

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 120192-EI
ORDER NO. PSC-13-0180-CO-EI
ISSUED: April 29, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER CONSUMATING ORDER NO. PSC-12-0556-PAA-EI

BY THE COMMISSION:

Case Background

On July 17, 2012, the Florida Public Service Commission (Commission) established this docket to address a formal complaint (Complaint) by Mr. Robert D. Evans (Mr. Evans) against Tampa Electric Company (TECO). In his Complaint, Mr. Evans requested a refund of money he paid to TECO and the payment of his attorneys' fees and costs. Mr. Evans alleged that in 1989, TECO was paid by the prior owner of the property to install underground cable in an existing underground conduit. Therefore, Mr. Evans alleged that, by his payment to TECO in 2010 (for the installation of the underground cable and the transformer) TECO was paid twice for the same service. TECO denied receiving any payment from the prior property owner. Neither Mr. Evans nor TECO has produced a record of TECO receiving payment from the prior property owner in 1989, and the prior owner of the property is deceased. TECO stated that it maintains records of transactions dating back over 50 years, but it has no record of payments from the prior property owner for the underground conduit, cable, or transformer.

On October 19, 2012, we issued Proposed Agency Action (PAA) Order No. PSC-12-0556-PAA-EI, denying Mr. Evans' request for a refund, attorneys' fees and costs, because Mr. Evans provided no evidence of the prior owner's payment to TECO in 1989, and because we lack authority to award attorneys' fees and costs.

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On November 9, 2012, Mr. Evans filed a petition for formal proceeding (Petition) in which he asserted that we failed to address issues of material fact in making our decision. He identified the following as factual disputes: (1) whether TECO was previously paid for the underground cable and conduit; (2) whether TECO's refusal to provide the records of the payment violated Rule 25-6.093, Florida Administrative Code (F.A.C.); and (3) whether Mr. Evans had to pay TECO for installing the underground cable in the existing underground conduit. Mr. Evans' requested relief included asking us: (1) to reverse our Order denying Mr. Evans' request for refund and attorneys' fees and costs; (2) to refer his complaint to the Division of Administrative Hearings (DOAH); and (3) to issue an order directing TECO to specifically perform under the prior executed contract on the property.

On November 15, 2012, TECO filed its Motion to Dismiss Mr. Evans' Petition with prejudice and to deny his hearing request. Mr. Evans did not file a response to TECO's Motion to Dismiss.

On February 7, 2013, by Order No. PSC-13-0073-FOF-EI, we granted the TECO Motion to Dismiss and denied Mr. Evans' request for referral of his complaint to DOAH.

On February 11, 2013, Mr. Evans submitted an untitled letter (Letter) in which he argues the merits of his case. Although Mr. Evans did not request oral argument on the matter, he did ask that we "allow [him] to be heard." TECO did not respond to the Letter. Because there is some ambiguity regarding the nature and intent of the Letter, we will address the Letter as both a motion for reconsideration and as an amended petition.

We have jurisdiction over this matter pursuant to Sections 366.04 and 366.05, Florida Statutes (F.S.), Chapter 28-106.201, F.A.C., and Rules 25-6.064 and 25-6.078, F.A.C.

Decision

We will review the Letter first as a motion for reconsideration and then as an amended petition.

Reconsideration

At page 2 of his Letter, Mr. Evans asks "that the Commission's reconsider their Motion to Dismiss of January 24, 2013." To the extent that the Letter is intended to be a motion for reconsideration of Order No. PSC-13-0073-FOF-EI, we find that it fails as follows.

It is well established:

1. that 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;

2. that it is not appropriate to reargue matters that have already been considered by the Commission; and,
3. that 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.¹

Mr. Evans' Petition was denied for failure to comply with Rule 28-106.201, F.A.C., which requires that a petition state the specific rules or statutes that require reversal or modification of a PAA Order.² Upon review, we find that, by his February 11, 2013 Letter, Mr. Evans fails to identify a point of fact or law which was overlooked or which we failed to consider in rendering our Order. By his Letter, Mr. Evans does recount factual assertions from his Petition; however, he does not identify where, in his Petition, he stated the specific rules or statutes that constitute compliance with Rule 28-106.201, F.A.C. As such, Mr. Evans simply reargues his case and he does not address any matter that was overlooked by this Commission related to the basis of our decision. Therefore, to the extent that the Letter is intended by Mr. Evans to be a motion for reconsideration, it shall be denied.

Amended Petition

By Order No. PSC-13-0073-FOF-EI, we dismissed without prejudice Mr. Evans' Petition for formal proceeding. By our Order we identified defects in the Petition, provided that Mr. Evans could file an amended petition curing the same, and stated that "Mr. Evans may file an amended petition by 5:00 PM on February 14, 2013." While Mr. Evans' Letter was timely filed, it fails to identify the specific rules or statutes that require reversal of Order No. PSC-12-0556-PAA-EI, and fails to provide an explanation of the relationship between the alleged facts and the applicable statutes or rules. As such, the Letter fails to cure the defects we described in Order No. PSC-13-0073-FOF-EI.³ Therefore, we find that, to the extent that the Letter is intended by Mr. Evans to be an amended petition, it shall be dismissed with prejudice pursuant to Section 120.569(2)(c), Florida Statutes.

¹ See e.g., Order No. PSC-11-0222-FOF-TP, issued May 16, 2011, in Docket No. 090538-TP; in *In re: Amended Complaint of Qwest Communications Company, LLC against MCI metro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination (citing Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981); and Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959)).*

² See PSC-13-0073-FOF-EI, at 3 (granting motion to dismiss).

³ *Id.*

Based on the foregoing, it is

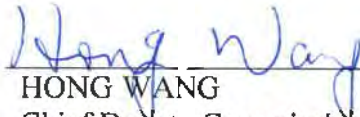
ORDERED by the Florida Public Service Commission that, to the extent that Mr. Evans' Letter is intended to be a motion for reconsideration, it is hereby denied. It is further,

ORDERED that, to the extent that Mr Evans' Letter is intended to be an amended petition, it is hereby dismissed with prejudice. It is further,

ORDERED that Order No. PSC-12-0556-PAA-EI is hereby revived, made final and effective. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 29th day of April, 2013.



HONG WANG
Chief Deputy Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.

Pursuant to Florida Rules of Appellate Procedure 9.190(e)(2)(A) and 9.310(f), review of the Commission's decision regarding a stay shall be to the appellate court upon motion. Any such motion must comply with Florida Rule of Appellate Procedure 9.300(a).