

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Frederick Smallakoff  
against Progress Energy Florida, Inc.  
concerning alleged improper bills, Case No.  
1059336E.

DOCKET NO. 120176-EI  
ORDER NO. PSC-13-0468-FOF-EI  
ISSUED: October 14, 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 DENYING FREDERICK SMALLAKOFF'S  
SECOND REQUEST FOR A FROMAL PROCEEDING

BY THE COMMISSION:

**Background**

On April 4, 2012, Mr. Frederick Smallakoff filed an informal complaint against Progress Energy Florida (now Duke Energy Florida, DEF) alleging overbilling, improper levying of penalties and harassment by the utility. This informal complaint was assigned Case Number 1059336E. After an investigation and administrative review, Commission staff found no evidence that the utility had acted improperly and sent Mr. Smallakoff a final case disposition letter on June 4, 2012. On June 19, 2012, the Commission Clerk received a letter from Mr. Smallakoff to file a "formal proceeding/complaint" in this matter. By Proposed Agency Action Order No. PSC-13-0124-PAA-EI, issued March 13, 2013, we denied Mr. Smallakoff's complaint on the grounds that after a thorough investigation by Commission staff, there was no evidence that the utility had improperly billed the customer or improperly assessed any penalties or other fees.

Any person whose substantial interests were affected by the proposed action could file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code (F.A.C.). On April 3, 2013, the Commission Clerk received a letter from Mr. Smallakoff purporting to request a formal proceeding. Order No. PSC-13-0184-PCO-EI was issued on April 30, 2013, finding that the letter did not meet the requirements of Rule 28-106.201, F.A.C., denying Mr. Smallakoff's request for a hearing, and allowing Mr. Smallakoff leave to refile his request in compliance with the requirements of the rule. On May 21, 2013, the Commission Clerk received a second letter from Mr. Smallakoff purporting to request a formal proceeding.

This Order addresses Mr. Smallakoff's filing and the appropriate disposition of Order No. PSC-13-0124-PAA-EI. We have jurisdiction pursuant to Section 366.04, Florida Statutes (F.S.).

### Decision

When this Commission issues an order as a proposed agency action, any person whose substantial interests are affected by the action proposed in the order may file a petition for a formal hearing, provided it meets the requirements outlined in Rule 28-106.201, F.A.C. Any substantially affected person generally has twenty-one days from the issuance of the order to file a petition with the Commission Clerk.

Rule 28-106.201(2), F.A.C., states that any request for a hearing must meet certain requirements including:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

Mr. Smallakoff's first letter, received on April 3, 2013, did not meet the requirements outlined in Rule 28-106.201, F.A.C., particularly with regard to paragraphs 2(c), 2(d), 2(e), 2(f) and 2(g) as described above. Therefore, Mr. Smallakoff's request for a hearing was denied pursuant to Order No. PSC-13-0184-PCO-EI, with leave for him to refile a petition for a formal proceeding by May 21, 2013. That order also instructed Mr. Smallakoff that any such petition must substantially conform to the requirements of Rule 28-106.201, F.A.C., a copy of which was

attached to the Order.

On May 21, 2013, the Commission Clerk received a second letter from Mr. Smallakoff purporting to request a formal proceeding. This second letter again failed to materially comply with the requirements outlined in Rule 28-106.201, F.A.C., particularly with regard to paragraphs 2(c), 2(d), 2(e), 2(f) and 2(g) as described above.

Since Mr. Smallakoff has had two opportunities to submit a petition for a formal proceeding and neither request substantially or materially complies with Rule 28-106.201, F.A.C., his request for a hearing is denied. Since the opportunity to refile his petition for a hearing effectively extended the time for filing well past the twenty-one days normally afforded individuals who wish to protest a proposed agency action, Mr. Smallakoff has had more than ample opportunity to properly file a request for formal hearing and the time for filing such a request has expired. Therefore, Mr. Smallakoff's request for a hearing shall be denied with prejudice. Order No. PSC-13-0124-PAA-EI shall accordingly be issued as final agency action.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mr. Frederick Smallakoff's request for a formal hearing in this matter is denied with prejudice. It is further

ORDERED that Order No. PSC-13-0124-PAA-EI shall be effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of October, 2013.



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ANN COLE  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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 Office of Commission Clerk, 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 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 Office of Commission Clerk, 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.