

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Mr. Eddy) DOCKET NO. 960726-EI
Grosse against Florida Power &) ORDER NO. PSC-96-1355-FOF-EI
Light Company concerning billing) ISSUED: November 18, 1996
for electric use at customer's)
rental property.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER FINDING PROTEST TIMELY FILED

BY THE COMMISSION:

CASE BACKGROUND

On March 12, 1996, Mr. Eddy Grosse filed a complaint with the Public Service Commission's Division of Consumer Affairs (CAF). Mr. Grosse objected to Florida Power & Light Company (FPL) transferring unpaid balances from Mr. Grosse's accounts at his rental properties to his residential account. Mr. Grosse stated that his tenants had the electric service in their name, he was not the customer of record at the rental properties, and he did not owe FPL \$817.12.

On April 1, 1996, CAF staff advised Mr. Grosse that it appeared he established the accounts in question. Thus, FPL could transfer the outstanding balances of the rental properties to Mr. Grosse's residential account. An informal conference was held on June 3, 1996; however, a resolution was not achieved.

At the July 16, 1996, Agenda Conference, we determined that the rental property accounts were in Mr. Grosse's name, were not paid in full, and constituted prior indebtedness. We found Mr. Grosse liable for the unpaid balance of \$871.12. On August 5, 1996, Order No. PSC-96-0998-FOF-EI, Notice of Proposed Agency Action Order Affirming Liability For Unpaid Balance was issued. The Notice of Further Proceedings or Judicial Review, which is a part of the Order, provided that:

[a]ny 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, This petition must be

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received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on **August 26, 1996**. (Emphasis added)

On August 26, 1996, Mr. Grosse sent a petition protesting Order No. PSC-96-0998-FOF-EI and requesting a formal proceeding by facsimile to the Division of Records and Reporting and to an attorney in the Division of Legal Services. The attorney informed Mr. Grosse that the Commission's rules do not permit filings by facsimile, and suggested that he immediately send a copy of the facsimile, by mail, to the Division of Records and Reporting. On August 29, 1996, the Director of the Division of Records and Reporting received a letter written by Mr. Grosse protesting Order No. PSC-96-0998-FOF-EI and requesting a formal proceeding, in Miami, Florida.

DECISION

On August 26, 1996, we received Mr. Grosse's facsimile protesting Order No. PSC-96-0998-FOF-EI and requesting a formal proceeding. Order No. PSC-96-0998-FOF-EI, issued August 5, 1996, indicated that Mr. Grosse must file a petition for a formal proceeding, pursuant to Rule 25-22.029(4), Florida Administrative Code, and that this petition must be **received** by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on **August 26, 1996**. (Emphasis added).

Rule 25-22.028, Florida Administrative Code, states that a filing may be made by U.S. Mail, hand delivery, or courier service. While it is a person's responsibility to be familiar with the Administrative Code, with today's technology a reasonable person could assume that a petition may be filed by facsimile. Consequently, we believe it was reasonable for Mr. Grosse to assume his petition was timely filed.

Rule 25-22.036, Florida Administrative Code, permits, but does not require, the Commission to deny a petition for proposed agency action if it is untimely filed. Whether to grant or deny an untimely petition is within our discretion. The Commission has granted such petitions in certain cases upon a showing of good cause why the petition is untimely.

The circumstances surrounding Mr. Grosse's petition are similar to those found in Order No. PSC-95-0630-FOF-TC, issued May 23, 1995, in Docket No. 940719-TC. In Docket No. 940719-TC, Vocal

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Motion, Inc. (Vocal Motion) attempted to file a petition for a formal proceeding via facsimile transmission on the due date. Vocal Motion, after learning that our Rules do not allow for such filings, sent its pleading to the Commission via overnight mail. On May 23, 1995, the Commission issued Order No. PSC-95-0630-FOF-TC, in Docket No. 940719-TC, stating that it was fair and appropriate to exercise Commission discretion in granting Vocal Motion's Petition for a Formal Proceeding. See also, PSC-95-1386-FOF-WS, issued November 8, 1995, in Docket No. 950695-WS (denying utility's motion to dismiss untimely filed objection to transfer application when the objection was filed five days late); and, PSC-PSC-96-1184-FOF-WS, issued September 20, 1996, in Docket No. 950966-WS (granting untimely petition for formal proceeding).

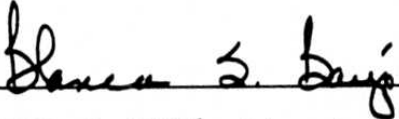
We find Mr. Grosse's protest of Order No. PSC-96-0998-FOF-EI and request for a formal proceeding, as timely filed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mr. Eddie Grosse's letter protesting Order No. PSC-96-0998-FOF-EI, Notice of Proposed Agency Action Order Affirming Liability For Unpaid Balance and requesting a formal proceeding, as discussed above, is timely filed. It is further

ORDERED that this docket shall remain open pending resolution of the protest.

By ORDER of the Florida Public Service Commission, this 18th day of November, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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 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.