

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by James DiGirolamo vs. Florida) Docket No. 150169-EI
Power & Light Company)
_____) Filed: August 7, 2015

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

Florida Power & Light Company, Inc. ("FPL") hereby files, pursuant to Rule 28-106.204, Florida Administrative Code, this Motion to Dismiss the Complaint filed by Petitioner James DiGirolamo in this docket. For the reasons set forth below, the Florida Public Service Commission ("Commission") should dismiss the Petitioner's Complaint.

I. INTRODUCTION

Petitioner's Complaint should be dismissed because it falls far short of the well established pleadings requirements that a Complaint must meet to be deemed sufficient. Beyond the pleading requirements in the Florida Administrative Code, the Complaint fails to state any cause of action whatsoever for which relief could be granted by the Commission. Furthermore, the 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 Complaint. The vagueness of the Complaint also makes it impossible for FPL to adequately respond without engaging in a substantial amount of conjecture as to the true facts in the instant situation. For these reasons, 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 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). 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 action upon which relief may be granted. See, e.g., *Ralph v. City of Daytona Beach*, 471 So.2d 1,2 (Fla. 1983); *Orlando Sports Stadium, Inc. v. State of Florida ex reI Powell*, 262 So.2d 881, 883 (Fla. 1972); *Kest v. Nathanson*, 216 So.2d 233, 235 (Fla. 4th DCA, 1968); *Ocala Loan Co. v. Smith*, 155 So.2d 711, 715 (Fla. 1st DCA, 1963).

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

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.

Petitioner’s Complaint fails to satisfy any part of Rule 25-22.036, F.A.C. In the Complaint, Petitioner fails to cite or reference any rule, order or statute which FPL has allegedly violated. Without this required information, FPL cannot adequately research, prepare and formulate a defense. For this reason alone, the Complaint should be dismissed.

Petitioner’s Complaint makes allegations of fact related to their bills increasing after installation of smart meters at their business. Petitioner alleges that their usage has remained the same, without providing details of this statement.¹ Finally, Petitioner claims that “[t]here is no way our little business, is taxing or creating demand on the electrical grid, as FPL suggests.”

The Petitioner's allegations are vague and ambiguous at best, and contain no mention of rules, statutes or orders which allegedly have been violated.

Furthermore, there is no mention of a cause of action. Simply alleging that Petitioner does not agree with FPL's monthly bills for service is not a legal cause of action which is within the authority of the Commission to grant relief. To sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. *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*, Order No. PSC-07-0332-PAA-TP, Docket No. 060640-TP (Issued April 16, 2007), 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); *Varnes*, at 350. "In 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." See, *In re: Complaint and petition of John Charles Heekin against Florida Power & Light Co.*, Order No. PSC-99-1054-FOF-EI at 3, Docket No. 981923-EI, (Issued May 24, 1999). Plaintiff has failed to allege an action at law for which relief could be granted under the vague facts stated in the Complaint.

Finally, Petitioner states "[w]e seek immediate relief, from these unrealistic charges," but does not specify or even suggest what relief is sought. Even reading Petitioner's Complaint in the most favorable light possible for the Petitioner, it essentially ignores the well established

¹ Petitioner simply states at one point "If you research our history, it will prove this," and later states "again check our records."

pleading requirements for a complaint before the Commission, and therefore the Petitioner's Complaint must be dismissed.²

Petitioner's Complaint fails to properly allege each of the required elements to state a cause of action. Without properly pleading the required elements, FPL is left to guess what actions are specifically in violation of which specific rule, order or statute. As such, FPL cannot properly investigate and prepare a response to the Complaint before the Florida Public Service Commission. Therefore, 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 7th day of August, 2015.

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² Additionally, Petitioner fails to properly identify the name and address of the party against whom the Complaint is lodged. The Petition refers only to "FPL" without providing the address as required by Rule 25-22.036, F.A.C.

CERTIFICATE OF SERVICE
Docket No. 150169-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via *U.S. Mail or +electronic delivery this 7th day of August, 2015, to the following:

* James DiGirolamo
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