

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-12-0478-PCO-EI  
ISSUED: September 18, 2012

ORDER DENYING MOTION FOR CONTINUANCE

BY THE COMMISSION:

On November 4, 2011, Mr. Edward McDonald (Mr. McDonald) filed a formal complaint requesting relief against Tampa Electric Company (TECO). On February 7, 2012, we issued Proposed Agency Action (PAA) Order No. PSC-12-0053-PAA-EI denying the request for relief.

On February 29, 2012, Mr. McDonald filed a pleading protesting the PAA Order, and a recommendation addressing the pleading was filed for the May 22, 2012 agenda conference. Thereafter, Mr. McDonald filed a request for continuance and to conduct discovery, which was denied by Order No. PSC-12-0309-PCO-EI, issued on June 18, 2012. The Commission also dismissed Mr. McDonald's pleading without prejudice by Order No. PSC-12-0252-FOF-EI, issued on May 23, 2012.

Mr. McDonald filed an amended pleading on June 12, 2012. On September 6, 2012, a recommendation addressing Mr. McDonald's amended pleading was filed in the docket file for the September 18, 2012 agenda conference. The parties received copies of the recommendation in accordance with our policies, practices, and procedures. The recommendation is also available to all parties on our website.

On September 14, 2012, Mr. McDonald filed a Motion for Continuance. In the Motion, Mr. McDonald requested a continuance alleging that: (1) he did not receive the recommendation until September 10, 2012 making it untimely; and (2) he is entitled to responses for his duly tendered discovery requests.

We have jurisdiction over this matter pursuant to Chapters 120 and 366, Florida Statutes (F.S.), and Chapter 28-106, F.A.C.

Rule 28-106.210, F.A.C., provides that the presiding officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

Mr. McDonald's receipt of the recommendation on September 10, 2012, is timely as the recommendation was delivered to the parties in accordance with our practices, policies, and procedures, and the recommendation was available to the parties on our website since September 6, 2012. Therefore, his allegation of untimely receipt of the recommendation does not constitute good cause for a continuance pursuant to Rule 28-106.210, F.A.C.

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Mr. McDonald's second reason for requesting the continuance is that he is entitled to a response for the discovery requests he tendered to TECO. However, Order No. PSC-12-0309-PCO-EI issued on June 18, 2012, denied Mr. McDonald's prior request for discovery. The Order notified Mr. McDonald of his right to seek reconsideration or judicial review. Mr. McDonald did not seek reconsideration of the Order within 10 days in accordance with Rule 25-22.0376, F.A.C., or timely judicial review before the Florida Supreme Court in accordance with Rule 9.100, Florida Rules of Appellate Procedure. The timeline for seeking reconsideration or judicial review of the Order has expired; and the Order denying Mr. McDonald's prior request for discovery is final and effective. Therefore, Mr. McDonald's request to conduct discovery does not constitute good cause for the continuance pursuant to Rule 28-106.210, F.A.C.

I find that the Motions do not demonstrate a good cause for the continuance as required by Rule 28-106.210, F.A.C., and I find it appropriate to deny Mr. McDonald's Motion at this time.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Mr. Edward McDonald's Motion for Continuance is hereby denied.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 18th day of September, 2012.



EDUARDO E. BALBIS  
Commissioner and Prehearing Officer  
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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 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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.