

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 060774-EI

COMPLAINT OF FREDERICK SMALLAKOFF  
AGAINST FLORIDA POWER & LIGHT  
COMPANY CONCERNING ALLEGED IMPROPER  
BILLS, CASE NO. 696236E.

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In the Matter of:

DOCKET NO. 120176-EI

COMPLAINT OF FREDERICK SMALLAKOFF  
AGAINST PROGRESS ENERGY FLORIDA,  
INC. CONCERNING ALLEGED IMPROPER  
BILLS, CASE NO. 1059336E.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEMS NO. 2 AND NO. 3

COMMISSIONERS

PARTICIPATING: CHAIRMAN RONALD A. BRISÉ  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER ART GRAHAM  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Wednesday, September 25, 2013

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR  
Official FPSC Reporter  
(850) 413-6734

## P R O C E E D I N G S

1  
2           **CHAIRMAN BRISÉ:** Now we're going to Item  
3 Number 2.

4           **MR. LAWSON:** Good morning, Mr. Chairman.

5           Item 2 involves Mr. Smallakoff's request for a  
6 formal proceeding in Docket Number 060774-EI. On  
7 March 13th, 2013, this Commission issued an order  
8 denying Mr. Smallakoff's complaint against Florida Power  
9 & Light. That order is proposed agency action and, as  
10 you are all aware, any person whose substantial  
11 interests are affected by the proposed action may file a  
12 request for a formal proceeding. Such a petition must  
13 substantially comply with Rule 28-106.201 of the *Florida*  
14 *Administrative Code*.

15           On April 3rd, 2013, the Commission Clerk  
16 received a letter from Mr. Smallakoff. Upon review --  
17 and upon review it was determined that the request of  
18 that letter did not substantially comply with the rule.

19           On April 30th, 2013, the Chairman, as  
20 presiding officer, issued an order denying  
21 Mr. Smallakoff's request, but did grant an additional 30  
22 days to refile an appropriate petition. A copy of that  
23 rule was attached to that order.

24           On May 21st, 2013, the Commission Clerk  
25 received a second letter from Mr. Smallakoff requesting

1 a formal hearing. Staff has reviewed the request and  
2 believes that this second request does not substantially  
3 comply with the requirements of Rule 28-106.201.  
4 Therefore, staff recommends that Mr. Smallakoff's  
5 request for a formal hearing should be denied and that  
6 the order should be made final.

7 Staff is available for questions.

8 **CHAIRMAN BRISÉ:** Thank you.

9 Is Mr. Smallakoff available by  
10 telecommunication -- by phone?

11 **MR. LAWSON:** He had indicated that he would  
12 like to, but I believe Mr. Staden would be able to tell  
13 us if he's available at this time.

14 **MR. STADEN:** He's not available by phone.

15 **CHAIRMAN BRISÉ:** All right. Thank you.

16 Commissioners? Commissioner Graham.

17 **COMMISSIONER GRAHAM:** Do we know roughly --  
18 this is not the first time this person has had this sort  
19 of complaint. Do we know how many times he's done this  
20 before?

21 **MR. LAWSON:** I'll split that between myself  
22 and Mr. Forsman.

23 In terms of complaints that have gotten to the  
24 level of review involving General Counsel's office we  
25 have two. In fact, the second one is the next item on

1 the agenda. Mr. Forsman can probably comment more on  
2 his interactions with the customer service division.

3 **MR. FORSMAN:** He has filed five other informal  
4 complaints that have, have been resolved through the  
5 process review system.

6 **COMMISSIONER GRAHAM:** And do we know how they  
7 were resolved? Were they all resolved roughly the same  
8 way or --

9 **MR. FORSMAN:** He received credits in, in three  
10 of the complaints where he was -- he had full  
11 satisfaction of his disputed amounts. And the other  
12 two -- well, the final one, the Duke complaint, that has  
13 not been the case.

14 **MR. LAWSON:** In this matter the, the, this  
15 matter involving Florida Power & Light, the credit  
16 company has credited Mr. Smallakoff the disputed amount  
17 several years back. However, he continues to maintain  
18 his complaint based on his, what he alleges,  
19 mistreatment by FPL.

20 In the next matter, that disputed amount,  
21 which is roughly \$420, that is still in dispute and the  
22 subject of the complaint.

23 **COMMISSIONER GRAHAM:** His complaint was about  
24 how he was treated by the company?

25 **MR. LAWSON:** Yes.

1                   **COMMISSIONER GRAHAM:** If I may.

2                   **CHAIRMAN BRISÉ:** Sure.

3                   **COMMISSIONER GRAHAM:** Any comments?

4                   **MR. RUBIN:** Thank you. Ken Rubin for FPL.

5                   From our perspective, we treated the customer  
6 with complete respect. There was no substantive support  
7 for his complaints or allegations. We nonetheless  
8 credited the customer for a customer satisfaction issue.  
9 We absolutely disagree with those assertions and  
10 allegations.

11                   **COMMISSIONER GRAHAM:** It was kind of  
12 surprising to me, just having come from service hearings  
13 and hearing several customers speak very highly about  
14 your customer service. That's the only reason why I  
15 brought, brought the question up.

16                   **MR. LAWSON:** Commissioner Graham, I'd also  
17 like to point out in this matter when, when the staff  
18 and legal reviewed the case, we could not find any  
19 evidence of mistreatment by the utility either. We did  
20 look into that extensively. And like I said, we didn't  
21 find anything that would merit, justify his complaint.

22                   **COMMISSIONER GRAHAM:** It was kind of shocking  
23 to me just because, like I said, we just got through  
24 going to several, several, several service hearings and  
25 not hearing that kind of description when it came to

1 customer service. Thank you.

2 **CHAIRMAN BRISÉ:** Commissioner Edgar.

3 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

4 I just want to be clear, and I'm not sure who  
5 to pose this to, so I guess I'll maybe start with you.  
6 My understanding from staff is that customer Smallakoff  
7 had at one point indicated a desire to speak on this  
8 item today. But it's not that our, our phone system or  
9 anything like that is not allowing him to. He has since  
10 had a change of mind or circumstance and has chosen not  
11 to participate?

12 **MS. CRAWFORD:** Jennifer Crawford for legal  
13 staff. It's my understanding from speaking with  
14 Mr. Staden that he has attempted several times to  
15 contact Mr. Smallakoff this morning. He's also left a  
16 complete message for him. We have been in contact with  
17 Mr. Smallakoff over the course of the last few days to  
18 arrange the time for contact and how that contact would  
19 be initiated, and he has, in fact, participated in a  
20 past agenda regarding the PAA order.

21 **COMMISSIONER EDGAR:** I recall.

22 **MS. CRAWFORD:** So I believe all procedures  
23 have been adequately followed. For whatever reason we  
24 are not able to -- he has not picked up the phone.

25 **COMMISSIONER EDGAR:** Okay. Thank you. I

1 appreciate that clarification.

2 Mr. Chairman, up to you, of course, but we  
3 might want to consider taking 2 and 3 together.

4 **CHAIRMAN BRISÉ:** Sure.

5 Commissioner Balbis.

6 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

7 I want to thank the other Commissioners  
8 concerning your comments as well. In looking at more of  
9 the substance of the issue, I recall during the PAA  
10 process in investigating his complaints, I mean, there  
11 have been inspection of meters, there have been multiple  
12 audits, and at the end result both companies, at least  
13 Florida Power & Light has refunded or issued a credit  
14 when it's possible they didn't even have to. So I think  
15 this matter has been thoroughly investigated, and I'm  
16 very comfortable with the decision that we made in the  
17 PAA process, and I think we have been more than  
18 accommodating to Mr. Smallakoff in allowing extensions  
19 of time, et cetera.

20 So I'm glad we're taking these together, and  
21 I'm comfortable that the issues have been thoroughly  
22 investigated. And what's before us today is whether or  
23 not to proceed to a formal hearing, and I fully support  
24 staff's recommendation on all issues.

25 **CHAIRMAN BRISÉ:** All right. So I'm going to

1 ask Progress and their representation to join the table.  
2 Mr. Smallakoff is available now by phone, so we're going  
3 to go ahead and give him his time to, to make his  
4 comments. I think we offered five minutes.

5 **MR. LAWSON:** Yes, Commissioner.

6 **CHAIRMAN BRISÉ:** So at this time, Mr.  
7 Smallakoff, the time is yours.

8 **MR. SMALLAKOFF:** Hello.

9 **CHAIRMAN BRISÉ:** Hello. Good morning.

10 **MR. SMALLAKOFF:** Good morning. Who am I  
11 speaking to?

12 **CHAIRMAN BRISÉ:** This is Chairman Brisé. So  
13 this is how it's going to work: You have five minutes  
14 to make your comments, and then after that you will be  
15 put on mute to answer questions. So if a question is  
16 posed to you, then once the question is posed, then we  
17 will take off the mute and then you'll be able to  
18 answer, and then we will continue. But at this point,  
19 you have five minutes to make your comments.

20 **MR. SMALLAKOFF:** Well, my -- first of all, I  
21 was advised yesterday that somebody would call in  
22 reference to a time. Nobody did. And now I'm getting  
23 these games that are being played here with reference  
24 to -- you know, they called five minutes to 10:00, and  
25 what am I supposed to do with it? Five minutes is not



1 sufficient, as I advised the Attorney Crawford and so  
2 on.

3 I'm here to contest and object to the denial  
4 of a formal hearing and so on in reference to the letter  
5 signed by Crawford. And what I need to do is ask the  
6 relevant questions as to why the requests, proper  
7 requests made in my May 31st letter was denied. And she  
8 listed a number of items and I have to ask questions  
9 regarding those items because they have all been  
10 complied with. And unless I'm given sufficient time to  
11 answer and to ask these questions and get proper  
12 responses to my questions, and limited to five minutes,  
13 which a New York lawyer with a total staff couldn't do  
14 and so on and so forth, then in effect, you know, this,  
15 this hearing is not fair or a legal process, and any  
16 decisions arising therefrom will be null and void and  
17 further pursued.

18 So either I'm going to be given the time and a  
19 modicum of respect, unlike last time, to answer these  
20 questions, ask these questions and have them answered,  
21 the whole point is futile. And the only reason I'm  
22 doing this with reference to a telephone hearing and so  
23 on is I'm unable healthwise to attend. Other than that,  
24 I don't mean to forfeit my, my position by, by ignoring  
25 the thing. However, if I'm going to be mistreated and

1 not be able to ask, ask the questions relative to this,  
2 and what I need to do is go over those points of denial  
3 in the Public Service Commission's letter signed by  
4 Crawford and so on. And I need responses to those  
5 things because they've all been complied with.

6 **CHAIRMAN BRISÉ:** Okay. Thank you,  
7 Mr. Smallakoff.

8 So I don't know if staff would like to address  
9 some of the issues that you have brought up, and I think  
10 Ms. Crawford is prepared to do so at this time.

11 **MR. SMALLAKOFF:** I'm sorry. I missed what you  
12 said. Could you speak a little louder, please?

13 **CHAIRMAN BRISÉ:** Sure. Ms. Crawford is  
14 prepared to address some of the issues that you have  
15 brought up.

16 **MS. CRAWFORD:** This is Jennifer Crawford.

17 If I understand correctly, Mr. Smallakoff, you  
18 are referring to a letter. What you mean by that is the  
19 staff recommendation in both dockets that was filed by  
20 staff that recommends that the PAA order be made final,  
21 and that the filings you have made do not sufficiently  
22 meet the requirements of the rule to serve as a protest  
23 and request for hearing; is that correct?

24 **MR. SMALLAKOFF:** Well, that's what your  
25 statement is, but it's incorrect in terms of the denial

1 and the reasons therefore. And my questions are, or my  
2 questions will be is to justify the, the, the rules and  
3 so on regarding the certain requirement.

4 And I want to start off with a request that is  
5 the name and address of each agency affected and each  
6 agency's file or identification number. All of these  
7 things are known. As far as B is concerned, I've  
8 addressed all of these things in many letters that I've  
9 sent to the Public Service Commission and Ann Cole, the  
10 Clerk, and so on. So they're all addressed in those  
11 things. All you have to do is read the letter. And if  
12 they were read, then they were ignored.

13 And then see a statement that when and how the  
14 Petitioner received notice of this agency decision. I  
15 can't, I can't do anything but treat that as a joke.  
16 The Public Service Commission sent me the letter by  
17 certified mail and so on, and they're asking me a  
18 statement of how the Petitioner received notice of the  
19 agency decision. I didn't realize that when you sent  
20 these documents and so on and edicts that you didn't  
21 know who you were sending it to and so on.

22 A statement of all disputed issues of material  
23 fact, I, I addressed those in my letter. All that has  
24 to be done is have that letter read. And I know that  
25 the letter was read; however, it was ignored as usual.

1           A statement of specific rules or statutes the  
2           Petitioner contends require reversal or modification of  
3           the agency's -- excuse me -- agency's proposed action,  
4           including an explanation of how the alleged facts  
5           related to the specific rules, and so on and so forth.  
6           Well, a New York lawyer with a staff of 20 couldn't  
7           comport with that.

8           And the time that was, quote, given to me with  
9           reference to getting my letter of protest on May the  
10          31st, it took about two weeks to issue that edict. But  
11          then after that I didn't hear anything from the Public  
12          Service Commission for 160 days, and then had all of  
13          this documentation dumped on me during the weekend of  
14          the 14th and so on.

15          So all of these things, you know, they're  
16          impossible to comply with. They're just a pretext to  
17          deny me a formal hearing. To deny me a formal hearing  
18          means that I will be not allowed to call witnesses to  
19          testify under oath, which is what the crux of the  
20          situation is right now. Apparently the Public Service  
21          Commission's mind is made up and so on, and that is not  
22          going to happen at all costs is to deny me that, that,  
23          that forum that's given to everybody else.

24          A statement of release by the Petitioner  
25          stating precisely the actions the Petitioner wishes the

1 agency to take with respect to the agency's proposed  
2 actions, I have addressed all of these things in my  
3 letter of protest. They're all there. All they had to  
4 do is read the letter. However, if reading the letter  
5 means ignoring it and not taking into account anything  
6 and dismissing it outright, which apparently has been  
7 done, then that's what you're going to do. However,  
8 there are outlets and I don't mean to have this thing  
9 unaddressed and so on.

10 So these excuses promoted by this, by this  
11 letter that you signed and so on don't comport. I have  
12 comported with all of the requirements with respect to  
13 this, and now I need responses as to -- let's start off  
14 with a statement of when and how the Petitioner received  
15 notice of the agency's position. When you called me  
16 yesterday, and I was surprised to get the call, you  
17 considered it argumentative simply because I asked you a  
18 question, and that's your style. But I need a response  
19 to that question first. Doesn't the Public Service  
20 Commission know what they sent and who they sent it to?

21 **CHAIRMAN BRISÉ:** Was that a question?

22 **MR. SMALLAKOFF:** Yeah. Of course it was a  
23 question.

24 **MS. CRAWFORD:** I'm sorry. Mr. Smallakoff,  
25 this is Jennifer Crawford. If there was a question

1 there, I'm afraid I got a bit lost. If you could  
2 concisely state your question.

3 **MR. SMALLAKOFF:** Well, I did. But if  
4 precisely isn't good enough for you, I will restate it.

5 E, which is one of the items that you listed  
6 as not comporting or complying with, with my letter of  
7 protest, a statement of when and how the Petitioner  
8 received notice of the agency's decision. My statement  
9 was and question was is that doesn't the Public Service  
10 Commission know to whom they sent the letters?

11 **MS. HELTON:** Mr. Chairman, back in the  
12 mid-'90s when the Administration Commission adopted the  
13 uniform rules they put into place Rule 28-106.201, and  
14 that rule requires all Petitioners who request a hearing  
15 on any agency preliminary action, not just the  
16 Commission but all state agencies, to do quite a few  
17 things. And they are listed in staff's recommendation  
18 for Florida Power & Light on page 3, A through G.

19 Staff is recommending here that the Petitioner  
20 has not met the requirements of Rules C through G. So  
21 these requirements are not something that staff just  
22 pulled out of the air. These are requirements that all  
23 petitioners requesting a hearing before any state agency  
24 must meet.

25 **MR. SMALLAKOFF:** Well, this is all well and

1 good pulling these statutes out of the air, which  
2 doesn't comply with what I'm saying. I'm contesting  
3 this denial, and the denial was in the works. And as I  
4 stated before, there's no way that I'm going to be,  
5 quote, allowed a formal hearing because I would be  
6 allowed to bring in witnesses who would testify under  
7 oath. And that's the crux of the matter here. What you  
8 just relayed to me with respect to -- it doesn't answer  
9 A, B, C, D, E, F, and G and so on, which were all  
10 complied with in my letter, and I need responses to  
11 that. And I still haven't gotten a response of a  
12 statement of when and how the Petitioner received notice  
13 of the agency's decision. This is outrageous because if  
14 the Public Service Commission doesn't even know who they  
15 sent the letter to and why, how am I supposed to be  
16 responsible for that? And I'd like a direct response to  
17 that.

18 **CHAIRMAN BRISÉ:** Thank you, Mr. Smallakoff.  
19 Your time has been exhausted.

20 Ms. Crawford.

21 **MS. CRAWFORD:** To address that particular  
22 question, staff is unable to answer the question when  
23 and how the Petitioner got notice. Mr. Smallakoff is  
24 the Petitioner. He is the one who is in the  
25 circumstances to know when and how he got notice of the

1 agency action. He did participate in the PAA agenda.  
2 He was sent a copy of the order. He has been sent  
3 copies of the recommendation. He's received copies of  
4 Rule 28-106.201. He -- in fact, I believe a copy of  
5 that rule was attached to the order whereby his first  
6 letter was found not to sufficiently comply with that  
7 rule to meet the standards for granting a hearing for a  
8 protest of the PAA order.

9 I have read through the letters, the staff has  
10 prepared the recommendation, have read through the  
11 letters. And in absolute fairness and even leniency  
12 towards pro se litigants, they do not comply with the  
13 rule.

14 **CHAIRMAN BRISÉ:** All right. Thank you.

15 Commissioners? Commissioner Graham.

16 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

17 I've, I've spent hours on this thing last time  
18 and this time and yesterday with staff in my briefing  
19 with staff, so I feel very comfortable moving approval,  
20 staff approval of Items 2 and 3.

21 **COMMISSIONER BROWN:** Second.

22 **CHAIRMAN BRISÉ:** That's -- I think there may  
23 be some more questions. So it's been moved and  
24 seconded, but we'll continue with questions.

25 Commissioner Edgar.



1                   **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

2                   Very briefly I would just like to say I am  
3 glad that Mr. Smallakoff was able to participate today.  
4 I understand that there was, you know, a little time lag  
5 in there, and that often happens, but I'm glad that he  
6 was able to participate and that we were able to hear  
7 from him this morning, and that we were able to hear his  
8 comments when this related item was before us  
9 previously.

10                  I regret that he is not completely satisfied  
11 with the process and the result. However, I am aware  
12 that our staff has made every effort, as they do and as  
13 they should and as is the process, to work with him and  
14 to try to address his concerns.

15                  I do not appreciate the allegation that his  
16 correspondence has been ignored when I know that to  
17 patently be false. And I think this may be one of those  
18 cases where unfortunately it is not possible to please  
19 all of the people all of the time. But I do believe his  
20 concerns have been given every consideration, and I am  
21 comfortable with the motion at this time as the  
22 appropriate action for us to take.

23                  **CHAIRMAN BRISÉ:** All right. It's been moved  
24 and seconded. Any further comments? And this is on  
25 Items 2 and 3.

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(No response.)  
All in favor, say aye.  
(Vote taken.)  
All right. Thank you very much.  
(Agenda item concluded.)

\* \* \* \* \*

1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

3  
4 I, LINDA BOLES, CRR, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

8 IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes  
12 of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,  
14 employee, attorney or counsel of any of the parties, nor  
15 am I a relative or employee of any of the parties'  
16 attorney or counsel connected with the action, nor am I  
17 financially interested in the action.

18 DATED THIS 30<sup>th</sup> day of September 2013.

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