

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION  
CLERK

**DATE:** November 29, 2012

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

**FROM:** Office of the General Counsel (Robinson) *PER M*  
Office of Consumer Assistance and Outreach (Forsman, Hicks)  
Division of Economics (Draper) *ESD JWD nls*

**RE:** Docket No. 110305-EI – Initiation of formal proceedings of Complaint No. 1006767E of Edward McDonald against Tampa Electric Company, for alleged improper billing.

**AGENDA:** 12/10/12 – Regular Agenda – 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\110305.RCM.DOC

### Case Background

On November 4, 2011, Mr. Edward McDonald (Mr. McDonald) filed a formal complaint against Tampa Electric Company (TECO) asserting that (1) he did not owe TECO the \$915.94 shown as outstanding balance on his account; and (2) TECO owed him \$3,500 in alleged overpayments and \$5,000 in alleged attorneys' fees he incurred in circuit court. TECO offered Mr. McDonald a settlement regarding the outstanding \$915.94, and Mr. McDonald refused TECO's offered settlement. On February 7, 2012, Proposed Agency Action (PAA) Order No. PSC-12-0053-PAA-EI denied Mr. McDonald's request for relief.

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FPSC-COMMISSION CLERK

On February 29, 2012, Mr. McDonald filed a pleading entitled, "Initiation of Formal Proceedings," protesting the PAA Order and requesting a formal hearing. On May 23, 2012, Order No. PSC-12-0252-FOF-EI dismissed Mr. McDonald's request for a formal hearing for failure to state a cause of action and for its nonconformance with Rule 28-106.201, Florida Administrative Code (F.A.C.).

On June 12, 2012, Mr. McDonald filed an amended petition for a formal hearing in response to the order dismissing his initial petition. On September 21, 2012, Order No. PSC-12-0485-FOF-EI dismissed Mr. McDonald's amended petition for a formal hearing with prejudice for failure to cure the defects of the original request for a formal hearing. On September 24, 2012, Consummating Order No. PSC-12-0489-CO-EI was issued in the docket, closing the docket file and the original complaint.

On October 8, 2012, Mr. McDonald filed a request for Oral Argument, Motion for Reconsideration, and a Motion to Stay the Proceedings. On October 11, 2012, TECO filed its response to the Motion for Reconsideration and Motion to Stay. TECO did not request Oral Argument. On October 17, 2012, Mr. McDonald filed a Motion to Strike TECO's response to his Motion for Reconsideration. On October 16, 2012, Mr. McDonald filed another complaint based on the same facts in this docket regarding disconnection of his services. He alleged that the interruption of service was without the required five days disconnection notice in violation of Rule 25-6.005, F.A.C. He also alleged that his bill was inaccurate and his reconnection fees were excessive. Mr. McDonald's services were disconnected after the docket file was closed.

On October 22, 2012, TECO filed a letter in response to Mr. McDonald's complaint regarding the interruption of services. TECO asserted that it was not served a copy of the complaint but stated that the disconnection was in compliance with the Commission's rules, and that Mr. McDonald's services were reconnected that same day after he paid the outstanding balance on his account.

On October 30, 2012, Mr. McDonald filed his response to TECO's October 22, 2012 letter. Mr. McDonald asserted that the complaint regarding the disconnection of services should be severed from this docket as it alleges impermissible conduct by TECO and disputed billing amounts. On November 6, 2012, Mr. McDonald submitted another letter stating that TECO's representative acknowledged that the bill was inaccurate and the disconnection notice did not conform to the Commission's rules as he alleged in his October 16, 2012 complaint.

On November 7, 2012, TECO filed its response to Mr. McDonald's November 6, 2012 letter. TECO stated that its representative did not acknowledge anything to Mr. McDonald. Instead, its representative's contact with Mr. McDonald was to explain his payment obligations. On November 16, 2012, Mr. McDonald filed a notice of filing complaint.

The purpose of this recommendation is to address Mr. McDonald's request for Oral Argument, Motion for Reconsideration, Motion to Stay the Proceedings, Motion to Strike, Complaint Regarding Interruption of Services, and Notice of Filing Complaint. The Commission is vested with jurisdiction over this matter pursuant to Chapters 120 and 366, Florida Statutes (F.S.), and Chapter 28-106.201, F.A.C.

**Discussion of Issues**

**Issue 1:** Should the Commission grant the Request for Oral Argument?

**Recommendation:** No. Oral Argument will not aid the Commission and should be denied. However, if the Commission grants oral argument, staff recommends that the time granted be limited to five minutes per side. (Robinson, Draper, Forsman)

**Staff Analysis:** Pursuant to Rule 25-22.0022(1-3), F.S., the granting or denying of a request for oral argument is within the sole discretion of the Commission. The request for oral argument shall state with specificity how the oral argument will aid the Commissioners in understanding and evaluating the issues to be decided.

Mr. McDonald is requesting oral argument to address the Commission by telephone on his Motion for Reconsideration, Motion to Strike, Motion to Stay the Proceedings, and complaint regarding interruption of services. TECO requested the denial of Mr. McDonald's Request for Oral Argument as oral argument will not aid the Commission in making its decision.

Staff does not believe that the request for oral argument states with specificity how the oral argument will aid the Commissioners in understanding and evaluating the issues to be decided. Staff also does not believe that oral argument will aid the Commissioners at this time. Therefore, staff recommends denial of the Request for Oral Argument.

However, if the Commission grants the Request for Oral Argument, staff recommends that the time granted be limited to five minutes per side.

**Issue 2:** What actions should the Commission take regarding the Motion for Reconsideration, Motion to Stay the Proceedings, Motion to Strike, and Complaint Regarding Interruption of Services?

**Recommendation:** The Commission should deny Mr. McDonald's Motion for Reconsideration for failure to identify any errors or omissions in Order No. PSC-12-0485-FOF-EI that require modification to or reversal of the order. The Commission should deny the Motion to Stay the Proceedings and the Motion to Strike as the Motions fail to demonstrate any legal basis for staying the proceedings or striking TECO's responses. The Commission should dismiss Mr. McDonald's complaint regarding interruption of services with prejudice as moot since his services were reconnected. The complaint is also barred by the Doctrine of Administrative Finality. (Robinson, Draper, Forsman)

**Staff Analysis:**

Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order.<sup>1</sup> The alleged overlooked fact or law must be such that if it was considered, the [Commission] would reach a different decision than the decision in the order.<sup>2</sup> In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.<sup>3</sup> Furthermore, it is not necessary to respond to every argument and fact raised by each party, and "[a]n opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant."<sup>4</sup>

Mr. McDonald's Motion for Reconsideration, Motion to Stay the Proceedings, Motion to Strike, and Complaint Regarding Interruption of Services

In his Motion for Reconsideration and Motion for Stay, Mr. McDonald asserted that final Order No. PSC-12-0485-FOF-EI, issued on September 21, 2012, did not address his amended petition and his amended petition is still pending before the Commission. He also alleged that the order did not address his Renewed Motion for Continuance and Motion for Summary Judgment, and the Consummating Order should not have been issued in this docket and is therefore moot. He further alleged that he provided sufficient cases, statutes, and rules in his petitions to prevent the dismissal of his complaint with prejudice. Therefore, he requested that

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<sup>1</sup> See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

<sup>2</sup> See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962).

<sup>3</sup> See Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). See also Order No. PSC-07-0783-FOF-EI, issued September 26, 2007, in Docket No. 050958-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company; Order No. PSC-07-0561-FOF-SU; issued July 5, 2007, in Docket No. 060285-SU, In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven; and Order No. PSC-06-1028-FOF-EU, issued December 11, 2006, in Docket No. 060635-EU, In re: Petition for determination of need for electrical power plant in Taylor County By Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

<sup>4</sup> See Jaytex Realty, 105 So. 2d at 818.

the Commission stay the proceedings until the “fraudulent assertions” he highlighted in his pleadings can be examined.<sup>5</sup>

In his Motion to Strike, Mr. McDonald asserted that TECO’s response should be stricken because TECO waived its right to plead further in the proceedings, and TECO’s Motion is not responsive as TECO provided no rebuttal to his allegations of fraud or rebuttal regarding his Motion for Summary Judgment.<sup>6</sup>

In his complaint regarding interruption of services, Mr. McDonald did not request any relief. He asserted that TECO’s billing and interruption of service violated the Florida Administrative Code in that he was not given five days notice before the termination of his services, and the bill did not meet the standards established by the Commission’s rules. Mr. McDonald asserted that TECO violated the Commission’s rules in disconnecting his services because the amount listed for restoration of services was inaccurate.<sup>7</sup> In his November 6, 2012, letter, Mr. McDonald asserted that TECO’s staff acknowledged the inaccuracy in his billing statement.

*TECO’s Response to Mr. McDonald’s Motion for Reconsideration, Motion to Stay, Motion to Strike, and Complaint Regarding Interruption of Services*

In its response to Mr. McDonald’s Motion for Reconsideration, TECO stated that the sole permissible purpose of a motion for reconsideration is to bring to the Commission’s attention factual or legal points that were overlooked or not considered in rendering its decision and not to reargue the case by the losing party who disagrees with the order. TECO noted that Mr. McDonald’s motions failed to show any factual or legal oversights or any legitimate ground for staying the order dismissing the complaint with prejudice on September 21, 2012, or the Consummating Order that was issued on September 24, 2012. TECO requested the denial of Mr. McDonald’s motions.<sup>8</sup>

In TECO’s response to Mr. McDonald’s complaint regarding interruption of services, TECO asserted that the interruption was for non-payment and was in conformance with the Commission’s rules. TECO maintained that a TECO representative spoke with Mr. McDonald before the disconnection and explained the disconnection process before Mr. McDonald’s services were disconnected. TECO stated that the disconnection was for a new past due amount over and above the disputed amount in Mr. McDonald’s original complaint that gave rise to the docket. However, TECO affirmed that its representative did not acknowledge any inaccuracies in the billing as Mr. McDonald alleged in his November 6, 2012 letter, and Mr. McDonald’s services were reconnected after he paid the past due amount.<sup>9</sup>

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<sup>5</sup> See Mr. McDonald’s Motion for Reconsideration, Pages 1-2.

<sup>6</sup> See Mr. McDonald’s Motion to Strike, Page 1.

<sup>7</sup> See Mr. McDonald’s Complaint, Page 1.

<sup>8</sup> See TECO’s Response to Petitioner’s Motion for Reconsideration and Motion for Stay, Pages 1-2.

<sup>9</sup> See TECO’s letters dated October 22, 2012, Page 1 and dated November 7, 2012, Page 1.

**Staff Analysis**

*A. Mr. McDonald's Motion for Reconsideration, Motion to Stay the Proceedings, and Motion to Strike*

A Motion for Reconsideration must demonstrate any omission in facts or law, which if considered would have given an opposite ruling by the Commission.<sup>10</sup> Here, the Motion for Reconsideration did not demonstrate any omission of fact or law by the Commission that would have resulted in a different ruling than that in Order No. PSC-12-0485-FOF-EI, issued on September 21, 2012. Therefore, the Motion should be denied. Mr. McDonald also alleged that the Commission did not address his Renewed Motion for Continuance and his Motion for Summary Judgment. However, Order No. PSC-12-0485-FOF-EI, issued on September 21, 2012 dismissed Mr. McDonald's request for a formal hearing, his Renewed Motion for Continuance, and his Motion for Summary Judgment. Likewise, Mr. McDonald's Motions to Stay the Proceedings and to Strike failed to provide any legal basis for staying the proceeding or striking TECO's responses and should also be denied.

*B. Mr. McDonald's Complaint Regarding Disconnection of Services*

Mr. McDonald did not request a relief in his complaint regarding disconnection of services. Mr. McDonald's services were disconnected for an outstanding balance after the docket file closed. Staff believes that the disconnection of Mr. McDonald's services is directly related to issues resolved in this docket since the service disconnection is a result of the outstanding balance on Mr. McDonald's electricity account, the same account that was in dispute. The Commission has already issued an order holding that TECO conformed to its Commission approved tariff in affixing charges to this account. On February 7, 2012, Proposed Agency Action (PAA) Order No. PSC-12-0053-PAA-EI was issued in the docket denying Mr. McDonald's request for relief against TECO and finding that TECO complied with the requirements of its tariff with regards to the outstanding balance on the account. A consummating order issued on September 24, 2012, made the PAA order final and effective, and the time for appeal has passed. Therefore, Mr. McDonald's complaint is barred by the Doctrine of Administrative Finality.

Once the docket was closed, TECO was not prohibited from disconnecting Mr. McDonald's services for past due balances in accordance with its Commission approved tariff. Also, Mr. McDonald's services were reconnected that same day after he paid the outstanding balance. Staff recommends that the Commission dismiss the complaint regarding interruption of services with prejudice as being moot and barred by the Doctrine of Administrative Finality.

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<sup>10</sup> See Order No. PSC-11-0224-FOF-EI, issued on May 16, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause; and Order No. PSC-09-0156-FOF-TP, issued on March 16, 2009, in Docket No. 070736-TP, In re: Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida (denying Motion for Reconsideration).

**Conclusion**

The Commission should deny Mr. McDonald's Motion for Reconsideration for failure to identify any errors or omissions in Order No. PSC-12-0485-FOF-EI that require modification to or reversal of the order. The Commission should deny the Motion to Stay the Proceedings and the Motion to Strike as the Motions fail to demonstrate any legal basis for staying the proceedings or striking TECO's responses. The Commission should dismiss Mr. McDonald's complaint regarding interruption of services with prejudice as moot since his services were reconnected. The complaint is also barred by the Doctrine of Administrative Finality.

Docket No. 110305-EI  
Date: November 29, 2012

**Issue 3:** Should the docket be closed?

**Recommendation:** Yes. If the Commission approves staff's recommendations on Issues 1 and 2, then this docket should be closed. (Robinson)

**Staff Analysis:** If the Commission approves staff's recommendations on Issues 1 and 2, then this docket should be closed.