

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** October 4, 2012

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Robinson),  
Division of Economics (Draper, Garl) *FOR M ED CSN JWD*

**RE:** Docket No. 120192-EI – Robert D. Evans' formal complaint against Tampa Electric Company requesting reimbursement of money paid for installation of infrastructure on Mr. Evans' property for which Tampa Electric Company failed to complete.

**AGENDA:** 10/16/12 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Balbis

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\120192.RCM.DOC

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### Case Background

On July 17, 2012, a docket was established for Mr. Robert D. Evans' (Mr. Evans) formal complaint against Tampa Electric Company (TECO). Mr. Evans originally filed a cause of action against TECO in the County Court of the Thirteenth Judicial Circuit In and For Hillsborough County, Civil Division, requesting the relief of refund of monies and attorneys' fees and costs. The parties filed a joint motion with that court to have the case removed to the Commission so that Mr. Evans may exhaust his available administrative remedies. On May 25, 2012, the County Court issued an order staying further action on Mr. Evans' petition until the

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Commission issued an opinion, at which time the parties may reset the matter before the County Court on any outstanding issues.

Mr. Evans alleged he was charged \$5,276.15 by TECO for the installation of an underground cable in an existing underground conduit and a transformer for which TECO was already paid by the prior property owner. Therefore, TECO was paid twice for the same service, and he is requesting refund of monies and attorneys' fees and costs.

On August 1, 2012, TECO filed its response to Mr. Evans' petition denying liability and requesting the denial of Mr. Evans' requested relief.

On September 6, 2012, Commission staff held an informal meeting with the parties. At the meeting, Mr. Evans' attorney advised that the prior owner of the property paid TECO for contribution in aid of construction for the underground conduit, the underground cable, and the transformer, but TECO only constructed the underground conduit. Mr. Evans alleged that he was "forced" by TECO to execute a contract with a charge of \$5,276.15 for the installation of the cable and transformer to receive electric services for his irrigational needs, although the prior property owner already paid TECO for the cable and transformer. However, neither Mr. Evans nor TECO has any record of the payment, and the prior owner of the property is deceased. TECO stated it maintains records of transactions dating back over 50 years, but it has no records of payments from the prior property owner for the underground conduit, cable, or transformer.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, Florida Statutes (F.S.), and Rules 25-6.064 and 25-6.078, Florida Administrative Code (F.A.C.).

### **Discussion of Issues**

**Issue 1:** What action should the Commission take on Mr. Evans' complaint?

**Recommendation:** The Commission should deny Mr. Evans' request for refund of monies and attorneys' fees and costs. (Robinson, Draper, Garl)

#### **Staff Analysis:**

##### **Mr. Evans' complaint**

Mr. Evans requested attorneys' fees and costs and refund of the money paid to TECO for the installation of an underground cable in the existing underground conduit and for a transformer. Mr. Evans' allegations in his complaint are summarized below:

He purchased the property in October 2010. At the time of purchase, the property had an underground conduit and easements including an easement for TECO. The prior owner paid TECO to install an underground conduit, underground cable, and transformer, but TECO only installed the underground conduit. Therefore, Mr. Evans' payment to TECO meant that TECO was paid twice for the same service.

The property has easements belonging to TECO and GTE. GTE acknowledged ownership of its easement. However TECO refused to acknowledge ownership of its easement and the underground conduit. TECO conducted repairs to the existing underground conduit, which proves that TECO owns the conduit. The subcontractors' who installed the conduit stated to Mr. Evans that they believed TECO is the owner of the underground conduit. Therefore, TECO's easement on the property and the subcontractors' statements prove that TECO owns the underground conduit and was already paid for the installation of the underground cable and transformer. He is requesting a refund and attorneys' fees and costs because TECO was paid twice for the provision of the same service.<sup>1</sup>

Mr. Evans has no written documentation of the subcontractors' statements or any additional documentation to prove that TECO was paid by the prior owner for installation of the underground cable and the transformer for which he was charged. The prior owner is deceased.

##### **TECO's Response**

TECO requested dismissal of the complaint and its response is summarized below:

Mr. Evans contacted TECO on December 6, 2010, requesting the installation of an underground electric cable of a length of approximately 750 feet on his property. Mr. Evans told TECO of the existing unused underground electric service conduit with no underground electric cable or transformer, and TECO

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<sup>1</sup> See Mr. Evans' complaint paragraphs 1-64.

determined it could use the underground conduit with minor repairs to provide the cable and transformer that Mr. Evans needed. Mr. Evans then provided TECO with a copy of the recorded easement that he alleged the previous owner had granted TECO to access the property. TECO made necessary repairs to the existing underground conduit to enable TECO to provide the needed underground cable and transformer and not because TECO owned the underground conduit. TECO does not own the underground conduit, has no record of installing the conduit, and did not charge Mr. Evans any contribution in aid of construction relating to the underground conduit. The prior owner constructed the underground conduit, and TECO installed the cable and transformer in accordance with its contract with Mr. Evans.

TECO's contribution in aid of construction charge of \$5,276.15 for the installation of the underground cable and transformer was calculated using the Commission's contribution in aid of construction rules and TECO's Commission approved tariff. Mr. Evans was undercharged approximately \$287 for the services. Additionally, the Commission lacks jurisdiction to award attorneys' fees and costs. Therefore, the Commission should deny Mr. Evans' requested relief.<sup>2</sup>

#### Analysis

Pursuant to Chapter 366, F.S., the Commission has jurisdiction to regulate and supervise each public utility with respect to its rates and services, and the power to prescribe fair and reasonable rates and charges. Rule 25-6.064, F.A.C., outlines the formula for calculating contribution in aid of construction, and Rule 25-6.064(9), F.A.C., authorizes parties to appeal to the Commission for review of contribution in aid of construction amounts where the parties are unable to agree. Rule 25-6.109, F.A.C., authorizes the Commission to order a refund where applicable.

#### Mr. Evans' Request for Refund of Monies

Mr. Evans asserted that TECO was paid by the prior owner in 1989 to install an underground cable within the existing underground conduit on the property as evidenced by TECO's use of the easement on the property and its repairs to the underground conduit. However, Mr. Evans failed to provide any documentation to support his assertion that TECO was paid in 1989 for the installation of the underground cable and transformer for which he was charged.

Neither party has any records of transactions between TECO and the prior owner, and the prior owner is deceased. Although TECO does not have any records of the prior owner's payment, it maintains records dating back over 50 years for services to and payments from other customers. Mr. Evans believes TECO has the burden to provide the requisite documentation proving TECO was paid by the prior owner. Rule 25-6.093, F.A.C., requires the utilities to provide such information and assistance as is reasonable to any customer so the customer may

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<sup>2</sup> See TECO's Response Paragraphs 1-8.

secure safe and efficient service, including copies and explanations of the utilities rates. Here, TECO has no record of payment from the prior property owner, and staff believes TECO's inability to provide the requested documentation is not a violation of Rule 25-6.093, F.A.C.

Mr. Evans further alleged that the subcontractors' statements to him that TECO owns the underground conduit, TECO's use of the existing easement on the property, and TECO's repairs to the existing underground conduits suffice as circumstantial evidence that TECO was paid by the prior owner for the installation of the underground cable and transformer for which he was charged. In response, TECO denies ownership of the underground conduit, and it has no record of the installation of the underground conduit. TECO made repairs to the conduit to provide the requested service to Mr. Evans, and TECO did not charge Mr. Evans any contribution in aid of construction regarding the existing underground conduit.

Staff does not believe the subcontractors' statements, TECO's use of the easement, and TECO's repair of the underground conduit to provide the requisite services to Mr. Evans is sufficient evidence that TECO was already paid by the prior owner for the installation of the underground cable and transformer. Absent any written documentation of the prior owner's payment to TECO, staff recommends denial of Mr. Evans's request for refund of monies at this time.

Mr. Evans' Request for Attorneys' fees and costs

Mr. Evans is also seeking attorneys' fees and costs. The Commission has consistently held that as an administrative body, it lacks statutory authority to assess costs and attorneys' fees.<sup>3</sup> Since the Commission's regulatory jurisdiction over TECO does not extend to granting attorneys' fees and costs, staff recommends that the Commission deny Mr. Evans' request for attorneys' fees and costs.

**Conclusion**

Staff recommends that the Commission deny Mr. Evans' request for refund of monies and attorneys' fees and costs.

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<sup>3</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."

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action (PAA) files a protest within 21 days of the issuance of the PAA Order, a Consummating Order will be issued, and the docket may be closed. (Robinson)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action (PAA) files a protest within 21 days of the issuance of the PAA Order, a Consummating Order will be issued, and the docket may be closed.