

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-13-0675-FOF-EI  
ISSUED: December 20, 2013

ORDER DENYING FREDERICK SMALLAKOFF'S  
MOTION FOR RECONSIDERATION

BY THE COMMISSION:

**Background**

On April 4, 2012, Mr. Frederick Smallakoff filed an informal complaint against Progress Energy Florida, Inc. (now Duke Energy Florida, Inc. or 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 agency 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 hand-written 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 hand-written letter from Mr. Smallakoff purporting to request a formal proceeding. Upon review of this second letter, we issued Order No. PSC-13-0468-FOF-EI on October 14, 2013, denying Mr. Smallakoff's second request for a formal hearing with prejudice and stating that Order No. PSC-13-0124-PAA-EI shall be effective and final.

On October 29, 2013, the Commission Clerk received a hand written letter from Mr. Smallakoff titled as a motion for reconsideration of Order No. PSC-13-0468-FOF-EI. No request for oral argument was filed as required by Rule 25-22.0022, F.A.C.

This Order addresses Mr. Smallakoff's motion for reconsideration of Order No. PSC-13-0468-FOF-EI. We have jurisdiction pursuant to Section 366.04, Florida Statutes (F.S.).

## Decision

### Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a mistake of fact or law this Commission overlooked or failed to consider in rendering its order.<sup>1</sup> The overlooked point of fact or law must be such that if it were considered, this Commission would reach a different decision than the decision in the order.<sup>2</sup> In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.<sup>3</sup> Furthermore, it is not necessary to respond to every argument and fact raised by each party, and “[a]n opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant.”<sup>4</sup>

### Analysis

In his Motion for Reconsideration, Mr. Smallakoff asserted that final Order No. PSC-13-0468-FOF-EI did not address his complaints. He stated he wished to re-apply the facts and evidence presented in his previous pleadings. He also stated that he believed he had complied with Rule 28-106.201, F.A.C., in his two prior requests for a rehearing. Mr. Smallakoff’s motion does not identify any point of fact or law that was overlooked, or that this Commission failed to consider in rendering any of its decisions in this matter. Furthermore, Mr. Smallakoff’s letter does not allege any legal basis or argument of any kind in support of his motion.

A Motion for Reconsideration must demonstrate an omission in facts or law which, had they been considered, would have resulted in a different ruling by this Commission.<sup>5</sup> Here, Mr. Smallakoff’s Motion for Reconsideration did not allege or show any omission of fact or law which, if considered could result in a different ruling than that in Order No. PSC-13-0468-FOF-EI or any other ruling in this docket. By explicitly repeating the exact same arguments that he presented at the September 25, 2013 Agenda Conference, Mr. Smallakoff is merely rearguing his position, rather than pointing out a mistake of fact or law we overlooked in rendering our decision.

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<sup>1</sup> See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

<sup>2</sup> See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962).

<sup>3</sup> See Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). See also Order No. PSC-07-0783-FOF-EI, issued September 26, 2007, in Docket No. 050958-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company; Order No. PSC-07-0561-FOF-SU; issued July 5, 2007, in Docket No. 060285-SU, In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven; and Order No. PSC-06-1028-FOF-EU, issued December 11, 2006, in Docket No. 060635-EU, In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

<sup>4</sup> See Jaytex Realty, 105 So. 2d at 818.

<sup>5</sup> See Order No. PSC-11-0224-FOF-EI, issued on May 16, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause; and Order No. PSC-09-0156-FOF-TP, issued on March 16, 2009, in Docket No. 070736-TP, In re: Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida (denying Motion for Reconsideration).

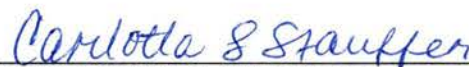
Therefore, we find that Mr. Smallakoff's Motion for Reconsideration shall be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mr. Frederick Smallakoff's Motion for Reconsideration is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of December, 2013.



CARLOTTA S. STAUFFER

Commission Clerk

Florida Public Service Commission

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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.

MTL

#### 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 Office of Commission Clerk, 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.