficient, and comply with Commission requirements.⁸

Despite the lack of legally sufficient pleading, we attempted to determine whether any facts within Mr. Ricca’s Amended Complaint could support a situation where we would have jurisdiction to grant Mr. Ricca some relief. After conducting significant research into the substance of the Amended Complaint’s allegations, we were unable to identify any situation in which Mr. Ricca’s alleged facts and legal arguments would constitute a claim that was within our statutory jurisdiction to resolve. It is clear that, after a thorough review of the facts, Mr. Ricca’s Amended Complaint fails to state any claim upon which this Commission may grant any relief. Moreover, we found no evidence that FPL violated any statute, rule, tariff or other Commission requirement in its dealings with Mr. Ricca regarding the CIAC estimates to provide new electrical service to the partially constructed residence in North Port, Florida.

⁷ See, Order No. PSC-14-0191-FOF-EI, issued April 23, 2014, in Docket No. 130290-EI – Initiation of formal proceedings of Complaint No. 1115382E of Brian J. Ricca against Florida Power & Light, for failing to provide reasonable service, p. 6.

⁸ Id.

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 in estimating the total amount of annual revenues” that the new “facilities are expected to produce.”⁹ When estimating the annual revenues likely to be produced by installing electrical service to a new area, a utility will usually estimate the direction of development an area is likely to take and formulate an installation plan along the “route” most likely to provide future customers with the most “sufficient, adequate and efficient” service in accordance with Commission requirements. As outlined in our prior Order, we reviewed all of the CIAC estimates provided by FPL at Mr. Ricca’s request, pursuant to Rule 25-6.064(9), F.A.C., and found that FPL’s estimates were calculated in accordance with our rules and FPL’s Commission-approved, tariff provision.¹⁰ Although Mr. Ricca asserted that FPL’s CIAC estimates contained errors and/or were invalid, Mr. Ricca provided no specific facts or evidence to illustrate that any of FPL’s three CIAC estimates were erroneous or invalid. Without specific facts or evidence to suggest a utility’s installation plan is insufficient, inadequate, inefficient, or fails to comply with Commission requirements, we cannot order a utility to install new electrical service along the “shortest or cheapest route.”

We find that Mr. Ricca’s Amended Complaint does not substantially comply with Rules 25-22.036 or 28.106.201(2), F.A.C. 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, we find the Amended Complaint fails to state a cause of action that would invoke our jurisdiction or permit us to grant any of the relief requested. Therefore, pursuant to Section 120.569(2)(c), F.S., Mr. Ricca’s Amended Complaint should be dismissed.

Conclusion

We hereby grant FPL’s Motion to Dismiss and dismiss Mr. Ricca’s Amended Complaint with prejudice, finding the Amended Complaint again, fails to state a cause of action upon which relief can be granted, does not substantially comply with Rules 25-22.036 and 28-106.201, F.A.C., and fails to cure the deficiencies identified in the initial complaint.

While we are sensitive to Mr. Ricca’s circumstances, and despite the lack of a legally sufficient pleading, we found no evidence that FPL or its CIAC estimates, violated any statute, rule, tariff or other Commission requirement, nor found any situation where we would have jurisdiction to grant Mr. Ricca some relief. While we are unable to grant any of the relief requested by Mr. Ricca, we would urge the parties to continue negotiating regarding payment of CIAC costs.

⁹ See Rule 25-6.064(6), F.A.C.

¹⁰ Id.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Motion to Dismiss Amendment to Complaint of Brian J. Ricca with Prejudice is hereby granted. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of September, 2014.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KFC

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.