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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

OCTAVIO FERNANDEZ	)	
	)	
Plaintiff	)	
	)	
v.	)	No. No. 2017-021639-CA-01
	)	
FLORIDA POWER & LIGHT COMPANY	)	
	)	
Defendant	)	
_____/		

MOTION TO DISMISS COMPLAINT

INTRODUCTION

It is unfortunate, but not unexpected, that following a natural disaster such as Hurricane Irma, the "storm-chasers", as the Wall Street Journal aptly describes them, will emerge to exploit the impacts of the storm. (Exhibit A – WSJ Editorial) Traveling behind a complaint cobbled together from a hasty Internet search, without the benefit of any factual investigation whatsoever, the "chasers" seek billions of dollars in damages as a consequence of Florida Power & Light Company's ("FPL") alleged "failure" to prevent all hurricane damage of any kind to any customer. (Exhibit A – WSJ Editorial)[1]

The one-count complaint asserts a claim for breach of contract, although no contract is attached or even identified. It suggests, for no legitimate purpose, that FPL made "fraudulent" claims regarding its rates, but there is no claim for fraud. Complaint, Paragraph 8. It criticizes FPL's legislative initiatives but, again, fails to incorporate these irrelevancies into its one claim. Complaint, Paragraphs 27 and 28. It notes

[1] As a "companion" to their complaint, the "chasers" issued an intentionally overbroad document preservation letter to intimate how punitively expensive this litigation will become unless FPL capitulates in some as yet unstated fashion. See Exhibit B.

concern for unidentified "oxygen-dependent" seniors, but fails to indicate whether the Plaintiff falls into this category. Complaint, Paragraph 50. Other than asserting that Plaintiff "suffered substantial damages," the complaint fails to provide the minimal specificity required to support Mr. Fernandez's claim. Complaint, Paragraph 50.

First-to-file lawsuits such as the complaint at issue here provide no benefit to the customers which it purports to represent.[2] It imposes unnecessary, often significant, costs upon FPL, and therefore ultimately upon the "clients" themselves. It offers a fleeting public relations platform for the "chasers." It wastes the court's time and resources. It is appropriately disposed of on the earliest possible occasion.

ARGUMENT

1. The Complaint Provides No Basis for Either Class Action Status or Rate Relief

A. Individual Damages Preclude Class Treatment

Sprinting to the courthouse, Plaintiff was faced with an insoluble dilemma. There is no realistic way to create a cognizable class of hurricane-related plaintiffs because of the myriad of ways that parties can be damaged in a hurricane. Storm surges can cause flooding. High winds can remove a roof. Trees and tree limbs can fall on homes and cars. Flying debris can penetrate windows and walls. Failure to take sensible precautions can lead to personal injury.[3] Therefore, in order to recover, each plaintiff would be required to establish specifically how that plaintiff was damaged and then,

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[2] As expected, a second "copycat" lawsuit has now been filed. *Velez, et al vs. Florida Power & Light, NextEra Energy, Inc.*, in the 11th Judicial Circuit in and for Miami-Dade County, Florida, Case No. 2017 CA 022854-CA-01.

[3] It is noteworthy that the complaint gives no hint of the manner in which this Plaintiff was allegedly damaged. See Section 3, *infra*.

critically, to demonstrate that this specific damage was caused by something that FPL did or failed to do, and not by the hurricane itself or the intervention of some third party.

Did a limb fall from a tree because the city failed to trim the tree as required? Did the plaintiff fail to secure the plaintiff's property as required before the storm? Did a neighbor fail to secure the neighbor's property before the storm? Were the hurricane force winds sufficient to topple even "storm-hardened" poles or facilities? Were trees planted in an improper location by the plaintiff or by the city? The permutations of damage causation in a hurricane are obviously numerous and distinctive. No class can ever be certified to address these issues.

B. This Court Cannot Grant Rate Relief

In recognition of this inability to meet the commonality requirement of a class action, Plaintiff attempted to plead around it. To avoid the insuperable twin obstacles of individual causation and individual damages, Plaintiff defaulted to a contract theory. Alleging in an impenetrable fashion that FPL somehow failed to meet calculatedly unidentified contractual obligations, Plaintiff pleads that he and the class will assert the same legal theories. Complaint, Paragraph 34. That is, everyone in the class "was charged the exact same type of storm charge." *Id.* Despite this payment, Plaintiff argues, "FPL failed to meet its end of the bargain by failing to honor its obligations for storm prevention and restoration." *Id.*

Thus, indulging Plaintiff's allegations, there was a "contract" of sorts: Plaintiff and the class paid a storm charge pursuant to that "contract," which Plaintiff concedes to be the storm charges previously authorized by the Florida Public Service Commission ("the PSC"). Complaint, Paragraphs 47-49. FPL failed to perform the "contract" by collecting

the authorized storm charges but purportedly failing to make its facilities 100% fail-safe against the largest hurricane ever to hit Florida. *Id.* The only common damage alleged was the payment of the storm charges. *Id.* It is therefore self-evident that the only common relief available to the class would be a refund of the storm charge.

C. The PSC Has Exclusive Jurisdiction Over Rates and Service, Including Rate Relief and Rate Refunds.

Chapter 366 of the Florida Statutes outlines the powers vested in the PSC to regulate public utilities. FPL is a public utility as defined by §366.02(1) Fla. Stat. (2004) and is, therefore, regulated by and under the jurisdiction of the PSC. The established public policy of the State of Florida is to supervise the rules and rates of privately owned electric utilities through regulation by a state agency, and the PSC has been vested with broad, exclusive powers to accomplish this policy. *Storey et al. v. Mayo, et al.*, 217 So.2d 304, 307 (Fla. 1968) *cert. denied*, 395 U.S. 909 (1969). The legislature has expressly stated that regulation of public utilities is in the public welfare and Chapter 366 "shall be liberally construed for the accomplishment of that purpose." Fla. Stat. Ann. §366.01 (2004).

Florida appellate courts have consistently held that circuit courts do not have jurisdiction over matters within the exclusive jurisdiction of the PSC. *State et rel. McKenzie v. Willis*, 310 So.2d 1 (Fla. 1975) (circuit court lacked jurisdiction over noncompetitive agreements between common carrier regulated by the PSC); *Florida Public Serv. Comm. v. Bryson*, 569 So.2d 1253, 1254 (Fla. 1990) (circuit court did not have jurisdiction over claims of overcharging for utility service); *Richter v. Florida Power Corp.*, 366 So.2d 798 (Fla. 2d DCA 1979) (PSC, not circuit court, had jurisdiction over customer's claim of being overcharged); and *Utilities, Inc. of Florida v. Corso*, 846 So.2d

1159 (Fla. 5th DCA 2003) (disputes over rates and charges by utility are within exclusive jurisdiction of PSC). When a circuit court has improperly attempted to exercise jurisdiction over PSC regulated matters, appellate courts have either issued writs of prohibition to the circuit court or ordered the lower courts to dismiss the action. *Id.* This is because "neither general law nor the constitution provides the circuit court concurrent or cumulative power of direct review of PSC action." *Bryson*, 569 So. 2d at 1255.

Accepting Plaintiff's allegations, to the extent they can be fairly discerned, he claims to have paid into a contractually created storm fund and to have failed to receive the benefit of that contractual bargain. Complaint, Paragraphs 47-49. If true, and if proven, he would be entitled to a refund of the storm charges he paid. Plaintiff wants relief from the rate he was charged for this purpose. That is the only possible common relief available, if this is to be a class action.

Rate relief, however, falls squarely and exclusively within the jurisdiction of the PSC, as demonstrated in the cases cited above. Akin to Plaintiff's claim here that he was overcharged by having to pay a storm charge the benefit of which he did not receive, is the refund demand sought in the seminal case of *Florida Power & Light Company v. Albert Litter Studios, Inc.* 896 So.2d 891 (Fla. 3d DCA 2005). Plaintiff in *Litter* claimed that a defective meter led to excessive charges for electric power. Distilled to its essence, that claim, as the Plaintiff's claim here, was for a refund of the alleged overpayment. The appellate court ruled that a customer's request for a refund due to overcharging by FPL was a matter respecting FPL's rates and services, and that

the case law "universally" supported the conclusion that the proper forum for seeking a refund was the PSC. *Id.* at 895.

The *Litter* court's ruling applies with equal effect here: "The essence of the purported class-action claim against FP&L is a refund of money customers paid FP&L for electricity they did not actually use. Jurisdiction for actions such as this properly resides in the Commission." *Id.* at 896. Substituting these words in this complaint: "for storm protection and restoration [they did not receive]" for the words "electricity they did not actually use," in *Litter*, results ineluctably in the *Litter* conclusion: this case properly resides in the PSC.

The Court can now discern the dilemma behind Plaintiff's calculatedly obscure pleadings. If Plaintiff is seeking tort-like damages, that is, the damages to property or person that Plaintiff suffered as the result of some alleged breach of contract by FPL, he has obviously pleaded himself out of a class action. His damages and those of the putative class would be individual and distinct and clearly not subject to class treatment. While such a claim, properly pled, might survive a motion to dismiss, it would travel as an individual action only and could not support class action treatment.

If, on the other hand, seeking to demonstrate the necessary commonality to support his ill-founded class action, Plaintiff seeks recovery of the one common element of damage, that is, the storm charge, he has pleaded himself into a claim for rate relief from the PSC and has no claim here.

In this regard, the analysis in *Fla. Power Corp. v. Zenith Indus. Co.*, 377 So. 2d 203 (Fla. 2d DCA 1979) is particularly instructive. In *Zenith*, customers claiming that they had paid increased rates due to artificially inflated fuel prices, were seeking a

refund of the overcharges, together with unspecified general, special and exemplary damages. In remanding the case to await determination by the PSC, and relying in the holding in *Richter v. Florida Power Corp.*, 366 So. 2d 798 (Fla. 2d DCA 1979), the court explained:

> As applied to the facts of the present case, it is difficult to imagine that the damages directly, naturally and necessarily flowing from an overcharge could possibl[y] be anything other than the amount of the overcharge itself and legal interest thereon. As we have noted, that will be recovered by Zenith, if at all, through the PSC.

Zenith Indus. Co., 377 So. 2d at 205.

2. The Complaint Fails to Comply With Rule 1.130(a) of the Florida Rules of Civil Procedure.

Beyond these fundamental flaws, and undoubtedly because of them, the complaint falls fatally short of meeting basic pleading requirements.

Rule 1.130(a) of the Florida Rules of Civil Procedure requires that all contracts upon which an action may be brought must be incorporated into or attached to the pleading. Plaintiff alleges that "FPL was contractually obligated to better its grids, distribution lines, and remove or trim trees and other overgrowth...". Complaint, Paragraph 47. He does not identify the contract to which it refers. He does not attach any such contract to the pleadings.

None of the exhibits extracted almost randomly from the internet and attached to the complaint constitutes such a contract.

Exhibit A is a Press Release describing a planned rate application by FPL. It is not a contract.

Exhibit B is a Public Service Commission ("PSC") News Release announcing the settlement of a rate case. It is not a contract.

Exhibit C is a Securities and Exchange Commission filing by NextEra Energy, Inc. and FPL disclosing the settlement described in Exhibit B. It is not a contract.

Exhibit D is a PSC Order approving an interim storm restoration recovery charge. It is not a contract.

Plaintiff's reliance on this last document is particularly misleading, perhaps intentionally so. Exhibit D simply memorializes and approves FPL's effort in December of 2016 to recover costs already expended by FPL for the restoration of power following Hurricane Matthew, a storm that made landfall in October 2016. The Order details the mechanism by which FPL is permitted to recover monies previously expended for that purpose and to replenish its storm reserve. It contains no undertaking whatsoever delineating or even implying the "obligations" created by Plaintiffs without explanation or attribution in Paragraph 47.

Plaintiff has understandably not alleged that he is relying on an oral agreement. He has failed to attach any written agreement, if there is such, that in any way supports the allegations in Paragraph 47. The complaint must be dismissed for failure to comply with Rule 1.130(a).

3. The Complaint Fails to Comply With Rule 1.110(b) of the Florida Rules of Civil Procedure.

Rule 1.110(b) of the Florida Rules of Civil Procedure provides that a claim for relief must contain "...(2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." "It is a fundamental principle of pleading that the complaint, to be sufficient, must allege ultimate facts as distinguished from legal conclusions which, if proved, would establish a cause of action for which relief may be granted." *Maiden v. Carter*, 234 So.2d 168, 170 (Fla. 1st DCA 1970); *see also, e.g.*,

Clark v. Boeing Co., 395 So.2d 1226, 1229 (Fla. 3d DCA 1981) (*citing Maiden*); *Barrett v. City of Margate*, 743 So.2d 1160, 1162-63 (Fla. 4th DCA 1999); *Havens v. Coast Fla., P.A.*, 117 So.3d 1179, 1181 (Fla. 2d DCA 2013); *Doyle v. Flex*, 210 So.2d 493, 494 (Fla. 4th DCA 1968).

Applied to a complaint asserting a breach of contract, the complaint must allege ultimate facts demonstrating the existence of a contract, a breach of the terms of that contract and damages flowing from the breach.

A. No contract is alleged.

There are no ultimate facts alleged establishing the existence of a contract or any other basis for the contractual obligations asserted in Paragraph 47 of the complaint. As discussed in detail above, there is no contract attached to the complaint.

Beyond that, and lacking a written agreement, there are clearly none of the required and necessary factual details within the complaint itself regarding what contractual obligations FPL was to have undertaken. Plaintiff fails to allege when the contract was to have commenced, what specific actions FPL agreed to take, where and when performance was to occur, when FPL was obligated to complete its performance, how FPL was to perform the functions it allegedly agreed to perform, how its performance was to be measured, what the obligations of the counter-party were and what remedies were to be available for any breach of the contract. Without such factual allegations the complaint is "so vague, indefinite, and uncertain as to render a response thereto virtually impossible. *Maiden*, *supra*. It is legally insufficient to plead, as here, opinions, theories, legal conclusions or argument. *Barrett , supra.*

B. No Breach Is Alleged.

The following naked conclusion constitutes the full extent of the Plaintiff's allegations of breach: FPL "did nothing to improve its then existing facilities..." Complaint, Paragraph 48. There are no ultimate facts. There are no facts of any kind. There is the Plaintiff's conclusory opinion, which is insufficient as a matter of law.

It is, of course, impossible to demonstrate a breach of contractual obligations when there are no contractual obligations alleged against which to measure FPL's performance. There are no ultimate facts informing the court or FPL of what FPL allegedly undertook to perform. There are no ultimate facts informing the court or FPL of how FPL's performance fell short in some manner.

This problem is obviously compounded when considered in light of the fact that FPL services more than 4.8 million customers in 36 counties, according to Plaintiff's complaint and exhibits. What did FPL agree to do in this vast service area? Where did FPL fall short? The complaint is entirely silent on these two required elements of a breach of contract claim.

C. No Damages Are Alleged

Having failed to allege the existence of a contract, written or oral, as required and having failed to allege ultimate facts demonstrating a breach of that unknown contract as required, Plaintiff was precluded by his own fatal pleading deficiencies from demonstrating any damages tied to any alleged breach. What did FPL fail to do as regards this Plaintiff? How did that alleged failure damage this Plaintiff? What was the specific damage experienced by this Plaintiff? The complaint is calculatedly and fatally

silent as to Plaintiff's damages. He was without power in the sweltering heat. Complaint, Paragraph 24. Nothing more is alleged.

Plaintiff contents himself with simply asserting that he "suffered substantial damages." Complaint, Paragraph 50. There is not a single ultimate fact pled to indicate that he actually did suffer damages or, for purposes of this specific pleading requirement, of what those damages may consist. Under some circumstances, such a generalized allegation may be sufficient to survive a motion to dismiss. That is the case when the damages at issue may be presumed to actually and necessarily result from the alleged breach. *Augustine v. Southern Bell Tel. & Teleg. Co.*, 91 So.2d 320, 323 (Fla. 1956). Here, Plaintiff has failed to allege any specific breach. Accordingly, the Court and the FPL are at a complete loss as to what may actually and necessarily have resulted from any breach that may have occurred, if any.

Hurricanes cause multiple forms of damage. Storm surges cause flooding and related damage. Sustained high intensity winds cause trees to topple and tree limbs to be severed and carried away. Roofs can be lifted or damaged. Electrical wires can be disrupted or downed. Buildings and equipment can be damaged by falling trees or flying debris. Personal injuries and deaths can occur.

If, as a result of FPL's alleged unidentified breach of an unidentified contract, Plaintiff is asserting that one or more of these effects is attributable to FPL rather than to Hurricane Irma itself, his complaint must so specify. If Plaintiff claims to have experienced one or more forms of these clearly identifiable forms of damage, he must provide an allegation to that effect. It is counterintuitive, illogical and, more importantly, fatally defective for his complaint to be silent in this regard. These would be special

damages. Special damages must be pled with specificity. *Augustine, supra*; *DeMello v. Buckman*, 916 So.2d 882, 888-89 (Fla. 4th DCA 2005); *Precision Tune Auto Care, Inc. v. Radcliffe*, 804 So.2d 1287, 1292 (Fla. 4th DCA 2002); *Frieder v. Prince*, 308 So.2d 132, 134 (Fla. 3d DCA 1975).

For all of these reasons, the complaint fails to comply in multiple ways, with the requirements of Rule 1.110(b) and must be dismissed.

4. The Allegations of the Complaint are Contradicted by Plaintiff's Exhibits.

The complaint alleges that FPL "did nothing to improve its then existing facilities despite the fact that it charged a monthly fee **to furnish services** as a part of the storm restoration." Complaint, Paragraph 48 (emphasis supplied). Plaintiff cites no support for these allegations and identifies no documentary evidence. Presumably, Plaintiff is referring to his Exhibit D, which does address storm restoration. However, Plaintiff's asserted purpose for the storm restoration fee, that is, the furnishing of services of some unspecified nature, is simply an invention of Plaintiff. It finds no support in and is, in fact, directly rebutted by Plaintiff's own Exhibit D.

By the express terms of Exhibit D, the storm restoration recovery fee is to allow FPL to recover money previously expended by FPL in the recovery effort following Hurricane Matthew and to restore its storm reserve. It has nothing to do with the prospective furnishing of services. Accordingly, there is no reference in this document to the furnishing of services going forward or to bettering grids and distribution lines or to the removal or trimming of vegetation. Those activities were not addressed in either FPL's application or in the PSC's Order. This Exhibit not only fails to provide support for Plaintiff's unsubstantiated allegation, it directly contradicts it.

Of equal importance, the naked assertion that FPL did nothing to improve its then existing facilities is directly and overwhelmingly contradicted by Plaintiff's own Exhibit A. That document clearly recites that FPL expended "billions of dollar in infrastructure investments" that were necessary to "strengthen the electric grid…".It further recites that its rate plan will support "continued investments in long-term infrastructure" technology. It notes that FPL has increased its focus on "further improving the reliability and resiliency of its grid." FPL, it indicates, "continues to invest to make its grid stronger, smarter and more responsive." Plaintiff's factually-starved, wholly conclusory allegation cannot survive in the face of his own exhibits.

Exhibits attached to a complaint are controlling, where the allegations of the complaint are contradicted by the exhibits. The plain meaning of the exhibits will control. *Ginsberg v. Lennar Florida Holdings, Inc.*, 645 So.2d 490, 494 (Fla. 3d DCA 1994). The conclusions of the pleader, as to the meaning of the exhibits attached to the complaint, are not binding on the court. *Id.*, citing *N.C. Brandon v. County of Pinellas*, 141 So. 2d 278, 279 (Fla. 1962).

Plaintiff's allegations in Paragraphs 47 and 48 are directly and fatally contradicted by Plaintiff's own exhibits. Accordingly, they provide no basis for relief and the complaint must be dismissed.

CONCLUSION

The complaint is a deplorable effort to exploit a natural disaster. It is uninformed and fatally uninformative for purposes of compliance with the rules of pleading. It should be dismissed.

Dated: October 16, 2017

Respectfully submitted,

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By: *s/ Alvin B. Davis*
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served via the Court's E-Portal system on October 16, 2017.

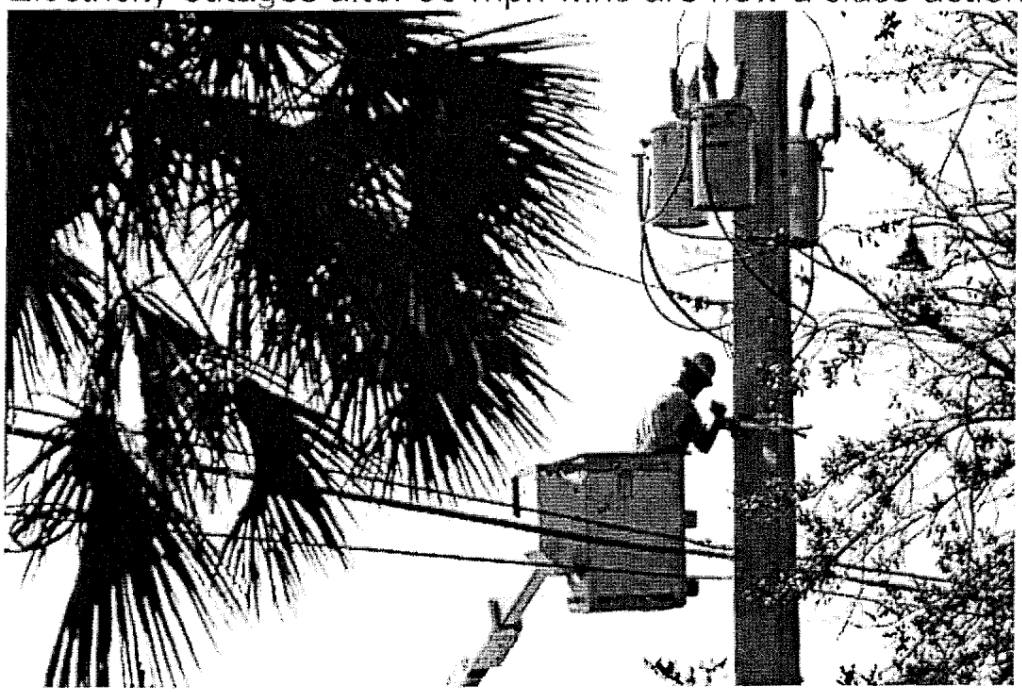
/s/ Alvin B. Davis
Alvin B. Davis

EXHIBIT A

OPINION
REVIEW & OUTLOOK

Hurricane Irma's Lawsuit Chasers

Electricity outages after 90 mph wins are now a class-action cause.



A lineman works on a utility pole as electricity is restored after Hurricane Irma in Fort Myers, Fl., Sept. 13. PHOTO: DANIEL ACKER/BLOOMBERG NEWS

By
The Editorial Board
Oct. 4, 2017 7:17 p.m. ET
19 COMMENTS

Trial lawyers never let a disaster go to waste. Behold the storm-chasing attorneys in Florida trying to exploit a power outage caused by Hurricane Irma.

Miami-based MSP Recovery Law and Dorta Law have filed a class-action lawsuit against the Florida Power & Light for inadequately maintaining its infrastructure and equipment, which allegedly resulted in the loss of power to nearly 4.4 million customers statewide. The law firms are seeking between $2 billion and $3 billion in damages.

Losing power is no doubt aggravating, but by September 19 Florida Power & Light had restored service to 99% of customers affected by the storm that swept the entire Florida Peninsula. After Hurricane Sandy, Con Edison needed two weeks to restore overhead lines and steam systems for a third of its customers. One percent of Jersey Central Power & Light customers were without power a month after the hurricane.

Utilities are responsible for girding and protecting their power plants, transmission lines and poles. But some damage is unavoidable during severe storms like Irma whose winds exceeded 90 miles per hour. The potential

for damage is greater in areas with dense vegetation like the tony Miami community of Coral Gables, which boasts picturesque, tree-lined streets.

Florida Power & Light in the past has complained about Coral Gables's refusal to pare back foliage. The utility notes that trees were planted by "the City in dangerous locations far too close to power lines. Other trees appear to have been planted too closely together, preventing their root systems from being able to grow properly and hold the ground securely in high winds." Coral Gables city commissioner Frank Quesada is employed by MSP Recovery and may have motivations other than civic virtue for deflecting blame to the utility.

The class action's putative victims could wind up paying higher electric rates for the legal costs the utility incurs and any damages awarded. Once again, plaintiff attorneys are trying to milk the public's pain for their own gain.

Appeared in the October 5, 2017, print edition.

EXHIBIT B

DORTA LAW
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September 29, 2017

VIA EMAIL

Eric E. Silagy, President, and Chief Executive Officer
R. Wade Litchfield, Vice President, General Counsel
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408

Re: Octavio Fernandez v. Florida Power & Light Co., No. 2017-21639-CA-31

DEMAND TO PRESERVE MATERIAL EVIDENCE

Dear Gentleman,

As you are aware and on notice of the above-noted pending action, and before its filing, you anticipated civil action after the recent storm, you and your parent company (NextEra Energy Inc.) and affiliates are under a legal obligation to maintain, preserve, retain, protect, not destroy and must secure any and all documents and data, both electronic and hard copy which might impact on the subject matter of this litigation, involving but not limited to text messages from individuals to FPL personnel, emails from personal laptop, telephonic incoming and outgoing cellular calls from company-issued or personal cell phones of FPL personnel and officers with former and/or current state officers, representatives, tenants, agency members, businesses pertaining to prioritizing return of power or services for their business, themselves and/or family members and friends pertaining to Hurricane Irma. Additionally, this notice requires you to secure, protect, preserve and maintain all other files, notices, wiretaps, documents relating, pertaining and/or containing information concerning the allegations in the complaint. For purposes of this notice to preserve communications, includes electronic stored data which shall include, but not limited to, all text files (including word processing document), presentation files (or PowerPoint), financial data, spreadsheets, petitions submitted to state's Public Service Commission (PSC) relating to storm restoration activity, storm restoration surcharge, storm restoration account (collectively "SRA"), and correspondence sent to former and current FPL customers (residential and business) since 2005 discussing tree trimming, line clearing activities and like-kind work, along with all work scheduled for SRA since 2005, and all other SRA workfiles documenting date, service area, neighborhoods and vendors that performed said tree-trimming and line clearing activities since 2005 to September 1, 2017.

This notice also seeks the preservation of all writings, emails, text messaging, memorandum, inter and intra company communications, writings and items relating to SRAs, including all detail contracts, plans, maps, construction plans, as built plans, photos, work schedules, permits relating to repairing, improving, bettering, modernizing FPC's distribution system since 2005 through Hurricane Irma and all other SRAs concerning FPL distribution facilities (transmission lines, utility poles, girds, etc.) since 2005 to current date, including all reports, analysis, writings authored by anyone recommending, evaluating, grading, opining and/or identifying areas of need, deficiencies or problems with FPL distribution facilities, storm preparation readiness, adequacy of FPL distribution facilities to withstand certain loads, winds, environmental conditions since 2005 to date.

This notice also seeks preservation of text messaging, emails, memos, communications, writings between FPL and NextEra Energy and former or current affiliates, officials, directors, representatives of each company that may impact the subject matter of this litigation. *This notice is served on NextEra Energy* and demand is equally made on it to preserve all the documents and records covered by this notice.

If there is any ongoing process of document removal, destruction, or alteration, demand is made to cease and preserve. Accordingly, if you need to continue to access electronically stored information (ESI) that is subject to this demand for preservation, please contact the undersigned in writing so that we can consider the best way to proceed to avoid accidental deletion or alteration of ESI. If you have any questions relating to this demand to preserve materials that relate or impact, directly or indirectly, the underlying litigation, please contact the undersigned in writing.

Respectfully

/s/ Gonzalo R. Dorta
Gonzalo R. Dorta

GRD/cm
cc: J. Ruiz, Esq.
cc: James L. Robo, CEO NextEra Energy, Inc.