

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

VERIZON FLORIDA LLC,

Complainant,

v.

FLORIDA POWER & LIGHT
COMPANY,

Respondent.

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Docket No. 15-73
File No.: EB-15-MD-002

**RESPONDENT FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF
REGARDING IMPACT OF STATE COURT JUDGMENT**

Pursuant to 47 C.F.R. §§ 1.1411 & 1.1415, Respondent Florida Power & Light Company (“FPL”), by and through its attorneys, respectfully submits this Motion for Leave to File Supplemental Brief Regarding Impact of State Court Judgment and requests that the Bureau grant FPL leave to submit the accompanying supplemental brief with respect to the effect of the state court judgment in FPL’s civil litigation with Verizon Florida LLC (“Verizon”) in the Florida court system on the present proceeding. In further support hereof, FPL states as follows.

1. FPL filed a state court breach of contract action against Verizon on April 13, 2013, in the Circuit Court for Miami-Dade County, Florida (the “Florida Court”), seeking payment under the parties’ joint use agreement of the full amount of pole attachment rental due FPL for calendar years 2011 and 2012. On March 13, 2015, Verizon filed the pending Pole

Attachment Complaint against FPL seeking, *inter alia*, to have the Commission set the pole attachment rates to be paid by Verizon to FPL that would apply beginning July 12, 2011.¹

2. On October 15, 2015, the Florida Court held a summary judgment hearing to decide the parties' civil litigation. Shortly after the hearing, the Florida Court entered summary judgment in favor of FPL on all issues, ordering Verizon to pay FPL approximately \$2.9 million in unpaid principal and interest in connection with FPL's invoices to Verizon covering pole attachment rental due for 2011 and 2012 pursuant to the parties' joint use agreement (the "Summary Judgment Order"). The Summary Judgment Order made findings on numerous issues of fact and law. On October 26, 2015, the Florida Court entered a final judgment in the parties' case on the Summary Judgment Order (the "Final Judgment"). On November 6, 2015, without the need for a hearing, the Florida Court denied Verizon's Motion for Reconsideration and Rehearing.

3. 47 C.F.R. § 1.1415 allows the Commission to "so conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice."

4. FPL believes that the Bureau will benefit from the submission of additional briefing from the parties with the respect to the impact that the entry of the Final Judgment in the parties' state court proceeding has on the present proceeding. There are no reported decisions by the Commission or courts deciding a complaint under 47 U.S.C. § 224 after a state court has entered final judgment in an overlapping parallel proceeding between the same parties.

5. FPL therefore asserts that good cause exists to permit the filing and consideration of additional briefs in the instant proceeding. This additional briefing will allow FPL to provide

¹ Pole Attachment Complaint at 44, *Verizon Fla. LLC v. Fla. Power & Light Co.*, Docket No. 15-73, File No. EB-15-MD-002, Related to Docket No. 14-216, File No. EB-14-MD-003 (Mar. 13, 2015); Response to Pole Attachment Complaint at 50, *Verizon Fla. LLC v. Fla. Power & Light Co.*, Docket No. 15-73, File No. EB-15-MD-002, Related to Docket No. 14-216, File No. EB-14-MD-003 (June 29, 2015) ("FPL Response").

the Commission with additional legal analysis with respect to several matters resulting from the Court's entry of judgment including, but not limited to, the effect of the Full Faith and Credit Clause of the United States Constitution on the interaction between federal agencies addressing matters involving related state court judgments.

6. FPL requests that the Commission grant it leave to file a single supplemental brief, which accompanies this motion and does not exceed 15 pages, regarding the effect of the Florida Court's Final Judgment on this proceeding. FPL further states that should Verizon wish to file a response brief regarding the same issues, FPL has no objection to Verizon filing a brief not to exceed 15 pages.

7. Neither party would be prejudiced by the requested supplemental briefing, nor would the Commission's processes be unduly delayed or overburdened. Rather, supplemental briefing would serve the interests of justice and provide a more thorough and informed basis for the legal analysis and future course of this proceeding.

For the foregoing reasons, FPL respectfully requests that the Commission grant it leave to file the accompanying supplemental brief addressing the single issue of the effect of the Final Judgment in the parties' civil litigation on the instant proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2016, I caused a copy of the foregoing Respondent's Motion for Leave to File Supplemental Brief to be served on the following by hand delivery, U.S. mail or electronic mail (as indicated):

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A handwritten signature in blue ink, appearing to read "R. J. Gastner", written over a horizontal line.

Robert J. Gastner