

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of formal proceedings of  
Complaint No. 1006767E of Edward McDonald  
against Tampa Electric Company, for alleged  
improper billing.

DOCKET NO. 110305-EI  
ORDER NO. PSC-12-0053-PAA-EI  
ISSUED: February 7, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER DENYING COMPLAINANT'S REQUEST FOR RELIEF AGAINST  
TAMPA ELECTRIC COMPANY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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.

**Background**

On May 3, 2011, Mr. Edward McDonald (Mr. McDonald) filed an informal complaint against Tampa Electric Company (TECO) alleging improper billing of \$915.94 and requesting a \$3,500 refund for alleged overpayments made in 2004. In accordance with Rule 25-22.032, Florida Administrative Code (F.A.C.), the complaint was sent to TECO for resolution.

On May 25, 2011, TECO advised Mr. McDonald by letter that: (1) the \$915.94 represented an outstanding balance that TECO delayed collecting because Mr. McDonald made bankruptcy filings which were later dismissed; (2) the bank recalled the \$3,500 payment because Mr. McDonald accessed the funds from his mother's account without proper authorization; and (3) Mr. McDonald had an additional \$307.49 outstanding balance in other fees that was different from the \$915.94 balance. TECO applied Mr. McDonald's deposit and interest to the outstanding balances and credited Mr. McDonald's account for the \$307.49. TECO also offered Mr. McDonald a payment arrangement to resolve the remaining \$915.94. Mr. McDonald

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rejected TECO's offer. TECO submitted documentation to support its assertion of the outstanding balance of \$915.94.

On May 31, 2011, Mr. McDonald filed his response to TECO's letter with an additional request that TECO should reimburse \$5,000 allegedly incurred in legal fees for a circuit court case. Several data requests were sent to TECO regarding Mr. McDonald's complaint and TECO disclosed that Mr. McDonald had three electricity account numbers at the same address between 2003 and 2005, and that two of these accounts had outstanding balances of \$915.94 and \$1,095.20 when the accounts were closed.

On July 25, 2011, a letter was sent to Mr. McDonald advising that the \$915.94 represented an outstanding balance for which TECO postponed collection pending his bankruptcy filings. Mr. McDonald made bankruptcy filings in 2003, 2004, and 2005. TECO had written off the outstanding balance of \$915.94 as bad debt; however, an upgrade to its computer system permitted TECO to match the outstanding balance to Mr. McDonald's current electricity account.

Mr. McDonald was also advised that the bank recalled payments totaling \$3,500 in 2005 as the bank determined the funds were accessed without authorization from Mr. McDonald mother's account. Mr. McDonald was provided documentation demonstrating that the bank recalled the \$3,500 payment. The alleged \$3,500 overpayment resulted from Mr. McDonald making numerous payments in the amount of \$500 each from his mother's bank account to TECO. Between November 2004 and December 2004, Mr. McDonald made nine payments of \$500 each from his mother's bank. In January 2005, payments totaling \$3,500 were recalled by the bank after it was determined that Mr. McDonald was not authorized to access his mother's bank account.

On October 3, 2011, after numerous telephone and written contacts with Mr. McDonald, a proposed resolution letter was mailed to Mr. McDonald which stated that: (1) Mr. McDonald was billed correctly for the \$915.94; (2) the \$3,500 payment was addressed in complaint number 648071E filed on May 24, 2005, which was closed; (3) Mr. McDonald may send any proof that he has paid the \$915.94 in full; and (3) the informal complaint process would close on October 12, 2011.

On November 4, 2011, Mr. McDonald filed a formal complaint rejecting the proposed resolution. On November 21, 2011, TECO filed its answer denying Mr. McDonald's assertions. Although not contemplated by our rules, on December 6, 2011, Mr. McDonald filed his reply asserting that (1) he paid the \$915.94 in full; (2) TECO returned the \$3,500 back to the bank and is thus liable; (3) his 2005 complaint was never investigated; and (4) Chapter 95, Florida Statutes (F.S.) prohibits TECO from collecting the \$915.94.

On December 9, 2011, TECO offered Mr. McDonald a credit adjustment resolution, and he rejected it. On December 11, 2011, Mr. McDonald filed his reply rejecting TECO's proposed settlement offer. On December 15, 2011, TECO filed a letter confirming receipt of Mr. McDonald's rejection of its settlement offer.

We have jurisdiction over this matter pursuant to Chapter 366, F.S.

### Discussion

Pursuant to Rule 25-22.036(2), F.S., a complaint is appropriate when a person complains of an act or omission by another person or utility subject to our jurisdiction which affects the complainant's substantial interests and which is in violation of a statute rule or order. In accordance with Rule 25-22.032(9), F.S., the parties may agree to settle their dispute at any time. Likewise, Rule 25-6.033, F.A.C., states that a utility should include provisions relating to disconnecting and reconnecting services and billing periods in its tariff. Rule 25-6.100, F.A.C., outlines bill requirements, and Rule 25-6.101, F.A.C., states that a bill is delinquent after 20 days from the bill mail or delivery date.

Our practice is to consider any pleading filed that is not contemplated by our rules as an inappropriate pleading and the arguments raised will not be considered.<sup>1</sup> Mr. McDonald's reply to TECO's answer is not contemplated by our rules and is therefore considered an inappropriate pleading. Mr. McDonald's reply restated his allegations in his petition, and pursuant to our practice, the arguments raised in his reply were not considered.

Mr. McDonald's petition failed to demonstrate that TECO's attempt to collect the outstanding \$915.94 violates a statute, rule, or order as required by Rule 25-22.036(2), F.S. TECO's tariff complies with Rules 25-6.033, F.A.C., and 25-6.100, F.A.C., and TECO complied with its tariff in attempting to collect the \$915.94. Therefore, we find it appropriate to deny Mr. McDonald's assertion that TECO is prohibited from collecting the \$915.94.

Mr. McDonald asserted that a payment was made for \$1,095.20, which proves that he does not owe the \$915.94. TECO stated that Mr. McDonald had outstanding balances on two different accounts as seen as follows:

ACCOUNTS	CLOSING DATES	BALANCES
1501-000031-4	July 27, 2004	\$915.94
1501-000031-5	February 1, 2005	\$1,095.20

As seen above, the \$1,095.20 represents the balance on a separate account, and this is the amount that was paid by Mr. McDonald. Therefore, Mr. McDonald still has an outstanding balance of \$915.94.

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<sup>1</sup> See Order No. PSC-03-0525-FOF-TP, issued on April 21, 2003, in Docket No. 020919-TP, In re: Request for arbitration concerning complaint of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida for enforcement of interconnection agreements with BellSouth Telecommunications, Inc. (finding that AT&T's Response to BellSouth's Response was an inappropriate pleading not contemplated by our rules or the uniform rules, and thus the Commission shall not consider the arguments raised in AT&T's Response to BellSouth's Response).

Mr. McDonald also failed to provide documentation to refute TECO's assertion that the \$3,500 was recalled by the bank. According to our Consumer Activity Tracking System (CATS), in 2005, Mr. McDonald was advised that the bank recalled the \$3,500 because the funds were accessed from Mr. McDonald mother's account without proper authorization. Mr. McDonald has provided no additional information or documentation to demonstrate that TECO retain possession of the alleged \$3,500 in overpayments made in 2004. As mentioned above, in accordance with Rule 25-22.032(9), F.S., which authorizes the parties to settle the dispute at any time, TECO offered a settlement agreement to Mr. McDonald on December 9, 2011, which he rejected. Since Mr. McDonald failed to demonstrate that TECO retained the alleged \$3,500 overpayment made in 2004, we find it appropriate to deny Mr. McDonald's request that TECO refund the alleged \$3,500 in overpayments to him.

Likewise, Mr. McDonald's request for the reimbursement of \$5,000 in attorney fees allegedly incurred in a 2005 circuit court proceeding exceeds our jurisdiction, and his request is denied. We have consistently held that as an administrative body, we lack statutory authority to assess costs and attorney's fees.<sup>2</sup> Additionally, Mr. McDonald sought reimbursement of \$5,000 in attorney's fees he allegedly incurred in the circuit court, and the circuit court is the forum in which Mr. McDonald should seek the reimbursement. We therefore find it appropriate to deny Mr. McDonald's request that TECO reimburse \$5,000 to Mr. McDonald that he allegedly paid in attorney fees.

Based on the aforementioned, we find it appropriate to deny Mr. McDonald's request for relief as Mr. McDonald failed to demonstrate that (1) TECO's attempt to collect the \$915.94 violates any statute, rule, or order; (2) TECO's calculation of the \$915.94 is incorrect; and (3) TECO is liable for the \$3,500 that the bank recalled because the bank determined that Mr. McDonald made the payments from his mother's account without proper authorization.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mr. Edward McDonald's request for relief against Tampa Electric Company is denied. It is further

ORDERED that the findings made in the body of this Order are incorporated herein in every respect. It is further

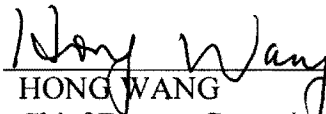
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<sup>2</sup> See Order No. PSC-09-0799-PAA-TP, issued on December 2, 2009, in Docket No. 090430-TP, In re: Amended petition for verified emergency injunctive relief and request to restrict or prohibit AT&T from implementing its CLEC OSS-related releases, by Saturn Telecommunication Services, Inc. Section 120.595, F.S., which authorizes administrative law judges to award attorney fees for improper purpose participation, is inapplicable here. Section 120.595(1)(b), F.S., states that the final order in a proceeding pursuant to Section 120.57(1), F.S., shall award reasonable costs and a reasonable attorney's fee to the prevailing party only where the nonprevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose. Section 120.595(1)(e)1., F.S., defines improper purpose as "participation in a proceeding pursuant to Section 120.57(1), F.S., primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity."

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the 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 7th day of February, 2012.

  
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HONG WANG  
Chief Deputy Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://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.

The action proposed herein 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 February 28, 2012.

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.