

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

GENERAL JURISDICTION DIVISION

CASE NO.

OCTAVIO FERNANDEZ,

Plaintiff,

v.

FLORIDA POWER & LIGHT COMPANY,

Defendant.

**CLASS REPRESENTATION**

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**PLAINTIFFS' CLASS ACTION COMPLAINT FOR DAMAGES**

Plaintiff OCTAVIO FERNANDEZ (“Octavio”), individually and on behalf of all others similarly situated (the “Class”), brings this action against defendant FLORIDA POWER & LIGHT COMPANY (“FPL”), a Florida corporation, and alleges the following:

**JURISDICTION, VENUE, AND PARTIES**

1. This is an action in which the amount in controversy when aggregated exceeds the sum of fifteen thousand dollars (\$15,000.00) exclusive of interest, costs, and attorney’s fees.
2. Defendant, FPL is the third largest electric utility in the United States, serving over 4 million customer accounts and over 10 million citizens. FPL is a citizen of the State of Florida, and maintains its principal place of business in Juno Beach, Florida.
3. This Court has jurisdiction over FPL because it is incorporated in Florida, conducts business in Miami, and has sufficient minimum contacts with Florida.
4. Plaintiff, Octavio Fernandez, is a citizen of Florida, and is an FPL customer. Every other putative Class member is a citizen of the state of Florida and a customer of FPL.

5. Venue is proper, as the cause of action accrued in Miami, Florida. § 47.051, Fla. Sta. (2016).
6. All conditions precedent to maintaining this action have occurred, been performed or been waived.

### **GENERAL ALLEGATIONS**

7. FPL has aggressively claimed that their rate plan would “support continued investments to modernize its power plant system and improve the reliability and resiliency” of its grid for customers as illustrated in Exhibit A attached herein.
8. However, FPL’s repeated claims regarding rates were fraudulent. Most of Florida’s power grids went dead after Hurricane Irma, because FPL had not improved its power grids and distribution facilities after the last storm even though it had agreed to do so in consideration for the storm restoration monthly fee that each member of the Class paid.
9. On March 15, 2016, FPL filed a four-year request with the Florida Public Service Commission (PSC) for new base rates that would be phased in beginning in 2017.
10. FPL’s request was based on “lessons learned from major storms, such as 2012’s Superstorm Sandy” and aimed to “reduce outages and enable FPL to restore power for customers and help local communities recover more quickly when severe weather strikes.” *Id.*
11. On November 9, 2016, the PSC approved FPL’s \$400 million 2017 rate increase, to be followed by \$411 million in rate hikes in the next three years. *See* Exhibit B.
12. On December 29, 2016, FPL filed a petition with the PSC to implement an interim storm restoration recovery charge to recover a total of \$318.5 million for restoration costs

related to Hurricane Matthew and to replenish its storm reserve pursuant to the terms and conditions of the Settlement Agreement attached herein as Exhibit C under paragraph 6.

13. The storm charge would enable FPL to temporarily adjust electric rates for 12 months to recover the costs associated with the restoration of service associated with electric power outages affecting customers as a result of a storm or storms, including but not limited to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, or distribution facilities to better withstand the next storm or wind event which is a foreseeable and typical annual event starting the first of June.
14. FPL petitioned PSC to authorize the storm charge to allow it to take preventative measures prior to announced storms striking service areas monopolized by FPL and to ensure that their systems would withstand Hurricanes with an improved performance.
15. Additionally, the storm charge was earmarked to address prospective recovery and restoration needs to ensure that FPL would be able to perform its statutory obligation under Florida Statutes, Section 366.03, and honor its contractual obligation to its customers to provide reasonably sufficient, adequate, and efficient power service to the following counties: Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Clay, Collier, Columbia, Desoto, Duval, Flagler, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Manatee, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Suwannee, Union, and Volusia in consideration for which FPL has been able to realize profits in the billions of dollars and maintain its monopolistic grip over the subject communities.

Specifically, in the year 2016 alone FPL reported a profit of about 1.7 billion dollars, and any economic losses FPL has suffered FPL's customers have absorbed such expenditures.

16. The requested recovery of \$318.5 million represented net retail recoverable costs of approximately \$200.7 million, plus an additional \$117.1 million to replenish the storm reserve to the balance that existed to improve existing distribution facilities, recovery and restoration for future storm events.
17. On February 20, 2017, the PSC granted FPL's 2017 interim storm restoration recovery charge of \$3.36 on a monthly 1,000 kWh residential bill, effective for a 12-month period beginning March 1, 2017. *See Exhibit D.*
18. Despite the grant of the requested interim storm restoration recovery charge, FPL has utterly failed to take precautionary measures to avoid service interruption.
19. On September 10, 2017, Hurricane Irma's spiral bands unleashed tropical storm force winds in the South Florida area impacting FPL customers, including Plaintiff and the Class.
20. Nearly 4.4 million FPL customers experienced multiple power outages because of Hurricane Irma, along with downed power lines, and other related interruptions of FPL services.
21. FPL's lack of preparation caused and continues to cause Plaintiff and the Class to remain without power in the sweltering summer heat.
22. As of Sunday, September 17, 2017, more than 300,000 customers were still without power, despite FPL's public commitment to restore power all along the East coast of Florida by then. *See Exhibit E.*

23. FPL's failure to adequately respond to situations involving downed yet still energized power lines or nonperforming power lines have posed a dangerous hazard to Plaintiff and the Class.
24. Additionally, FPL provided customers status updates and promised dates when power would be restored knowing full well that those status reports and restoration dates would not be honored.
25. Natural disasters such as Hurricane Irma are indeed beyond FPL's control but this event was a foreseeable storm where FPL received over a week in advance notice of its potential impact on its facilities yet FPL did nothing to prepare for the coming storms. FPL's failure to perform its contractual obligations is one of the core issues in this litigation.
26. FPL's representation about the benefits of a rate increase and storm charge to strengthen its power lines and related infrastructures were false when made and continue to be false. The storm charges collected have not been used as represented by FPL. Customers like Plaintiff and the Class have not received the benefit of the bargain despite having paid storm charges.
27. Rather than strengthening its grid, FPL has spent millions of dollars influencing the state legislative process. Notably, FPL has exerted its monopoly power over some of the state's most influential legislators through political contributions.
28. These legislators in turn ensure that legislature written by FPL is swiftly enacted into law providing the monopolistic enterprise unprecedented protection and immunity for the large campaign contributions it spreads among those legislators.

## CLASS ALLEGATIONS

29. Plaintiff brings this class action both individually and on behalf of all other similarly situated Florida residents that are customers of FPL pursuant to Florida Rule of Civil Procedure 1.220(a), 1.220(b)(1)(A), and 1.220(b)(3).

### **A. Numerosity**

30. This action satisfies the **numerosity** requirement of Fla. R. Civ. P. 1.220(a) because there are millions of Florida citizens that are customers of FPL that experienced the power outages complained of herein. Indeed, more than 4 million FPL customers experienced multiple power outages throughout the state of Florida. Individual joinder of all Class members is impracticable.

31. The Class consists of:

Any and all FPL customers that are citizens of the state of Florida who were charged a "storm charge" and that sustained damages as a result of the power outages associated with Hurricane Irma due to FPL's failure to comply with its contractual obligations to take preventative measures prior to Hurricane Irma as well as failing to take proper measures to restore power as expeditiously as possible.

32. Excluded from the Class are FPL customers that are not citizens of the state of Florida; FPL and their employees, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of FPL; Class Counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

### **B. Commonality and Predominance**

33. This action satisfies the **commonality** requirement of Fla. R. Civ. P. 1.220(a) and 1.220(b)(3) because questions of law and fact that have common answers that are the

same for each Class member **predominate** over questions affecting only individual Class members.

34. The class claims all derive directly from a common course of conduct by FPL. This case is about FPL's failure to satisfy its contractual obligation. The same exact legal claims that are asserted by Plaintiff are the exact same legal theories advanced by the Class. Specifically, everyone was charged the exact same type of storm charge. Despite paying this storm charge, FPL failed to meet its end of the bargain by failing to honor its obligations for storm prevention and restoration.

35. Hence, the prosecution of separate claims or defenses by or against individual members of the class would create a risk of inconsistent or varying adjudications concerning individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class.

36. The common issues that the Plaintiff shares with the Class include, without limitation, the following:

1. Whether FPL breached its contract with Plaintiff and the Class;
2. Whether FPL engaged in the conduct alleged herein;
3. Whether FPL adequately prepared for Hurricane Irma;
4. Whether FPL knew or should have known about the vegetation and/or other debris that could affect its infrastructure;
5. Whether FPL failed to satisfy its contractual obligation;
6. Whether FPL's failure to adequately prepare for Hurricane Irma caused Plaintiff and the Class damages;

7. Whether FPL had a duty to disclose its progress post Hurricane Irma, and maintain Plaintiff and the Class informed;
8. Whether FPL misrepresented that the “storm charge” would repair and improve its power and distribution means;
9. Whether FPL has been unjustly enriched by their conduct of not providing the services it promised to provide to its customers in consideration for the storm charge payment; and
10. Whether Plaintiff and the Class are entitled to damages and other monetary relief, and, if so, in what amount.

### **C. Typicality**

37. This action satisfies the requirements of Fla. R. Civ. P. 1.220(a) because Plaintiff’s claims relating to FPL’s breach of contract is typical of the claims of the Class that Plaintiff will represent.
38. All Class members (including Plaintiff) have been damaged in the same manner. Plaintiff’s claims have the same essential characteristics of those of the proposed Class, and Plaintiff’s claims arise from a similar course of conduct and share the same legal theory.
39. Accordingly, Plaintiff as the class representative possess the same interests and suffered the same injury as the other members of the proposed Class, such that there is a sufficient nexus between Plaintiff’s claims and those of the proposed Class.
40. Plaintiff’s claims are typical for the Class as Plaintiff, just like all Class members, is entitled to relief owing to FPL’s breach of contract.

### **D. Adequate Representation**



41. Plaintiff will fairly and adequately represent and protect the interest of the Class. Plaintiff has retained counsel with substantial experience in prosecuting consumer class actions. Plaintiff has retained John H. Ruiz, and Gonzalo Dorta.

42. John H. Ruiz has served as lead class counsel for numerous class action cases presiding in both state and federal courts. In addition to being involved in these types of cases, John H. Ruiz handles other complex litigation matters, including trials. Specifically, John H. Ruiz and Gonzalo Dorta have the experience and financial ability to prosecute this case.

#### **E. Superiority**

43. This action satisfies the requirement of superiority of Fla. R. Civ. P. 1.220(b)(3) because a class action is **superior** to other available methods for the fair and efficient adjudication of this controversy.

44. Specifically, a class action is the superior method of adjudicating Plaintiff and the Class member's claims as: (1) it will provide Plaintiff and the Class members with the only economically viable remedy; (2) the individual claims are not large enough to justify the expense of separate litigation considering standard attorneys fee rates in this jurisdiction and the collection costs; and (3) a class action will concentrate all of the litigation in one forum with no unusual manageability problems, particularly because, in this case, FPL's liability and the nature of the Class members' damages may be readily proven through common class-wide proofs.

### **CAUSES OF ACTION**

#### **COUNT I – BREACH OF CONTRACT**

45. Plaintiff hereby incorporates by reference the allegations of paragraphs one (1) through forty-four (44) above as if fully set forth herein, and further alleges:

46. FPL has a contractual obligation to the Plaintiff and Class to provide efficient power services.
47. In consideration for the storm restoration fee that FPL charges the Plaintiff and Class, FPL was contractually obligated to better its grids, distribution lines, and remove or trim trees and other overgrowth that would foreseeably damage its distribution facilities and cause massive electrical outages.
48. Although FPL charged the Plaintiff and Class the same storm charge restoration fee to undertake such contractual obligation FPL breached its contract and instead did nothing to improve its then existing facilities despite the fact that it charged a monthly fee to furnish services as part of the storm restoration.
49. The Plaintiff and Class were charged the same charge on the same basis for the same period of time in consideration for the same services, yet FPL breached its contractual obligation in the same manner with respect to the Plaintiff and each of the Class members.
50. As a direct and proximate result of FPL's breach, Plaintiff and the Class suffered substantial damages. Plaintiff and the Class experienced prolonged power outages causing specifically seniors major obstacles. For example, seniors who are oxygen-dependent had limited power.
51. In light of FPL's breach, Plaintiff and the Class are entitled to damages.

#### **PRAYER FOR RELIEF**

52. Plaintiff, individually and on behalf of all other similarly situated Florida residents that are customers of FPL, requests that the Court enter judgment against FPL, as follows:

1. An order certifying the proposed Class, designating Plaintiff as the named representative of the Class, designating the undersigned as Class Counsel, and making such further orders for the protection of Class members as the Court deems appropriate;
2. An award to Plaintiff and Class members of damages, including interests, in an amount to be proven at trial;
3. An award of attorneys' fees and costs, as allowed by law;
4. Leave to amend the Complaint to conform to the evidence produced at trial; and
5. Such other relief as may be appropriate under the circumstances.

**DEMAND FOR JURY TRIAL**

53. Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: September 18, 2017

Respectfully Submitted,

**MSP RECOVERY LAW FIRM**

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By: /s/ John H. Ruiz

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