

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for initiation of formal proceedings pursuant to Rule 25-22.036, F.A.C., by Devonson A. Walker.

DOCKET NO. 20170138-EI
ORDER NO. PSC-2017-0489-PAA-EI
ISSUED: December 27, 2017

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
ART GRAHAM
RONALD A. BRISÉ
DONALD J. POLMANN
GARY F. CLARK

ORDER GRANTING IN PART AND DENYING IN PART FLORIDA POWER & LIGHT'S
MOTION TO DISMISS AND
NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING DEVONSON WALKER'S
FORMAL COMPLAINT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the denial of Mr. Walker's formal complaint is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

I. Background

Section 366.03, Florida Statutes (F.S.), states that each public utility shall furnish to each person applying for service, reasonably sufficient, adequate, and efficient service. Rule 25-22.032, Florida Administrative Code (F.A.C.), implements Chapter 366, F.S., and establishes informal customer complaint procedures that are designed to address disputes, subject to the Commission's jurisdiction, that occur between regulated companies and individual customers. Pursuant to this rule, any customer of a Commission regulated company may file a complaint with the Commission's Office of Consumer Assistance and Outreach whenever the customer has an unresolved dispute with the company regarding electric, gas, water, or wastewater service.

On September 8, 2016, Devonson Walker filed an informal complaint with the Commission against Florida Power & Light Company (FPL). In his complaint, Mr. Walker stated that he wanted FPL to return his deposit for electric service because his electric service was being provided by solar panels only since February 2016. Later, on September 13, 2016, Mr. Walker filed a second complaint stating that he was trying to establish service with FPL but the service was being denied because of an unpaid final balance. He states that FPL billed and overbilled him for "services not rendered." FPL billed him on a reasonable estimate of the

energy used due to meter tampering at his premises and billed him for investigative costs related to FPL's investigation of the meter tampering.

On May 1, 2017, our staff advised Mr. Walker that his informal complaint had been reviewed and that our staff found that FPL had made a total credit adjustment of \$322.61 to his account. Our staff also informed Mr. Walker that he had an opportunity to file a petition for formal proceedings.

Mr. Walker filed a petition for initiation of formal proceedings on May 26, 2017. In the formal complaint, Mr. Walker claims that he notified FPL that electric service was no longer needed at his address. Mr. Walker further alleges that on three separate occasions FPL entered his property without provocation or probable cause and that FPL did not have a permit to enter his property in violation of the Fourth Amendment to the U.S. Constitution and Article I, Section 12 of the Florida Constitution. He also charges that FPL "billed and overbilled" for electric service not provided by FPL.

On June 16, 2017, FPL filed a Motion to Dismiss the Complaint. FPL asserts that the complaint does not comply with Rule 25-22.036, F.A.C., because it fails to state the rule, order, or statute that has allegedly been violated by FPL and does not state any cause of action for which relief could be granted by the Commission. Mr. Walker has not filed a response to the Motion to Dismiss the Complaint or provided any other information in support of his complaint.

We have jurisdiction over this matter pursuant to Section 366.04, F.S.

II. Motion to Dismiss the Complaint

In its Motion to Dismiss the Complaint, FPL asserts that Mr. Walker's formal complaint should be dismissed because it fails to follow the pleading requirements of Rule 25-22.036, F.A.C. FPL states that the Complaint fails to contain the rule, order, or statute that FPL has violated, and does not state a cause of action for which relief could be granted by us.

To sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations. *Matthews v. Matthews*, 122 So. 2d 571 (Fla. 2d DCA 1960). A sufficiency determination is confined to the petition and documents incorporated therein and the grounds asserted in the motion to dismiss. *Varnes* at 350. Thus, the trial court may not "look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side." *Id.* All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted. *See, e.g., Ralph v. City of Daytona Beach*, 471 So. 2d 1173 (Fla. 4th DCA 2000); *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1986); *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 715 (Fla. 1st DCA 1963).

Section 120.569(2)(c), F.S., states that we shall dismiss a petition for failure to substantially comply with the uniform rules. Section 120.569(2)(c), F.S., provides that the dismissal of a petition should, at least once, be without prejudice to the petitioner to allow the filing of a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. However, we have previously held *pro se* litigants such as Mr. Walker to a relaxed pleading standard in order to prevent delay and promote resolution of parties' disputes.¹

Rule 25-22.036, F.A.C., prescribes the criteria that must be addressed in a petition for initiation of formal proceedings:

1. The rule, order, or statute that has been violated;
2. The actions that constitute the violation;
3. The name and address of the person against whom the complaint is lodged;
and
4. The specific relief requested, including any penalty sought.

In his petition for initiation of formal proceedings, Mr. Walker alleges that FPL has billed and overbilled him for services not rendered. He also states that he notified FPL that electric service was no longer required and requested that his meter be removed.

The petition states a cause of action within our jurisdiction as provided in subsection 366.04(1), F.S., and shall not be dismissed. Mr. Walker's allegations concern FPL's billing and overbilling him for electric service not provided. As stated by FPL in its Motion to Dismiss the Complaint, the petition is about Mr. Walker's disagreement with FPL's billing of his account for services rendered. We find that these allegations relate to FPL's rates and service for Mr. Walker's electric account.

We find that the facts and law in this docket are sufficiently developed and a complaint in strict compliance with Rule 25-22.036, F.A.C., is not required for us to make a determination on Mr. Walker's petition. The informal complaint files, Mr. Walker's formal complaint, FPL's Motion to Dismiss the Complaint, and the record correspondence between our staff and Mr. Walker provide relevant information about Mr. Walker's arguments, factual assertions, and requested relief. We find that this information is sufficient to allow us to make a decision on the substance of Mr. Walker's complaint and it would not be an effective use of the parties' and our resources to require Mr. Walker to amend his complaint to comply with technical pleading rules.

¹ See, e.g., *Complaint against AT&T d/b/a BellSouth for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and AT&T regulations pertaining to billing of charges and collection of charges, fees, and taxes*, Order No. PSC-11-0117-FOF-PU, issued February 17, 2011, in Docket Nos. 100175-TL and 100312-EI; *In re: Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes*, Order No. PSC-02-1344-FOF-TL, issued October 3, 2002, in Docket No. 020595-TL; *In re: Complaint of J. Christopher Robbins against BellSouth Telecommunications, Inc. for violation of Rule 25-4.073(1)(c), F.A.C., Answering Time*, Order No. PSC-02-1344-FOF-TL, issued October 3, 2002, in Docket No. 020595-TL; *In re: Initiation of formal proceedings of Complaint No. 1006767E of Edward McDonald against Tampa Electric Company, for alleged improper billing*, Order No. PSC-12-0252-FOF-EI, issued May 23, 2012, in Docket No. PSC-11-0305-EI; and *In re: Complaint by James DiGirolamo vs. Florida Power & Light Company*, Order No. PSC-15-0522-PAA-EI, issued November 3, 2015, in Docket No. 150169-EI.

In his formal complaint, Mr. Walker also alleges that his Fourth Amendment rights have been violated. This allegation shall be dismissed with prejudice because we are without jurisdiction under Chapter 366, F.S., to adjudicate Fourth Amendment complaints. Therefore, FPL's Motion to Dismiss the Complaint is granted in part and denied in part.

III. Mr. Walker's Formal Complaint

Mr. Walker alleges that FPL billed and overbilled him for services not rendered. We find that FPL billed Mr. Walker's account on the basis of a reasonable estimate for electric service provided for which he did not pay due to unauthorized conditions at the meter site.

Meter Tampering

On March 7, 2016, FPL disconnected Mr. Walker's electric service for nonpayment. On the same day, FPL's Revenue Protection Department initiated an investigation of meter tampering on Mr. Walker's premises. On April 4, 2016, an FPL service crew, accompanied by police, went to the service address and determined that at this time meter tampering had occurred. The FPL service crew observed that there was no meter in the meter can and unauthorized jumpers were providing Mr. Walker's premises with unmetered electric service. At this time, Mr. Walker's electric service was disconnected at the pole for nonpayment of energy used due to unauthorized jumpers.

On April 22, 2016, FPL billed Mr. Walker's account \$284.17 for current diversion investigative costs as provided in FPL's tariffs. The FPL service crew observed that the meter was missing and unauthorized jumpers were present at Mr. Walker's premises. However, FPL's current diversion investigation did not result in any photographs of the tampering. On October 10, 2016, our staff notified FPL that because there were no photographs of the meter tampering, FPL should credit Mr. Walker's account balance for \$284.17 in investigative costs. On October 17, 2016, FPL issued a credit adjustment to Mr. Walker's account in the amount of \$284.17.

Billing

The FPL service crew's observation of the state of the meter is sufficient to conclude that unauthorized use of energy occurred at Mr. Walker's premises. Pursuant to Rule 25-6.104, F.A.C., FPL billed Mr. Walker's account based on a reasonable estimate of the energy being used and not paid for because of the use of energy through unauthorized jumpers. Our staff reviewed the billing calculations and notified FPL of a mathematical error on the estimated calculation of kWh used from March 21, 2016, through April 4, 2016. On November 4, 2016, FPL issued a credit adjustment on the account in the amount of \$38.44 due to FPL's miscalculation of the estimated kWh used from March 21, 2016, through April 4, 2016. With the credit adjustment issued by FPL on November 4, 2016, FPL's estimated billing of Mr. Walker's account comports with Rule 25-6.104, F.A.C.

Account Balance

Mr. Walker has a zero balance on his FPL account. On February 25, 2017, Mr. Walker requested that his account be closed and FPL closed the account. FPL's final bill for Mr. Walker's account was \$102.67. On March 1, 2017, Mr. Walker's \$450.00 deposit was applied to this final bill, which yielded a credit balance on the account in the amount of \$347.33. On

March 9, 2017, Mr. Walker cashed FPL's refund check for \$347.33, bringing his account to a zero balance.

Decision

Mr. Walker alleges that FPL billed and overbilled him for services not rendered and that he is due an additional refund or credit from FPL. Our staff identified two areas of concern in the billing of Mr. Walker's account. When our staff notified FPL regarding the current diversion investigative costs, FPL made a credit adjustment to Mr. Walker's account. FPL also issued a credit to Mr. Walker's account when advised by our staff that a mathematical error had been made in FPL's calculation of the billing for unauthorized use of energy. We find that FPL has properly handled Mr. Walker's account in compliance with Commission rules, statutes and orders and FPL's tariffs and that no additional refunds to Mr. Walker are required. Mr. Walker's formal complaint is hereby denied.

Based upon the foregoing, it is

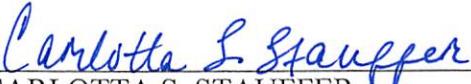
ORDERED by the Florida Public Service Commission that Florida Power and Light's Motion to Dismiss the Complaint is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that Mr. Walker's formal complaint is hereby denied. It is further

ORDERED that the denial of Mr. Walker's formal complaint, issued as proposed agency action, shall become final and effective upon issuance of a Consummating Order unless an appropriate petition in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 27th day of December, 2017.


CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

As identified in the body of this order, our action denying Mr. Walker's formal complaint is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 17, 2018.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the Commission's ruling on the Motion to Dismiss the Complaint may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.