

having the facilities on his property and the damaged palm trees. Further, Mr. Shuhi states that he will not allow the utility access to the facilities, so that FPL can remove its property, until he is compensated. Mr. Shuhi expressed concerns with the way FPL staff has treated him, and also with our staff's handling of his complaint. Mr. Shuhi is concerned that our staff accepts oral representations of the utility without requiring documentation.

On August 29, 2002, Mr. Shuhi requested an informal conference, which was held on November 6, 2002. At the informal conference, FPL reiterated that after the line had been de-energized, it would have removed the facilities, except that Mr. Shuhi would not let FPL on the property. Mr. Shuhi reiterated that he would not let the company on his property until FPL compensates him for the unauthorized use of his property and the damaged trees. Mr. Shuhi further stated that he understood that this Commission cannot award damages. A settlement was not reached, and the informal conference was closed.

Subsequently, on December 19, 2002, our staff opened this docket to address Mr. Shuhi's complaint. We have jurisdiction over the utility's rates, charges, fares, tolls, or rentals, and in fixing such charges may consider the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered pursuant to Sections 366.04 and 366.05, Florida Statutes. However, we do not have jurisdiction to determine easements or award damages.

COMPLAINT

As stated above, Mr. Shuhi filed his Complaint on April 5, 2002, and no resolution was reached at the informal conference held on November 6, 2002. At the informal conference, Mr. Shuhi expressed the following concerns: (1) that FPL had improperly placed power lines on his property without a properly recorded easement, (2) that FPL misled him by claiming to have an easement even though FPL later discovered that it could not document an easement in an area where the lines had been placed; (3) that FPL, in maintaining these improperly placed lines and trimming trees next to these lines, had damaged palm trees belonging to Mr. Shuhi; and (4) that neither FPL nor PSC staff had listened to him when he

stated that FPL did not have a properly recorded easement for the area where FPL had placed its lines.

These same concerns were addressed in a July 30, 2002, letter from Commission staff to Mr. Shuhi. In that letter, in regards to an easement and being provided false and misleading information, it was noted that Mr. Austin, a former employee of FPL, had advised Mr. Shuhi that FPL had a legal utility easement. The response further noted that FPL claimed "that the developer of Citrus Glen gave FPL permission to build the line in question on your [Mr. Shuhi's] property, and that the property was purchased . . . with full knowledge of the presence of the overhead facilities." The letter concluded that there may have been confusion about the existence of an easement, but that there was no evidence that FPL "knowingly and intentionally" provided false information. Also, the letter noted that FPL had de-energized lines which remained on Mr. Shuhi's property, and apparently stood willing and able to remove the lines and poles if Mr. Shuhi would allow FPL to have access.

There does not appear to have been any intention to mislead. Therefore, whether there was or was not an actual easement, we decline to take any further action on this portion of Mr. Shuhi's complaint.

Mr. Shuhi also seeks compensation for the damage to his palm trees and "for almost ten years of FPL knowingly, intentionally, and wrongfully using" his property without a proper easement. Again, in that same staff letter, it was noted that FPL had indicated a willingness to meet with Mr. Shuhi with an "FPL arborist to inspect the palms and formulate a restoration plan," but that Mr. Shuhi refused until all of his "remedies had been met." Moreover, the letter noted that FPL stood ready to remove all its property, and that FPL disputed that any compensation for use of the property was applicable. We find that this Commission is not the proper forum to discuss either compensation for the damaged palm trees or compensation for the use of Mr. Shuhi's land. We do not have authority to award damages or to reimburse a party for its losses. See Florida Power & Light Company v. Glazer, 671 So. 2d 211 (Fla. 3d DCA 1996).

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Finally, Mr. Shuhi expressed concern about our staff having accepted FPL's oral representations, especially about the existence of an easement, without requiring documentation. By letter dated August 13, 2001, our Division of Consumer Affairs advised Mr. Shuhi as follows:

The PSC does not have authority to determine whether FPL's lines and poles are located within an easement or if the company has prescriptive rights for the current location of the facilities. Only a court of proper jurisdiction can resolve that dispute.

In a follow-up letter dated September 24, 2001, the Division of Consumer Affairs did advise Mr. Shuhi that they had asked FPL to provide the documentation that Mr. Shuhi requested. In conclusion, it appears that staff attempted to assist Mr. Shuhi, but that Mr. Shuhi was not satisfied with staff's actions. However, as noted in the August 13 letter, our staff did not have the authority to determine whether FPL had an easement or some other prescriptive right. Moreover, this Commission does not have jurisdiction to resolve an easement question or award damages.

Based on all the above, Mr. Shuhi's complaint shall be dismissed as this Commission has neither the jurisdiction nor authority to determine easements or award damages.

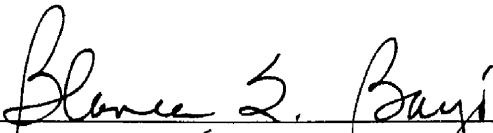
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Complaint of Robert Shuhi, Complaint No. 447560E, is dismissed. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 20th
day of February, 2003.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

RRJ

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.

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 the Commission Clerk and Administrative Services, 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

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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 the Commission Clerk and Administrative Services 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.