

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Erika Alvarez, Jerry
Buechler, and Richard C. Silvestri against
Florida Power & Light Company.

DOCKET NO. 150185-EI
ORDER NO. PSC-15-0496-FOF-EI
ISSUED: October 23, 2015

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
JULIE I. BROWN
JIMMY PATRONIS

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S
MOTION TO DISMISS WITHOUT PREJUDICE

BY THE COMMISSION:

BACKGROUND

The instant docket is a complaint against Florida Power & Light Company (FPL) by three FPL customers, Erika Alvarez, Jerry Buechler, and Richard C. Silvestri (collectively referred to as Petitioners), who were unable to procure a residential solar photovoltaic (PV) rebate reservation during FPL's online residential solar PV rebate reservation offering in January 2015. Petitioners allege that FPL's administration of its online residential solar rebate reservation program was unfair and violated our Orders and Florida Statutes, F.S., governing energy conservation goals and programs.

Conservation Goals and Solar Pilot Programs

Sections 366.80 through 366.85, and 403.519, F.S., are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). Pursuant to Sections 366.81 and 366.82, F.S., we are required to adopt energy conservation goals for Florida utilities subject to FEECA, as well as approve the plans and programs developed by each utility to meet the goals we set. FPL is one of seven utilities in Florida subject to FEECA.¹

By Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, we adopted annual numeric conservation goals for each of the FEECA utilities, including FPL, for the period 2010

¹ The seven utilities subject to FEECA are FPL, Duke Energy Florida, Inc. (DEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), JEA, and Orlando Utilities Commission (OUC).

through 2019.² Due to revisions to Section 366.82, F.S., in 2008,³ we requested the FEECA utilities to address demand-side renewable energy systems, such as solar PV systems, in their 2009 conservation goal-setting proceeding.⁴ At the conclusion of the 2009 goal-setting proceeding, we found that demand-side renewables were not cost-effective.⁵ Based on evidence presented during the proceeding, however, we ordered FPL and the other Investor Owned Utilities (IOUs)⁶ to develop and offer solar pilot programs to encourage such resources.⁷ In addition, the IOUs were directed to collect information relating to customer acceptance rates, energy production, and other data to refine potential future program offerings for solar technologies.⁸ The costs for these programs were limited to 10 percent of each IOU's five-year average for costs recovered through the Energy Conservation Cost Recovery (ECCR) Clause to minimize the rate impacts to all customers.⁹ Lastly, we directed the IOUs to file pilot programs focused on encouraging solar water heating and solar PV technologies in the demand-side management (DSM) program approval process.¹⁰

FPL Solar Pilot Programs

By Order No. PSC-11-0079-PAA-EG, we approved FPL's solar pilot programs.¹¹ FPL offered three types of solar pilot programs: (1) solar water heating; (2) solar photovoltaic systems; and (3) research and demonstration. FPL's solar PV programs were designed for residential and business customers. All of FPL's solar pilot programs were implemented on a first-come first-served basis and assisted approximately 4,000 customers during 2011-2013, at a cost of approximately \$30 million.¹² The PV pilot programs had high participation rates and

² See Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Nos. 080407-EG, In re: Commission review of numeric conservation goals (Florida Power & Light Company); 080408-EG, In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.); 080409-EG, In re: Commission review of numeric conservation goals (Tampa Electric Company); 080410-EG, In re: Commission review of numeric conservation goals (Gulf Power Company); 080411-EG, In re: Commission review of numeric conservation goals (Florida Public Utilities Company); 080412-EG, In re: Commission review of numeric conservation goals (Orlando Utilities Commission); 080413-EG, In re: Commission review of numeric conservation goals (JEA).

³ In 2008, the Legislature amended Section 366.82, F.S., to require us to establish appropriate goals to encourage the development of demand-side renewable energy systems. Section 366.82, F.S., defines "Demand-side renewable energy" as a system located on a customer's premises using Florida renewable energy resources with a capacity that does not exceed 2 MWs.

⁴ See Order No. PSC-09-0855-FOF-EG.

⁵ Id.

⁶ The investor-owned utilities in Florida are FPL, DEF, TECO, Gulf, and FPUC.

⁷ See Order No. PSC-09-0855-FOF-EG.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ See Order No. PSC-11-0079-PAA-EG, issued January 31, 2011, in Docket No. 100155-EG, In re: Petition for approval of demand-side management plan of Florida Power & Light Company; See also Order No. PSC-11-0346-PAA-EG, issued August 16, 2011, in Docket No. 100155-EG (modifying and approving FPL's DSM plan and reaffirming Order No. PSC-11-0079-PAA-EG).

¹² See Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, in Docket Nos. 130199-EI, In re: Commission review of numeric conservation goals (Florida Power & Light Company); 130200-EI, In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.); 130201-EG, In re: Commission review of numeric

residential and business customers quickly submitted requests for reservations each time an offering was announced.¹³ Data presented during the 2014 conservation goal-setting proceeding showed that an average of 75 percent of FPL residential customers who received a pilot program reservation installed solar PV equipment, while FPL business customers had an average completion rate of 50 percent.¹⁴

In 2014, we again reviewed the conservation goals of the FEECA utilities, pursuant to Section 366.82(6), F.S. By Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, we adopted new annual numeric conservation goals for the FEECA utilities, including FPL, for the period 2015 through 2024.¹⁵ We found that the solar pilot programs were not cost-effective and should be allowed to expire on December 31, 2015.¹⁶ Specifically, we found that:

The [solar pilot] programs are not cost-effective and experience gained since the last goals proceeding indicates that consumers have continued to install systems without any rebates. The current solar rebates represent a large subsidy from the general body of ratepayers to a very small segment of each utility's customers.¹⁷

On August 19, 2015, by Order No. PSC-15-0331-PAA-EG, we approved FPL's DSM programs for the period 2015 through 2024.¹⁸

We have jurisdiction pursuant to Chapter 366, F.S.

DECISION

Standard of Review

A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action.¹⁹ In order to sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted.²⁰ The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner

conservation goals (Tampa Electric Company); 130202-EI, In re: Commission review of numeric conservation goals (Gulf Power Company); 130203-EM, In re: Commission review of numeric conservation goals (JEA); 130204-EM, In re: Commission review of numeric conservation goals (Orlando Utilities Commission); 130205-EI, In re: Commission review of numeric conservation goals (Florida Public Utilities Company), at p. 51

¹³ Id.

¹⁴ Id.

¹⁵ See Order No. PSC-14-0696-FOF-EU.

¹⁶ Id., at p. 60; See also, Order No. PSC-14-0632-FOF-EG, issued on October 31, 2014, in Docket No. 140002-EG, In re: Energy conservation cost recovery clause., at p.3.

¹⁷ See Order No. PSC-14-0696-FOF-EU, at p. 60.

¹⁸ See Order No. PSC-15-0331-PAA-EG, issued August 19, 2015, in Docket No. 150085-EG, In re: Petition for approval of Florida Power & Light Company's demand-side management plan and request to cancel closed on call tariff sheets.

¹⁹ Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000); Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

²⁰ Varnes v. Dawkins, 624 So. 2d at 350.

has stated the necessary allegations.²¹ A sufficiency determination should be confined to the petition and documents incorporated therein, and the grounds asserted in the motion to dismiss.²² Thus, “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.”²³ All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.²⁴ Finally, pursuant to Section 120.569(2)(c), F.S., a petition shall be dismissed at least once without prejudice unless it conclusively appears from the face of the petition that the defect cannot be cured.²⁵

Petitioners’ Complaint

On August 17, 2015, Petitioners filed a complaint with this Commission alleging FPL violated Sections 366.81 and 366.82(3)(a)-(c), F.S., and Order No. PSC-14-0696-FOF-EU, during the administration of its two online residential solar PV rebate reservation program offerings in January 2015.²⁶ Petitioners allege that, on January 14, 2015, FPL’s online residential solar PV rebate reservation opening occurred earlier than the “publically announced opening time of 8:30 a.m.” Due to the early opening, the allocated rebate funds were depleted earlier than had the opening occurred at the advertised time of 8:30 a.m. As a result, Petitioners contend that neither they nor other applicants were given an “equal and fair opportunity to compete for a rebate while others had additional opportunity by taking advantage of an opening that was not announced beforehand.”

Petitioners allege that due to its “gross error” in meeting “the statutes and rules of the PSC” during the January 14, 2015, offering, FPL conducted a second online residential solar rebate reservation offering on January 21, 2015, at 8:30 a.m., using the same format and process as the prior offering. Petitioners state that during the second offering, FPL’s website “locked up” and prevented them from completing the application process. Mr. Silvestri, one of the Petitioners, contacted FPL when the website “locked up” and spoke to a FPL representative. Petitioners state that the FPL representative “acknowledged the site had locked up” and provided Mr. Silvestri with instructions “which failed to resolve the problem.” When Petitioners were finally able to continue on the website, the allotted rebate funds had been depleted and the rebate

²¹ Matthews v. Matthews, 122 So. 2d 571 (Fla. 2nd DCA 1960).

²² Barbado v. Green and Murphy, P.A., 758 So. 2d 1173 (Fla. 4th DCA 2000); Varnes v. Dawkins, 624 So. 2d at 350; and Rule 1.130, Florida Rules of Civil Procedure.

²³ Varnes v. Dawkins, 624 So. 2d at 350.

²⁴ 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 rel Powell, 262 So. 2d 881, 883 (Fla. 1972); Kest v. Nathanson, 216 So. 2d 233, 235 (Fla. 4th DCA, 1986); Ocala Loan Co. v. Smith, 155 So. 2d 711, 715 (Fla. 1st DCA, 1963).

²⁵ See also, Kiralla v. John D. and Catherine T. MacArthur Found., 534 So. 2d 774, 775 (Fla. 4th DCA 1988)(stating that a dismissal with prejudice should not be ordered without giving the plaintiff an opportunity to amend the defective pleading, unless it is apparent that the pleading cannot be amended to state a cause of action); and 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.

²⁶ See Document No. 05144-153, in Docket No. 150185-EI, Complaint by Erika Alvarez, Jerry Buechler and Richard C. Silvestri against Florida Power & Light Company.

offering was closed. Petitioners state that when Mr. Silvestri contacted FPL to complain following the second online offering, FPL advised Mr. Silvestri that “some [customers] were able to overcome the website problem.” Petitioners claim that because some applicants were able to overcome the “website glitch,” FPL failed “to have a fair, impartial and nondiscriminatory” rebate process as required by Sections 366.81, 366.82(3)(a)-(c) and Order No. PSC-14-0696-FOF-EU.

Petitioners further assert that implied in Order No. PSC-14-0696-FOF-EU is the requirement that “the process implemented by FPL must be fair, impartial and non-discriminatory.” Petitioners state that the “rebate reservation process became a ‘game of chance’ and possibly allowed favoritism rather than equal treatment.” As a result, FPL acted in bad faith in administering both online residential solar rebate reservation offerings by not ensuring all applicants “were treated fairly as evidenced by the unfair treatment given” to them in violation of Section 366.81, F.S.

Petitioners request that we order FPL to conduct another reservation process before midnight, December 31, 2015. In addition, Petitioners request that we “closely monitor FPL during the planning, development and deployment of” the future rebate reservation, especially the technical details to ensure “a fair, impartial and non-discriminatory computerized process, in lieu of the one used by FPL.”

FPL’s Motion to Dismiss

On September 1, 2015, FPL filed a motion to dismiss Petitioners’ complaint with prejudice.²⁷ FPL asserts Petitioners’ complaint fails to allege sufficient facts to state a cause of action upon which we could grant relief. Specifically, FPL asserts that Petitioners’ complaint: (1) fails to state “how the early opening constitutes a violation of the 2014 DSM Goals Order” or “constitutes a violation of FEECA;” (2) fails to state “specific allegations as to how or whether the website ‘lock up’ was the result of any action by FPL;” and (3) fails to allege any actions that “FPL treated certain customers in a discriminatory manner” during either of the online residential solar PV rebate reservation offerings. Because Petitioners did “not allege any unfair, partial or discriminatory actions by FPL,” FPL argues that Petitioners’ complaint should be dismissed.

FPL attached an exhibit in support of its motion to dismiss that we find is evidentiary in nature because it provides facts not included in Petitioners’ complaint and that disputes Petitioners’ allegations. Therefore, FPL’s exhibit is not discussed or considered in our analysis.²⁸

Mr. Silvestri and Ms. Alvarez’s Response to FPL’s Motion to Dismiss

²⁷ See Document No. 05465-15, in Docket No. 150185-EI, FPL’s Motion to Dismiss Complaint and Response to Motion for Oral Argument.

²⁸ See *Varnes v. Dawkins*, 624 So. 2d at 350 (the 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”).

On September 8, 2015, Mr. Silvestri and Ms. Alvarez filed a joint response to FPL's motion to dismiss.²⁹ In their response, Mr. Silvestri and Ms. Alvarez again assert that FPL's actions were unfair because certain applicants were able to complete the rebate process despite the technical issues that occurred during the online rebate offerings, "while others were barred from doing so based on technology on a machine by machine or computer by computer or IP by IP basis."³⁰ In addition, Mr. Silvestri and Ms. Alvarez's response spends a significant amount of time commenting on the information contained in the exhibit attached to FPL's motion to dismiss. Mr. Silvestri and Ms. Alvarez's comments on FPL's exhibit are not discussed or considered in our analysis herein for the reasons cited above.

Mr. Buechler's Response to FPL's Motion to Dismiss

On September 2, 2015, Mr. Buechler filed a request for extension of time to file a response to FPL's motion to dismiss, which was granted.³¹ Mr. Buechler timely filed his response to FPL's motion to dismiss on September 24, 2015.³² In his response, Mr. Buechler reiterates Petitioners' assertions that FPL's online reservation process was unfair. Mr. Buechler also commented on FPL's exhibit, which is not discussed or considered in our analysis for the reasons previously cited.

Ruling

We grant a motion to dismiss upon a finding that the pleading failed to state a cause of action upon which relief can be granted.³³ Rule 25-22.036, F.A.C., outlines the procedure for filing a formal complaint. A pleading that conforms to the Rule provides the act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought.³⁴ In addition, 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.

²⁹ See Document No. 05605-15, in Docket No. 150185-EI, Silvestri-Alvarez Response to FPL's Motion to Dismiss Complaint and Oral Argument.

³⁰ Id., at p. 12.

³¹ See Order No. PSC-15-0366-PCO-ES, issued September 9, 2015, in Docket No. 150185-EI.

³² See Document No. 06033-15, in Docket No. 150185-EI, Buechler respond to FPL motion to dismiss.

³³ 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).

³⁴ 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.

Here, we find that Petitioners' complaint fails to comply with the requirements of Rule 25-22.036(2), F.A.C., because the complaint contains no specific facts asserting an act or omission by FPL that resulted in a violation of a particular provision of a statute, rule or Commission Order affecting Petitioners' substantive interests.

Petitioners allege that FPL violated Sections 366.81 and 366.82(3)(a)-(c), F.S., and this Commission's Order No. PSC-14-0696-FOF-EU, during the administration of its online residential solar rebate reservation offerings in January 2015. Petitioners assert that FPL violated Section 366.81, F.S., and "acted in bad faith by not abiding by the goals delineated in the [statute]" during the administration of its online residential solar rebate reservation offerings. Pursuant to Section 366.81, F.S., the Florida Legislature directs us to adopt energy conservation goals and approve the plans and programs each utility develops to meet the goals we set. In accordance with the Legislature's directive and the other FEECA statutes, we adopted conservation goals for FPL and the other FEECA utilities in 2009 and required FPL and the other IOUs to develop solar pilot programs.³⁵ In January 2011, we approved FPL's solar pilot programs and set an annual expenditure cap of \$15,536,870 for FPL's solar pilot programs.³⁶

Petitioners' complaint fails to state how either the early opening of the reservation system during the first rebate offering or the website "lock up" that occurred during the second rebate offering, violated Section 366.81, F.S. In particular, Petitioners fail to allege any facts that FPL failed to: (1) meet the conservation goals we set, (2) fund its solar pilot programs within the expenditure cap we set, or (3) implement the solar pilot programs as approved by us.

Petitioners also assert that FPL violated Section 366.82(3)(a)-(c), F.S., and this Commission's Order No. PSC-14-0696-FOF-EU. Section 366.82(3), F.S., sets out factors the we must consider when establishing conservation goals. Section 366.82(3)(a)-(c), F.S., states:

In developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, the commission shall take into consideration:

- (a) The costs and benefits to customers participating in the measure.
- (b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.
- (c) The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.

Pursuant to Section 366.82(3), F.S., we adopted conservation goals for FPL and the other FEECA utilities, in 2009 and, again in 2014.³⁷ In both the 2009 and 2014 DSM goal-setting proceedings, we considered the factors set out in Section 366.82(3), F.S. In Order No. PSC-14-0696-FOF-EU cited by Petitioners, we found that the solar pilot programs were "not cost-

³⁵ See Order No. PSC-09-0855-FOF-EG.

³⁶ See Order Nos. PSC-11-0079-PAA-EG, and PSC-11-0346-PAA-EG.

³⁷ See Order Nos. PSC-09-0855-FOF-EG and PSC-14-0696-FOF-EU.

effective” and that the “solar rebates represent[ed] a large subsidy from the general body of ratepayers to a very small segment of each utility’s customers.”³⁸ Therefore, our findings on the solar pilot program in Order PSC-14-0696-FOF-EU stemmed from our consideration of the very factors set out in Section 366.82(3)(a)-(c), F.S.

No statute, Commission rule or Commission Order prescribes a particular format or manner in which FPL, or any other utility, is required to administer its solar rebate reservations. Moreover, our practice has been not to micromanage the business decisions of regulated companies, but to instead focus on the end-product goal.³⁹ Sections 366.81 and 366.82(7), F.S., provide for our approval of a utility’s conservation plans and programs prior to implementation, and we approved FPL’s residential solar rebate program.

While FPL’s first online residential solar rebate offering may have opened earlier than the announced time of 8:30 a.m. on January 14, 2015, Petitioners allege no facts to suggest that FPL opened the reservation offering prematurely either to ensure particular customers received a rebate reservation or to prevent Petitioners, or other customers, from obtaining a rebate reservation. Additionally, while FPL may have acknowledged its website “froze” during the second online residential solar rebate offering on January 21, 2015, Petitioners allege no facts to suggest that FPL caused the website to “lock up” in order to ensure particular customers received a rebate reservation or to prevent Petitioners, or other customers, from obtaining a rebate reservation. As a result, Petitioners’ complaint fails to state any facts alleging how any of the technical events that occurred during either of FPL’s online residential solar rebate reservation offerings violated Section 366.82(3)(a)-(c), F.S., or Order PSC-14-0696-FOF-EU. Moreover, Petitioners’ complaint fails to state any facts alleging that FPL violated any Commission Order approving FPL’s solar pilot programs.⁴⁰

Despite Petitioners claims that FPL failed “to have a fair, impartial and nondiscriminatory” rebate process as required by Sections 366.81, 366.82(3)(a)-(c) and Order No. PSC-14-0696-FOF-EU, Petitioners’ complaint fails to describe or provide any documentation of any specific FPL actions during the administration of the two online residential solar rebate reservation offerings to indicate that either of FPL’s online rebate offerings was unfair, partial or discriminatory, or violated any statute, rule or Commission Order governing FPL’s solar pilot programs.

We are sensitive to Petitioners’ circumstances and, despite the lack of a legally sufficient pleading, our staff conducted research into the substance of Petitioners’ allegations in order to determine whether amendment of the complaint could lead to a situation where we would have jurisdiction to grant Petitioners relief. 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

³⁸ See Order PSC-14-0696-FOF-EU.

³⁹ See Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS, In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County, and 010503-WU, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

⁴⁰ See Order Nos. PSC-11-0079-PAA-EG and PSC-11-0346-PAA-EG.

most favorable to Petitioners, we find that Petitioners' complaint does not state a cause of action that would invoke our jurisdiction or permit us to grant the requested relief. As previously set out, we approved FPL's solar pilot programs with an annual expenditure cap.

Because Petitioners have not pled any specific facts, or produced any documentation, to support their claims that FPL violated any statute, rule, or other Commission requirement in the administration of its online residential solar PV rebate reservation offerings, we grant FPL's motion to dismiss. We find, however, that Petitioners' complaint should be dismissed without prejudice in accordance with Section 120.569(2)(c), F.S., thus allowing Petitioners to file an amended complaint. Should Petitioners choose to file an amended complaint, the complaint should conform to the pleading requirements of Rule 25-22.036, F.A.C., and request appropriate relief.

Conclusion

We grant FPL's Motion to Dismiss and dismiss the complaint without prejudice because the complaint fails to demonstrate a cause of action upon which the requested relief may be granted. Pursuant to Section 120.569(2)(c), F.S., Petitioners shall be permitted an opportunity to amend their complaint within fourteen days (14) from the date of this Order should they choose to do so.

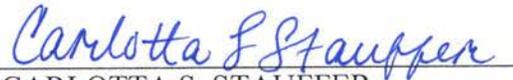
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Motion to Dismiss is hereby granted, without prejudice. It is further

ORDERED that, Petitioners, Mr. Buechler, Ms. Alvarez and Mr. Silvestri, are permitted fourteen days (14) from the date of this Order in which to file an amended complaint that conforms to the filing requirements of Rule 25-22.036, Florida Administrative Code, and requests appropriate relief. It is further

ORDERED that, should Petitioners, Mr. Buechler, Ms. Alvarez and Mr. Silvestri, fail to file an amended complaint timely, the docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 23rd day of October, 2015.



CARLOTTA S. STAUFFER

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

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

BYL

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.