

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.

THE CITY OF CORAL GABLES

Plaintiff,

v.

FLORIDA POWER & LIGHT COMPANY,

Defendant.

COMPLAINT

This Complaint is not about FPL’s post-Hurricane Irma (“Storm”) recovery efforts. It is about FPL’s failure to properly maintain its electrical systems prior to the advent of the Storm.¹ The City of Coral Gables (“the City”) and FPL have entered into a contract (the “Franchise Agreement”) that demands FPL’s performance of non-delegable duties, including amongst other things, the safe maintenance of its electrical facilities, its ever-aging transformers, and the vegetation and other obstructions that surround its power lines located within the easements it has been awarded. FPL’s failures have put the residents of the City, and residents of other affected cities, at risk. Fortunately, Hurricane Irma essentially “missed” South Florida and the City only experienced sustained tropical storm force winds. Unfortunately for FPL, the Storm exposed the systemic failure to properly and safely maintain its systems. This Complaint does not seek monetary damages, rather it is preventative in nature and will hold FPL accountable to its duties

¹ Although not the focus of this lawsuit, FPL’s recovery effort exposed significant issues with its ability to properly and effectively restore power after a direct hit by a storm with sustained Hurricane or tropical storm force winds which makes the relief sought in this action extremely time sensitive.

under the Franchise Agreement so that when the next true “Hurricane” hits the City its citizens will be better protected and prepared to weather the storm. Put simply, one cannot build a “broken home” and then seek praise for how quickly or efficiently the very issues that caused the breakdown in the first place are repaired. The City’s Complaint is one of last resort, as the City has on various occasions invited FPL to discuss the issues raised in this Complaint to no avail. The City of Coral Gables sues Florida Power & Light Company (“FPL”), a Florida corporation, for injunctive relief, and declaratory relief, and alleges:

INTRODUCTION

1. This lawsuit focuses on FPL’s failure to properly perform its non-delegable duties, including the maintenance of its electrical facilities, *prior* to the impact of Hurricane Irma, and endangering the safety and welfare of the City’s residents.

2. The City granted FPL an exclusive franchise agreement – an effective monopoly – to be its exclusive electric service provider. It is axiomatic that the City has the right to require FPL to comply with the Franchise Agreement and have the requisite infrastructure in place to provide power to the City’s residents in case of an emergency.

3. Days before landfall in South Florida, Hurricane Irma was a category 5 hurricane with winds reaching speeds of 185 miles per hour. Ultimately, the Storm changed direction and Miami-Dade County experienced mostly tropical storm force winds with gusts reaching, at best, the strength of a category 1 hurricane.

4. Nevertheless, almost 4.5 million of FPL’s 4.9 million customers lost power to their homes and businesses. Thousands of FPL’s customers in Coral Gables lost power, many for a week or more.

5. FPL's failure to maintain or replace its outdated transformers, its failure to manage the vegetation around its distribution lines, and its failure to maintain its electrical poles—all in violation of its exclusive obligations under the Franchise Agreement—caused the widespread and unreasonably lengthy power outages in the City.

6. Upon information and belief, FPL is aware of a significant amount of its transformers being several decades old, in some cases exceeding sixty years of age, and greatly surpassing their useful and recommended shelf life. Indeed, many of these aging transformers “blew up” during the storm causing live power lines to fall into residents' yards. Yet, FPL continues to refuse to maintain or replace these transformers because of their significant replacement cost.

7. The safety and welfare of many of the City's residents were put at risk in the aftermath of the Storm as a result of these downed power lines on their property due to FPL's dereliction of its responsibilities in maintaining its transformers and poles. Had FPL fulfilled its contractual obligations to the City, and not acted with negligent disregard for the potential consequences of a powerful storm, the massive recovery efforts required in the aftermath of Hurricane Irma would have been unnecessary.

8. FPL and the City are on notice that FPL's infrastructure and easement maintenance is woefully inadequate. It is now evident that FPL will not be prepared for the next major Hurricane or even a tropical storm. The consequences would be severe for the City and its residents and the timing for the relief requested in this action is of the essence so that FPL's electrical systems will be properly prepared for the next hurricane season.

9. The Complaint asserts claims against FPL for breach of contract/specific performance, and further seeks declaratory and injunctive relief.

PARTIES, JURISDICTION, AND VENUE

10. This is an action for declaratory and other equitable relief and the amount in controversy meets the jurisdictional threshold of this Court.

11. The City is a duly constituted Florida municipality located in Miami-Dade County.

12. FPL is a public utility in the business of supplying energy, and specifically electricity, to customers within the State of Florida, including the City. FPL's principal offices are in Juno Beach, Florida.

13. This court has exclusive jurisdiction over this action to provide declaratory and other equitable relief regarding the parties respective rights under the Franchise Agreement pursuant to Fla. Stat. §86.011, *et seq.*

14. Venue is appropriate in Miami-Dade County pursuant to § 47.011, Florida Statutes.

15. All conditions precedent to the bringing of this action have either been demanded, occurred or satisfied, or would otherwise have been futile to attempt to perform or satisfy.

GENERAL ALLEGATIONS

A. The Franchise Agreement

16. FPL is the exclusive provider of electricity and services to certain residents in the State of Florida, including the City.

17. On January 25, 1998, FPL and the City entered into the Franchise Agreement pursuant to which FPL was granted the exclusive right to supply electricity to the City and its residents pursuant to certain conditions. The Franchise Agreement was adopted by the City in an ordinance and countersigned by FPL. A copy of the Franchise Agreement and ordinance is attached hereto as **Exhibit A**.

18. The Franchise Agreement, and certain easements granted to FPL in connection with the Franchise Agreement, grant FPL the exclusive right and obligation to maintain its transformers, distribution lines, and poles, including the trimming of any trees or branches that may interfere with the provision of electricity and the replacement of transformers that are long past their useful life.

19. Specifically, the Franchise Agreement provides that FPL is to “construct, operate and maintain” its “conduits, poles, wires, transmission and distribution lines and all other facilities” in “accordance with [FPL’s] customary practice with respect to construction and maintenance...” *See* **Ex. A.** at Section 1.

20. In addition to the provisions in the Franchise Agreement, the Coral Gables City Code enacted in 1929, governs the rights of the City under the Franchise Agreement and requires the “maintenance of the plant and fixtures at the highest practicable standard of efficiency.” *See* Coral Gables City Code Sec. 78-188(2); 78-190².

21. It is obligatory and the customary practice with regard to the maintenance of the distribution lines for FPL to be solely responsible for the trimming of the trees and management of the vegetation such that the trees or other vegetation will not interfere with the electricity during a storm.

22. FPL’s knowledge of its obligation to exclusively manage the vegetation around its distribution lines is shown by, among other things, the following:

- a. The Frequently Asked Questions on FPL’s own website which states that “it is our responsibility to protect our lines and equipment.” *See* FPL | Trees | Frequently Asked Questions, <https://www.fpl.com/reliability/trees/faq.html> (last visited Oct. 2, 2017). FPL’s website further advises its customers to “stay far away from power

² Coral Gables City Code Sec. 78-188 is incorporated into the Franchise Agreement between FPL and the City.

lines at all times” and to “[n]ever attempt to trim any vegetation growing on or near power lines.” *Id.*

- b. FPL Tariff Rule 5.6 states that, “The Company shall have perpetual unobstructed access to its overhead and underground facilities such as poles, underground cables, pad mounted transformers and meters in order to perform repair and maintenance in a safe, timely and cost-efficient manner.” *See* <https://www.fpl.com/reliability/trees/power-line-safety.html> (last visited October 2, 2017).
- c. Resolution No. 2005-179 from the City of Coral Gables which among other things states that FPL has the right to “access premises and address any interference with the utility company’s facilities that may cause interruptions” and urges FPL to “conduct the necessary inspections/analysis to insure that the equipment including but not limited to power lines, transformers and poles are properly and routinely maintained.” A copy of the resolution is attached hereto as **Exhibit B**.

23. It is further the customary practice for FPL to have the responsibility to properly maintain its electrical poles and transformers to withstand tropical storm or category 1 force winds such that service will be restored and its customers will not be put in jeopardy by downed power lines or suffer an unreasonably prolonged and widespread power outage after a storm.

B. FPL’s Breach of the Franchise Agreement

24. Hurricanes are nothing new to South Florida. Each year, Florida residents prepare their homes and businesses for hurricane season, which lasts from June 1 through November 30 each year.

25. In the week preceding Hurricane Irma’s landfall, the Storm was a category 5 hurricane with wind speeds reaching upwards of 185 miles per hour. Weather forecasters originally predicted that the hurricane would make direct landfall on Miami-Dade County as a category 4 or 5 hurricane. Fortunately for Miami-Dade County, the Storm changed direction at the last moment, and Florida’s east coast experienced only tropical storm or category 1 hurricane storm force winds.

26. Notwithstanding the fact that Hurricane Irma's strength in Miami-Dade County was considerably less powerful than originally predicted, Miami-Dade County, including the City, experienced widespread and unreasonably prolonged power outages. Nearly all of FPL's 4.9 million customers lost power in the aftermath of Hurricane Irma, many for a week or more.

27. The majority of the power outages in the City were caused by FPL's neglect of its transformers that are long past their useful life, trees or branches falling on FPL's distribution lines, and by the damaged out-of-date wooden electrical poles, evidencing FPL's widespread failure to fulfill its obligations under the Franchise Agreement.

28. Rather than acknowledge its responsibility to properly maintain and protect its transformers, distribution lines, and electrical poles, FPL chose to place blame on the City. In a September 19, 2017 statement, FPL stated that it was the City's "irresponsibly managed tree program" and its resistance to "FPL's well-documented efforts to trim trees" that caused the widespread and lengthy power outages in the City.

29. Even more egregious, FPL took to blaming the City's residents for its negligent maintenance of the distribution line vegetation. FPL spokesman, Peter Robbins, publicly stated that, "[c]ustomers need to know they are responsible for trimming in their backyards."³ This statement is in clear contradiction of FPL's own FAQ's and guidelines. Indeed, Mr. Robbins' advice seeks to knowingly put residents in danger by encouraging them to trim trees close to power lines.

30. In fact, the City has never resisted FPL's efforts to trim the trees around its distribution lines, nor could it as this is the exclusive right and obligation of FPL. The City has at

³ See, FPL spent \$3 billion preparing; so why did Irma knock out the lights? <http://www.miamiherald.com/news/weather/hurricane/article174521756.html> (last visited October 2, 2017).

all times complied with all the terms and conditions of the Franchise Agreement and specifically has never interfered with FPL's rights or obligations to maintain the vegetation around its distribution lines. Unlike FPL, the City has no right to enter the private property of a resident to trim trees or otherwise manage the vegetation.

31. Rather than fulfill its obligations under the Franchise Agreement, and in an attempt to increase its own profits, FPL reduced the money it spends on vegetation management and failed to perform its exclusive obligation to trim the trees and branches near its distribution lines. In the years from 2012 through 2016, FPL reduced its expenses on tree trimming by nearly \$2 million despite increasing its customer base by approximately 300,000 new accounts. Upon information and belief, FPL did not even use its allotted budget for vegetation management, knowing that it could seek reimbursement of these expenses in the Storm's aftermath, all at the expense of its customers.

32. FPL's failure to live up to its obligation to manage the vegetation around its distribution lines, resulting in the long and widespread outages after Hurricane Irma, is a breach of the Franchise Agreement.

33. In addition to FPL's failure to trim the vegetation around its distribution lines, the lengthy and widespread power outages in the City were also a result of FPL failing to properly service and maintain the wooden poles that support the electrical lines.

34. FPL owns the wooden poles, and, under the Franchise Agreement, it has the obligation to properly maintain its poles to insure that electric service to its customers will be sustained.

35. The outages were further a result of FPL failing to replace or repair antiquated transformers that should have been replaced as part of FPL's obligations under the Franchise

Agreement. Despite only experiencing sustained tropical storm force winds, many of FPL's transformers failed leading to downed power lines in residents' properties across the City.

36. The transformers are several decades old, or more, and are long past their useful life. FPL has neglected to replace these outdated transformers due to the high cost of doing so.

37. FPL touts that it spent close to \$3 billion over the last decade to "harden" its electrical systems, and that its upgrades are designed to withstand winds up to 150 mph, however, many of these wooden poles and transformers were damaged by Hurricane Irma's weaker winds.⁴

38. FPL's failure to live up to its obligation to maintain its transformers and electrical poles, resulting in the long and widespread outages after Hurricane Irma, is a breach of the Franchise Agreement

39. FPL failed to carefully inspect, repair, or replace its transformers and wooden poles and trim the vegetation near its distribution lines in the City prior to Hurricane Irma, resulting in widespread damage evidenced by the following pictures:

⁴ FPL fails to disclose that the money it spends for its storm-hardening is ultimately assessed to its customers.









40. Had FPL properly maintained its facilities, as it had the exclusive obligation to do, the power outages in the City would have been shorter and less widespread and the danger posed to the public from the downed power lines would have been diminished.

41. FPL breached the terms of the Franchise Agreement, by failing to perform its obligations and properly maintain its equipment.

42. In addition, FPL's public statements regarding its responsibility to manage the City's vegetation, or lack thereof, have given rise to an actual controversy regarding the rights and obligations of FPL and the City under the Franchise Agreement and other applicable authority.

COUNT I
DECLARATORY RELIEF

Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 above and further alleges as follows:

43. Pursuant to § 86.011, Florida Statutes:

The court may render declaratory judgments on the existence, or nonexistence:

(1) Of any immunity, power, privilege, or right; or

(2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action.

Fla. Stat. § 86.011.

44. The City is entitled to a declaratory judgment from this Court, and further supplemental remedies, to resolve its dispute with FPL over the management of vegetation near distribution lines and maintenance of transformers and power poles.

45. The City seeks a declaration that under the Franchise Agreement, FPL has the sole and exclusive responsibility to trim and manage trees and other vegetation near its distribution lines.

46. The City further seeks a declaration that FPL has an obligation to carefully maintain or replace its transformers and electrical poles.

47. The dispute is not hypothetical, abstract, or academic, nor is it sought merely for the purpose of providing legal advice.

48. The dispute between the City and FPL represents an actual controversy, is definite and concrete, affecting the parties' adverse legal interests with sufficient immediacy as to justify relief. The City seeks to remove any doubt as to FPL's obligations under the Franchise Agreement and other applicable authority.

49. The City is entitled to a declaration of its rights.

WHEREFORE, the City respectfully requests this Court enter a final declaratory judgment (i) determining the rights and obligations of the parties under the Franchise Agreement and other applicable authority; and (ii) awarding such further relief as the Court deems just.

COUNT II
BREACH OF CONTRACT/SPECIFIC PERFORMANCE

Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 above and further alleges as follows:

50. The City and FPL entered into a valid and enforceable Franchise Agreement with express terms and conditions.

51. Pursuant to the terms of the Franchise Agreement, FPL is obligated to maintain its transformers, lines, and poles in accordance with its customary practices.

52. In addition, Coral Gables' City Code governs the Franchise Agreement and requires FPL to maintain its fixtures, including the distribution lines and electrical poles, "at the highest practicable standard of efficiency."

53. FPL materially breached the Franchise Agreement by failing to perform its obligations and properly manage the trees and other vegetation near its distribution lines.

54. FPL further materially breached the Franchise Agreement by failing to perform its obligations and inspect, repair, or replace its transformers and electrical poles that would fail during a tropical storm or category 1 hurricane.

55. FPL's unreasonable and unjustified refusal to perform its obligations under the Franchise Agreement has left the City with no adequate remedy at law.

56. As justice requires, FPL's breach of the Franchise Agreement entitles the City to an equitable remedy requiring FPL to specifically perform in compliance with the terms and obligations of the Franchise Agreement and the incorporated ordinance.

WHEREFORE, the City respectfully requests that this Court enter judgment against FPL requiring it to specifically perform its obligations to maintain its transformers, electrical poles, and the vegetation around its distribution lines and any further relief the Court deems just.

COUNT III
INJUNCTIVE RELIEF

Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 and further alleges as follows:

57. In order to prevent any further damage to the City or threat to the safety and welfare of its citizens, the Court should enter an injunction requiring FPL to trim trees near its distribution lines and to inspect, repair, replace, and maintain its neglected transformers and electrical poles.

58. If FPL is not ordered to take these actions, there is a likelihood that the City will suffer irreparable harm. The Atlantic Hurricane Season is ongoing and another hurricane making landfall either this year or in the near future is foreseeable.

59. The City has already suffered harm in the form of widespread and unreasonably lengthy power outages as a result of FPL's actions. In addition, the safety and welfare of its residents have been put at risk due to the downed power lines.

60. The City is without a legal remedy to immediately cease FPL's wrongful conduct.

61. As described above, there is a high likelihood that the City will succeed on the merits of its claim that FPL breached the Franchise Agreement by failing to maintain its electrical facilities.

62. Public policy supports granting the injunction where the potential harm is high and the harm to the other party is minimal. There is minimal, if any, harm to FPL as the conduct requested by the City is required by the Franchise Agreement. In addition, public policy supports

this requested injunction because FPL's actions have harmed not only the City, but its non-party residents.

WHEREFORE, the City respectfully requests that the Court enter an order requiring FPL to undertake its obligations to properly maintain its electrical facilities, and granting any further relief the Court deems just.

RELIEF

Coral Gables seeks judgment in its favor, including specific performance under the Franchise Agreement, a declaration of rights, injunctive relief, and such other, further relief as the Court deems just.

Dated: October ____, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing was filed with the Clerk of Court and sent via email and the Clerk's electronic filing system this ...th day of October ____, 2017, to all counsel of record.

By: _____
Javier A. Lopez

SERVICE LIST

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