

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Jack Yanks) DOCKET NO. 920366-EI
construction against Florida) ORDER NO. PSC-92-0476-FOF-EI
Power & Light Company regarding) ISSUED: 06/09/92
the transfer of outstanding)
accounts and disconnection of)
service.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER GRANTING IN PART AND DENYING IN PART COMPLAINT

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Mr. Jack Yanks of Jack Yanks Construction filed a complaint against Florida Power & Light Company (FPL) with the Florida Public Service Commission's Division of Consumer Affairs on March 6, 1992, questioning the validity of the billing of other accounts under the name Lakeview Construction to his account for unit 54 at 20826 NE 10th Avenue Road, North Miami Beach and the termination of service on February 20, 1992 for nonpayment. Mr. Yanks' account for unit 54 was also under the name Lakeview Construction.

Mr. Jack Yanks contends that he had no knowledge of Lakeview Construction and that the accounts in question should have been billed to Lakeview Town Homes of the California Club, Inc.

A report submitted by FPL to the Florida Public Service Commission on March 10, 1992, advised that five accounts (units 51, 52, 53, 54 and 57) under the name Lakeview Construction were disconnected on February 20, 1992 for nonpayment. Service was restored to units 53 and 54 after payment was received for those two accounts. During its investigation, FPL discovered six additional accounts under Lakeview Construction that had been final billed but not paid for units 26, 29, 55, 56, 58 and 70. FPL

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informed Mr. Jack Yanks, by a letter dated February 21, 1992, that the balances for these unpaid accounts were being transferred to his account for unit 54.

On March 9, 1992, service to unit 54 was disconnected for the outstanding balances. Since Mr. Jack Yanks had previously filed a complaint concerning the disputed bills with the PSC, the service was ordered restored while the case was pending.

On March 12, 1992, the Division of Consumer Affairs determined that the customer of record was Lakeview Construction for all accounts and that FPL could deny service on all Lakeview Construction accounts for nonpayment of the outstanding balances. Mr. Jack Yanks was informed of the determination. On March 20, 1992, service was again denied for nonpayment. Mr. Jack Yanks was advised to apply for service in his name or in his company's name since he was still denying knowledge of Lakeview Construction and that an informal conference would be held on the disputed accounts.

An informal conference, pursuant to Rule 25-22.032(4), Florida Administrative Code, was conducted by staff at the Miami District office of the FPSC on April 2, 1992. At the informal conference, Mr. Jack Yanks submitted and summarized a 12 page statement charging that FPL had violated various rules of the Commission, that FPL took "malicious and vindictive type actions," that he was not responsible for the bills, and that he was not affiliated with Lakeview Construction. The customer stated that he did not receive the bills for the units in question and that he objected to FPL allowing the monthly bills to accumulate without disconnecting service promptly.

FPL responded that on September 25, 1990, an application for service was made by a person stating that he was Mr. Ron Yanks, who is the son of Mr. Jack Yanks. Mr. Ron Yanks requested the accounts to be billed to Lakeview Construction and gave telephone number (305) 770-0837 as a contact number, which is the same telephone number as Jack Yanks Construction. FPL stated that it is normal procedure for a builder to request service prior to the sale of the units. FPL then enters the request into its computers and as soon as a certificate of occupancy is received, the power is turned on. For apartment units for sale, normally a \$25 deposit is billed to each account, as it was to each Lakeview Construction account. FPL stated that the service was properly disconnected on February 20, 1992 for nonpayment of Lakeview Construction accounts.

We find that FPL acted properly in disconnecting the service of Lakeview Construction on February 20, 1992. Each account under the name Lakeview Construction, units 51, 52, 53, 54, 57, had past

due balances. Service had been provided since March 1991. During this period, no payments had been received for units 51 and 52. Irregular payments were made for units 53, 54 and 57. The last payment prior to disconnection on February 20, 1992, was on December 13, 1991, and collected in the field. Final notice pursuant to Rule 25-6.105(5), Florida Administrative Code, was sent February 4, 1992. No payment was received, and therefore, service was denied. Service was later restored for units 53 and 54 after payment was received for those two units. Therefore, FPL did act properly in disconnecting the service of Lakeview Construction on February 20, 1992.

Also, we find that FPL did not act properly in disconnecting the service of Lakeview Construction for units 53 and 54 on March 9, 1992. Mr. Jack Yanks called the PSC on March 6, 1992, disputing the transfer of the outstanding charges to unit 54. At that time, FPL was notified of the complaint. Rule 25-22.032(10), Florida Administrative Code, prohibits service disconnection during a PSC Rule complaint proceeding for nonpayment of a disputed bill. After the PSC notified FPL of its violation of the rule, service was restored the same day. Accordingly, we find that FPL did not act properly in disconnecting the service of Lakeview Construction for units 53 and 54 on March 9, 1992.

We find that FPL properly transferred the outstanding balances of units 51, 52, 57, 26, 29, 55, 56, 58 and 70 to the Lakeview Construction account for unit 54. The Lakeview Construction outstanding balances for service prior to the accounts being established for renters or owners for units 26, 29, 55, 56, 58 and 70 were final billed but never paid. The applications for service under Lakeview Construction provided the same telephone number and contact name as for unit 54. Also, the application for service for units 51, 52 and 57 was made on September 25, 1990, the same day as unit 54, under the name Lakeview Construction with the same contact name and contact number. Thus, FPL properly transferred the outstanding balances of units 51, 52, 57, 26, 29, 55, 58 and 70 to the Lakeview Construction account for unit 54.

We find that FPL acted properly in disconnecting the service of Lakeview Construction for units 53 and 54 on March 20, 1992. Mr. Jack Yanks had been notified by PSC staff of its determination that service could be denied to units 53 and 54 for the outstanding charges of Lakeview Construction accounts pursuant to FPL tariff 6.010 (1.5), and therefore, FPL acted properly in disconnecting the service of Lakeview construction for units 53 and 54 on March 20, 1992.

We find that FPL can deny service to Jack Yanks Construction for the outstanding balance from the accounts in the name of Lakeview Construction. The account for unit 54 was established on September 25, 1990, by the same person who established the accounts for the other units. The telephone number provided for reference is the number for Jack Yanks Construction. Although the account was billed to Lakeview Construction, Mr. Jack Yanks rendered payment for his service to unit 54. Mr. Yanks apparently received the bills and notices for all Lakeview Construction accounts. As evidence of this, during the informal conference held in April, Mr. Yanks presented the bill for unit 51, even though previously he denied ever receiving such a bill. Thus, we find that FPL can deny service to Jack Yanks Construction for the outstanding balance from the accounts in the name of Lakeview Construction.

Based on the following reasons, the outstanding charges shall be reduced. Mr. Yanks has expressed concern that each account was not disconnected after the \$25 deposit and the first month's bill was not paid. We believe that the collection procedures were sloppy and have contributed to the controversy in this matter.

On April 16, 1992, FPL faxed Mr. Yanks a settlement offer on the outstanding balance of \$1,471.69. FPL offered to reduce the balance by \$314.20. Our staff has discovered that FPL had made provisions to credit an additional amount of \$48.85 for unit 29 on March 9, 1992 which was not included in its settlement offer.

The following additional amounts shall be credited to be consistent with the credit amounts offered on April 16 by FPL: \$33.58 for unit 26, \$154.37 for unit 58, \$3.53 for unit 56, and \$48.85 for unit 29. For units 26 and 58, we find that the bill for the final month be credited as was offered for the other units where a new tenant became the customer of record. For unit 56, we find a credit for a late payment charge, and for unit 29, find a credit for the amount that FPL had made provisions for credit on March 9, 1992.

Accordingly, we find that the past due balance of \$1,471.69 for the nine accounts in question be reduced by \$554.53. Jack Yanks Construction shall be responsible for the balance of \$917.16.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission, that Florida Power and Light Company acted properly in disconnecting the service of Lakeview Construction on February 20, 1992. It is further

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ORDERED that Florida Power and Light Company did not act properly in disconnecting the service of Lakeview Construction for units 53 and 54 on March 9, 1992. It is further

ORDERED that the outstanding balances of units 51, 52, 57, 26, 29, 55, 56, 58, and 70 were properly transferred to the Lakeview Construction account for unit 54. It is further

ORDERED that Florida Power and Light Company acted properly in disconnecting the service of Lakeview Construction for units 53 and 54 on March 20, 1992. It is further

ORDERED that Florida Power and Light Company can deny service to Jack Yanks Construction for the outstanding balance from the accounts in the name of Lakeview Construction. It is further

ORDERED that the outstanding charges be reduced as discussed within the body of this Order from \$1471.69 to \$917.16. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 9th day of June, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
DLC:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as

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well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 30, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.