

Third District Court of Appeal
State of Florida, July Term, A.D. 2009

Opinion filed December 23, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-2808
Lower Tribunal No. 09-13282

Florida Power & Light Company,
Petitioner,

vs.

Alfredo Feo, Rosa Perez, et al.,
Respondents.

A Case of Original Jurisdiction – Prohibition.

Quintairos, Prieto, Wood & Boyer and David M. Tarlow and Philip J. Kantor, for petitioner.

Andrew T. Traylor and Brian H. Pollock, for respondents.

Before SUAREZ, LAGOA and SALTER, JJ.

PER CURIAM.

Florida Power & Light Company [“FPL”] petitions for a writ of prohibition

to prevent the trial court from proceeding on a Florida Deceptive and Unfair Trade Practices Act, §§ 501.201 - .213, Fla. Stat. (2009) [“FDUTPA”], claim brought against it by the respondents. We grant prohibition and remand the case with directions that this claim in the complaint be dismissed.¹

FPL is correct when it asserts that the circuit court lacks jurisdiction to entertain the FDUTPA claims. Section 501.212(5), Florida Statutes (2009), creates a specific exception from suit under that Act for “[a]ny activity regulated under laws administered by the Florida Public Service Commission.” The Resident Building Envelope Program giving rise to the complaint is an incentive program approved and governed by the Florida Public Service Commission [“PSC”]. Fla. Admin. Code R. 25-17.0021 (granting PSC authority to establish conservation goals for utilities and to oversee/regulate progress in meeting same). Therefore, the PSC has exclusive jurisdiction over this matter. See § 366.04, Fla. Stat. (2009); Extraordinary Title Servs., LLC v. Fla. Power & Light Co., 1 So. 3d 400 (Fla. 3d DCA 2009). Dismissal of the FDUTPA claim is appropriate.

Petition granted; cause remanded.

¹ The dismissal will be without prejudice to the appellees’ prosecution of the claim against FPL before the Florida Public Service Commission.