

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint by Juana L. Del Rosario
against Florida Power & Light Company
regarding backbilling for alleged meter
tampering

Docket No. 20200030-EI

Filed: July 31, 2020

FLORIDA POWER & LIGHT COMPANY'S MOTION TO DISMISS PETITION

Florida Power & Light Company ("FPL"), pursuant to Rules 28-106.201 and 28-106.204, Florida Administrative Code (F.A.C.) and section 120.569(2)(c), Florida Statutes, moves to dismiss the Notice of Request of an Appeal filed by Juana L. Del Rosario on July 20, 2020 ("Petition"). The Petition fails to comply with the pleading requirements of subparagraphs (2)(d), (e) and (f) of Rule 28.106.201, F.A.C. and therefore should be dismissed. In support of this motion, FPL states:

1. On June 13, 2019, Ms. Del Rosario filed an informal complaint against FPL regarding backbilling for meter tampering. On December 17, 2019, Commission Staff notified Ms. Del Rosario that after review, Staff found that it did not appear FPL had violated any rules or statutes in backbilling her account.

2. On January 17, 2020, Ms. Del Rosario filed a formal complaint alleging she had not tampered with her meter. FPL provided Commission Staff documentation of the meter tampering and backbilling for Ms. Del Rosario's account. Based upon the information provided by the parties, by Order No. PSC-2020-0219-PAA-EI ("Order 2020-0219"), dated June 29, 2020, the Commission took proposed agency action on Ms. Del Rosario's complaint, in which it determined that:

- There is no evidence that FPL backbilled Ms. Del Rosario incorrectly;
- FPL did not violate any statutes, rules, or orders; and

- FPL’s backbilling of 48 months was not unreasonable.

Page 6 of Order 2020-0219 provided that a “person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding in the form provided by Rule 28-106.201, Florida Administrative Code.” Order 2020-0219 states the petition must be received by the Commission Clerk by the close of business on July 20, 2020.

3. On July 20, 2020, Juana L. Del Rosario filed the Petition. Although her Petition makes conclusory allegations, it fails in material respects to comply with multiple subsections of Rule 28-106.201(2), F.A.C., and it fails to put FPL on notice of which statute, rule, or tariff the Company has allegedly violated.

4. Rule 28-106.201(2), F.A.C., provides the required elements that must be contained in the petition, which include the following elements:

- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes;

5. The Protest Petition fails to provide a statement of all disputed issues of material fact or ultimate facts alleged, including the facts she contends require reversal or modification of the Commission’s proposed action, as required by sections (2)(d) and (e) of Rule 28.106.201, F.A.C. While she restates the same claims made in her initial compliant, they are not a statement

of disputed issues of material fact or a statement of the ultimate facts requiring reversal or modification of Order 2020-0219.

6. In addition, Ms. Del Rosario fails to state any rule or statute that is alleged to have been violated. She fails to state how any of her claims relate to a specific rule or statute that she contends would require reversal or modification of Order 2020-0219. As a result, the Protest Petition does not comply with Rule 28-106.201(f). This deficiency fails to give FPL or the Commission adequate notice of what facts would give rise to an alleged violation of rule or statute requiring reversal or modification, and therefore must be dismissed.

7. Pursuant to Florida Statute § 120.569(2)(c), any petition that fails to comply with the Rules, shall be dismissed without prejudice to cure the defects and refile. As the Petition fails to substantially comply with subparagraphs (2)(d), (e) and (f) of Rule 28.106.201, F.A.C., the Commission should dismiss the Petition without prejudice.

WHEREFORE, for the foregoing reasons, Florida Power & Light Company respectfully requests that the Commission dismiss Ms. Del Rosario's Petition because it fails to contain the required elements under the rules.

Respectfully submitted this 31st day of July, 2020

David M. Lee, Esq.
Senior Attorney
david.lee@fpl.com
Attorney for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
Telephone: (561) 691-7263
Facsimile: (561) 691-7135

By: /s/ David M. Lee
David M. Lee
Fla. Bar No. 103152

CERTIFICATE OF SERVICE
Docket No. 20200030-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished
by electronic service on this 31st day of July, 2020, to the following:

Kristen Simmons, Esq.
Bianca Lherisson, Esq.
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
ksimmons@psc.state.fl.us
blheriss@psc.state.fl.us
Office of the General Counsel
Florida Public Service Commission

Juana L. Del Rosario
10751 NW 87th Ct,
Hialeah Gardens, FL 33018
jlrosariog@live.com

By: /s/ David M. Lee
David M. Lee
Florida Bar No. 103152