



Stephanie A. Cuello  
SENIOR COUNSEL

March 25, 2022

**VIA ELECTRONIC FILING**

Adam J. Teitzman, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: *Motion to Dismiss to the Complaint of Chris Rosa*; Docket No. 20220058-  
EI

Dear Mr. Teitzman:

Please find attached for electronic filing, Duke Energy Florida, LLC's Motion to Dismiss to the Complaint of Chris Rosa.

Thank you for your assistance in this matter and if you have any questions, please feel free to contact me at (850) 521-1425.

Sincerely,

*s/ Stephanie A. Cuello*

Stephanie A. Cuello

SAC/mw  
Attachments

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In Re: Complaint by Chris Rosa  
against Duke Energy Florida, LLC

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Docket No. 20220058-EI

Filed: March 25, 2022

**DUKE ENERGY FLORIDA, LLC'S MOTION TO DISMISS  
THE COMPLAINT OF CHRIS ROSA**

Duke Energy Florida, LLC (“DEF” or the “Company”) hereby files this Motion to Dismiss the Complaint of Chris Rosa (“Petitioner” or “Ms. Rosa”) filed against DEF with the Florida Public Service Commission (“FPSC” or “Commission”). For the reasons set forth below, DEF requests the FPSC dismiss this Complaint.

**I. Background**

1. On or about September 29, 2020, the Petitioner filed a complaint with the FPSC, stating her account had been removed from the Budget Billing Program (“Budget Billing”), and DEF continued to bill her account for past-due amounts. Ms. Rosa believes the unpaid balance is a result of DEF keeping her account in Budget Billing after her renewable generation equipment was installed. She further claims DEF provided incorrect information while her account was on Budget Billing and requested a bill clarification. The Petitioner disputed the bill dated September 25, 2020 for the amount of \$507.01 and sought a credit adjustment for that amount. Ms. Rosa’s complaint was assigned No. 1349979E. (See Exhibit A, Process Review Case Summary)

2. On June 17, 2019, DEF installed a bi-directional meter at Ms. Rosa’s address. At the time, Ms. Rosa was participating in Budget Billing. The billing statements from June 2019 – December 2019 were estimated due to a locked gate but were updated once actual readings were received. During this time period, DEF only received three (3) payments to Ms. Rosa’s account, and her

account has not had a zero balance since August 7, 2019. The Petitioner remained on Budget Billing until December 31, 2019, when she contacted DEF regarding the estimated bills and requested to be removed from Budget Billing. (Exhibit A)

3. On January 9, 2020, DEF issued a re-billed final Budget Billing/net metering statement, which included \$61.71 in current charges, \$8.36 in late fees, \$701.29 past due balance, and a Budget Billing deferred credit balance of \$212.59. The Budget Billing credit balance was applied to her account and resulted in a new account balance of \$558.77. DEF received payments from the Petitioner during the first six (6) months of 2020; however, those payments only included the current charges on the account which resulted in a balance forward on each statement. An additional four (4) late fees in the amount \$28.03 were waived. (See Exhibit A)

4. On June 18, 2020, DEF and the Petitioner entered into an agreement for the \$365.04 balance due that allowed Ms. Rosa to pay 12 monthly installments of \$30.42. No payment for the monthly installment was received for July and August 2020, so the agreement was canceled and the entire past due balance of \$365.04 was charged back to the Petitioner's account along with an unpaid balance of \$12.53 for a total balance of \$377.57. (See Exhibit A)

5. On December 28, 2020, three (3) more late fees were waived, and on April 7, 2021 DEF waived two (2) additional late fees incurred for February and March 2021. DEF advised the FPSC they were willing to create an agreement for payment of the remaining unpaid balance, which at the time was \$370.04. (See Exhibit A)

6. On April 8, 2021, the FPSC mailed a letter to Ms. Rosa that included five (5) tables with data reflected on the billing statements from January 2019 - March 2021 to clarify the information regarding the unpaid balance of \$370.04. Ms. Rosa responded to the FPSC letter and indicated she never asked for nor agreed to an installment plan and she was never advised to request DEF to

terminated Budget Billing after the bi-directional meter was installed. Additionally, Ms. Rosa claims she was advised by DEF to stay on Budget Billing because she would eventually receive a credit because her consumption was lower due to net metering. The Petitioner claims on December 31, 2019, a DEF representative suggested she be removed from Budget Billing, and another representative told her to only pay current charges on her account. (See Exhibit A)

7. Commission Staff reviewed the 23 months from June 2019 (when net metering billing commenced), to April 2021, and found the Petitioner's account had been billed for the difference between energy used and energy received. Ms. Rosa made 16 payments, and DEF waived 11 late fees for a total of \$69.73. DEF has no record of advising Ms. Rosa to remain on Budget Billing. Based on the information available for review, the FPSC determined that DEF had not violated any Commission rules or its tariff in the handling of Ms. Rosa's issue. (See Exhibit A)

8. On March 14, 2022, the Petitioner filed a formal complaint ("Complaint") with the FPSC against DEF for "improper billing and advise [sic] from multiple customer service Duke representative." Ms. Rosa's requested resolution is "that the undersigned does not owe any past due amounts." (See Exhibit B, Notice of Complaint)

## **II. Argument for Dismissal**

9. A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action. *Meyers v. City of Jacksonville*, 754 So. 2d 198, 202 (Fla. 1st DCA 2000). The standard to be applied in disposing of a motion to dismiss is whether, with all the allegations in the petition assumed to be true, the petition states a cause of action upon which relief can be granted. *Id.* 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). When

making this determination, only the petition and documents incorporated therein can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993); *Flye v. Jeffords*, 106 So. 2d 229 (Fla. 1st DA 1958), overruled on other grounds, 153 So. 2d 759, 765 (Fla. 1st DCA 1963); and Rule 1.130, Florida Rules of Civil Procedure. When “determining the sufficiency of the complaint, 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.” *Varnes v. Dawkins* at 350.

10. Rule 25-22.036(3)(b), F.A.C. states:

*“.....Each complaint, in addition to the requirements of paragraph (a) above shall also contain: (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.”*

11. The Complaint filed by Ms. Rosa alleges DEF engaged in “improper billing and advise [sic] from multiple customer service Duke representative.” Ms. Rosa claims she “does not owe any past due amounts.” However, in her Complaint the Petitioner fails to identify the rule, order, or statute that DEF allegedly violated, nor does she describe any actions taken on behalf of DEF that constitute a violation a violation of any rules, statutes, company tariff, or Commission Orders. (See Exhibit B)

12. The Petitioner has not met the requirement of Rule 25-22.0.36(3)(b)(2) F.A.C., nor has she provided any evidence that DEF violated any additional applicable statutes, rules, company tariffs,

or Commission Orders. When considering all facts plead in the Petition as true, there is no legal basis upon which to grant the relief.

13. Ms. Rosa has failed to state a cause of action upon which relief can be granted, therefore the Complaint should be dismissed.

### **III. Conclusion**

Based on the foregoing, Duke Energy Florida, LLC respectfully requests this Commission dismiss the Complaint filed by Chris Rosa.

Respectfully submitted,

*s/Stephanie A. Cuello*

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Attorneys for Duke Energy Florida, LLC

**CERTIFICATE OF SERVICE**

*Docket No. 20220058-EI*

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 25<sup>th</sup> day of March, 2022.

*s/ Stephanie A. Cuello*

Stephanie A. Cuello

Bianca Lherisson  
Office of General Counsel  
FL Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
[blheriss@psc.state.fl.us](mailto:blheriss@psc.state.fl.us)

Chris Rosa  
[Chris.ccr7@gmail.com](mailto:Chris.ccr7@gmail.com)

**Exhibit A**



**Process Review Case Summary**  
**CHRIS ROSA - Complaint No. 1349979E – DEF**

**Summary of Customer's Issues**

When Ms. Rosa filed her complaint on 09/29/2020, she stated that her account had been removed from Budget Billing (BB); however, DEF continued to bill her for past due BB amounts when she should not have been billed for BB. Ms. Rosa believes that the unpaid balance is due to DEF keeping her account in the BB program after her renewable generation equipment was installed. She stated that DEF provided misinformation while her account was on BB and was requesting bill clarification.

**Relief Sought:** Ms. Rosa is disputing the 09/25/20 bill for \$507.01, and is seeking a credit adjustment for that amount.

**Utility Response**

Ms. Rosa's account participated in DEF's Budget Billing. On 06/17/19, DEF removed meter #1529216 and installed bi-directional meter #4934149. On 06/29/19, DEF requested a meter read to provide all readings including second channel read for meter #4934149 for billing purposes.

Each billing statement from June 2019 to December 2019 was first estimated, due to a locked gate, and later updated once actual readings for energy used provided by DEF and energy received from Ms. Rosa's renewable generation equipment were obtained. During this same period, only three payments were received. Due to the irregular payment pattern, the account has not had a zero balance since 08/07/19. The account continued to be in DEF's BB program until 12/31/19, when Ms. Rosa contacted DEF regarding the estimated bills and requested DEF to removed her account from the BB program.

On 01/09/20, DEF issued a re-billed final BB/net metering statement. The bill reflected \$61.71 in current charges, \$8.36 late fee, \$701.29 past due balance, and a prior BB deferred credit balance of \$212.59. The BB credit balance was applied to the account yielding \$558.77 as the new account balance.

During the first six months of 2020, bills were issued and payments were received every month. However, payments only included the current charges amount, yielding always a balance forward. Three late fees issued in 2019, and one in February 2020, for a total of \$28.03, were waived.

On 06/18/20, a special agreement was created for the balance due amount of \$365.04, to pay 12 monthly installments of \$30.42. Because no payment for the monthly installment was received in July and August 2020, the special agreement was canceled and the entire past due balance of \$365.04 was charged back to the account, in addition to the unpaid balance of \$12.53 from current charges of the 07/27/20 bill. The new balance forward was \$377.57. During the second half of 2020, payments continued to include current charges, only. Therefore, the balance forward remained. The last three late fees of 2020, for a total of \$17.16, were waived on 12/28/20. On 04/07/21, DEF waived the February and March 2021 late fees, for a total of \$11.18. In addition, DEF advised the PSC that it was willing to create a special agreement to pay the remaining unpaid balance, which at the moment was \$370.04, in 12 monthly installments of approximately \$30.84.

On 04/08/21, a PSC letter was mailed to Ms. Rosa which included five consecutive tables with the information reflected in the billing statements from January 2019 to March 2021 in an attempt to clarify to Ms. Rosa why there was still an unpaid balance of \$370.04 even though she had been paying current charges every month. On 04/20/21, Ms. Rosa forwarded an E-mail to the PSC thanking the effort, however, with numerous inaccuracies. She stated that she never asked or agreed to an installment plan, and that no one ever advised her to request DEF to stop BB after the bi-directional meter was installed. Ms. Rosa stated that when she called DEF to inquire why bills continued to show BB she was advised by DEF's rep to stay on BB because eventually she would have a credit since her consumption was lower due to net metering. Ms. Rosa further stated that finally on 12/31/19 a DEF's rep advised her to get off BB, and later another DEF's rep advised her to only pay current charges.

**CAO Staff's Analysis & Recommendation**

During the 23 months from June 2019, when net metering billing began, to April 2021, the account has been billed the difference between energy used and energy received; DEF received 16 payments, and waived 11 late fees for a total of \$69.73. DEF has no record of advising Ms. Rosa to keep her account on BB. The account was removed from BB program when she requested it on 12/31/19, and the deferred credit balance was applied to the account. Based on the information currently available, she was billed correctly. In summary, it does not appear that DEF has violated any Commission rules or its tariff in the handling of this matter.

**Exhibit B**

COMMISSIONERS:  
ANDREW GILES FAY, CHAIRMAN  
ART GRAHAM  
GARY F. CLARK  
MIKE LA ROSA  
GABRIELLA PASSIDOMO

STATE OF FLORIDA



OFFICE OF COMMISSION CLERK  
ADAM J. TEITZMAN  
COMMISSION CLERK  
(850) 413-6770

# Public Service Commission

## NOTICE OF COMPLAINT

TO

**Duke Energy Florida, LLC**  
**106 E. College Avenue, Suite 800**  
**Tallahassee, FL 32301**  
(via Certified Mail No. 7017 1000 0000 4194 3874)

**Re: Docket No. 20220058-EI - Complaint by Chris Rosa against Duke Energy Florida, LLC.**

Notice is hereby given, via certified U.S. mail, that the above-referenced complaint was filed with the Public Service Commission on March 14, 2022, a copy of which is attached.

You may file a response to this complaint with the Office of Commission Clerk at the address below, with a copy sent to the complainant. The Commission also accepts documents for filing by electronic transmission provided the electronic filing requirements are met. For information regarding these requirements, visit the Commission's website at [www.floridapsc.com](http://www.floridapsc.com).

Noticed this 14th day of March, 2022.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Teitzman", with a long horizontal flourish extending to the right.

Adam J. Teitzman  
Commission Clerk

AJT/lms  
Enclosure

cc: Chris Rosa  
Office of Public Counsel  
Office of General Counsel  
Office of Consumer Assistance & Outreach  
Docket File

Public Service Commission  
March 14, 2022

Re: Complaint Number 1349979E

Pursuant to Rule 25-22.036, the undersigned is requesting a formal complaint against Duke Energy of Florida, P. O. Box 14042, St Petersburg, FL 33733; for improper billing and advise from multiple customer service Duke representative.

The resolution sought is that the undersigned does not owe any "past due" amounts. Every single month Duke has been paid for the actual kwh and taxes used by the undersigned.

I remain,

Chris Rosa