

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Consumer complaint against Florida
Power & Light Company by Leticia Callard.

DOCKET NO. 040208-EI
ORDER NO. PSC-05-0957-FOF-EI
ISSUED: October 7, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

ORDER DENYING REQUEST FOR RECONSIDERATION

BY THE COMMISSION:

Background

On October 4, 2002, Mr. Jorge Callard filed a complaint with the Commission's Division of Consumer Affairs on behalf of his wife, Mrs. Leticia Callard (customer of record) against Florida Power & Light Company (FPL or utility). According to Mr. Callard, FPL had inappropriately backbilled the Callard residence at 7860 SW 18th Terrace, Miami, Florida, in the amount of \$9,398 for alleged unbilled energy, when the Callards had not diverted or otherwise tampered with the meter.

We issued Proposed Agency Action Order No. PSC-O4-0397-PAA-EI on April 16, 2004 (PAA Order). Mrs. Callard filed a protest to the PAA Order and requested a hearing. A hearing was conducted at the Division of Administrative Hearings. By Order No. PSC-05-0806-FOF-EI, issued August 5, 2005 (Final Order), we denied FPL and Mrs. Callard's exceptions to the Recommended Order entered by the Administrative Law Judge on May 13, 2005 and adopted the Recommended Order as our Final Order. On August 22, 2005, Mrs. Callard timely filed a request for reconsideration of the Final Order. FPL timely filed a response on August 29, 2005. Oral argument on the request for reconsideration was not requested or heard. This Order addresses the request for reconsideration. We have jurisdiction pursuant to Section 366.05(1), Florida Statutes, and Rule 25-6.104, Florida Administrative Code.

Request for Reconsideration

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that this Commission overlooked or failed to consider in rendering its Order.¹

¹ See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). Moreover, in a motion for reconsideration, it is not appropriate to reargue matters that have already

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A motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."²

In her request for reconsideration, Mrs. Callard states, among other things, that: 1) FPL violated the electrical code by ignoring the Callards' complaints about electrical problems in the past; 2) the so-called visible scratches on the protective glass of the meter were never seen by FPL's meter reader because they were not there to begin with; 3) the meter reader testified that it is possible to have read the meter incorrectly; 4) FPL improperly accessed the Callards' property and broke their fence; 5) FPL replaced the meter with one which was not presented and which will show false information on behalf of FPL; 6) the Callards have proven themselves to be innocent of the allegations against them and that FPL has failed to prove otherwise; and 7) the Callards have established witnesses' contradictions in their testimony concerning meter findings.

In its response, FPL states that Mrs. Callard's request is legally insufficient and should therefore be denied. FPL argues that Mrs. Callard does not cite to any statutes, administrative code provisions, or opinions which were overlooked or neglected by this Commission in rendering its Final Order and that therefore, Mrs. Callard's request for reconsideration must be denied as to any mistake of law. Moreover, FPL argues that although Mrs. Callard makes numerous unsubstantiated claims, none of her claims are set forth in the record. Rather, she makes a series of new claims with no basis contained in the record. FPL states that it would be error for this Commission to consider such claims. FPL cites to Order No. PSC-04-0942-FOF-TP for the proposition that "it is well established that it is inappropriate to raise new arguments in a motion for reconsideration."³ According to FPL, in most instances, the only way for FPL to respond to the new claims made by Mrs. Callard would be to also go outside of the record. If the Commission allowed such activity to occur, there would never be finality to matters brought before the Commission.

We agree with FPL that Mrs. Callard's request for reconsideration fails to identify a point of fact or law that we overlooked or failed to consider in rendering our Final Order. Nor are Mrs. Callard's arguments based upon specific factual matters set forth in the record and susceptible to review. Therefore, Mrs. Callard's request for reconsideration is denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mrs. Callard's request for reconsideration is denied. It is further

ORDERED that this docket shall be closed.

been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959) (citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958)).

² Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

³ Issued September 23, 2004, in Docket No. 040301-TP, In Re: Supra Telecommunications and Information Systems, Inc.

By ORDER of the Florida Public Service Commission this 7th day of October, 2005.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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NOTICE OF 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 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 by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.