

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

OCTOBER 17, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (WAGNER) *RVE, LW*
DIVISION OF ELECTRIC & GAS (GOAD) *CA*
DIVISION OF CONSUMER AFFAIRS (DURBIN) *DD* *JDJ*

RE: DOCKET NO. 960726-EI - FLORIDA POWER & LIGHT COMPANY -
COMPLAINT OF MR. EDDY GROSSE AGAINST FLORIDA POWER &
LIGHT COMPANY CONCERNING BILLING FOR ELECTRIC USE AT
CUSTOMER'S RENTAL PROPERTY

AGENDA: 10/29/96 - REGULAR AGENDA - DECISION PRIOR TO HEARING -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960726EI.RCM

CASE BACKGROUND

On March 12, 1996, Mr. Eddy Grosse filed a complaint with the Public Service Commission's Division of Consumer Affairs (CAF). Mr. Grosse objected to Florida Power & Light Company (FPL) transferring unpaid balances from Mr. Grosse's accounts at his rental properties to his residential account. Mr. Grosse stated that his tenants had the electric service in their name, he was not the customer of record at the rental properties, and he did not owe FPL \$817.12.

On April 1, 1996, CAF staff advised Mr. Grosse that it appeared he established the accounts in question. Subsequently, FPL could transfer the outstanding balances of the rental properties to Mr. Grosse's residential account. An informal conference was held on June 3, 1996; however, a resolution was not achieved.

At the July 16, 1996, Agenda Conference, the Commission determined that the rental property accounts were in Mr. Grosse's name, were not paid in full, and constituted prior indebtedness. The Commission found Mr. Grosse liable for the unpaid balance of \$871.12. On August 5, 1996, the Commission issued Order No. PSC-

DOCUMENT NUMBER-DATE

11104 OCT 17 96

FPSC-RECORDS/REPORTING

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96-0998-FOF-EI, Notice of Proposed Agency Action Order Affirming Liability For Unpaid Balance. The Notice of Further Proceedings or Judicial Review, which is a part of the Order, provided that:

[a]ny person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, This petition must be **received** by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on **August 26, 1996**. (Emphasis added)

On August 26, 1996, Mr. Grosse sent a petition, by facsimile, protesting Order No. PSC-96-0998-FOF-EI and requesting a formal proceeding, to the Division of Records and Reporting and to an attorney, in the Division of Legal Services. (Attachment A). The attorney informed Mr. Grosse that the Commission's rules do not permit filings by facsimile, and suggested that he immediately send a copy of the facsimile, by mail, to the Division of Records and Reporting. On August 29, 1996, the Director of the Division of Records and Reporting received a letter written by Mr. Grosse protesting Order No. PSC-96-0998-FOF-EI and requesting a formal proceeding, in Miami, Florida.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the facsimile protesting Order No. PSC-96-0998-FOF-EI and requesting a formal hearing, which was received on August 26, 1996, as timely filed?

RECOMMENDATION: Yes. Mr. Grosse attempted, in good faith, to timely file a request for a formal hearing.

STAFF ANALYSIS: On August 26, 1996, the Commission received Mr. Grosse's facsimile protesting Order No. PSC-96-0998-FOF-EI and requesting a formal proceeding. Order No. PSC-96-0998-FOF-EI, issued August 5, 1996, indicated that Mr. Grosse must file a petition for a formal proceeding, pursuant to Rule 25-22.029(4), Florida Administrative Code, and that this petition must be **received** by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0950, by the close of business on **August 26, 1996**. (Emphasis added).

Rule 25-22.029, Florida Administrative Code, states:

(4) One whose substantial interests may or will be affected by the Commission's proposed action may file a petition for a Section 120.57 hearing, in the form provided by Rule 25-22.036. Any such petition shall be filed within the time stated in the notice issued pursuant to subsection (2) of this rule....

(5) Any person who receives notice and who fails to file a timely request for a Section 120.57 hearing shall have waived his or her right to request a hearing on the decision.

Rule 25-22.036, Florida Administrative Code, addresses how a person may initiate a final proceeding, but the rule does not address petitions to the Commission made by facsimile.

Rule 25-22.028, Florida Administrative Code, states that a filing may be made by U.S. Mail, hand delivery, or courier service. While it is a person's responsibility to be familiar with the Administrative Code, staff believes that with today's technology a reasonable person could assume that a petition could be filed by facsimile. Consequently, staff believes it was reasonable for Mr. Grosse to assume his petition would be timely filed, if the Commission **received** the petition on **August 26, 1996**, by facsimile.

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Staff also notes that Rule 25-22.036, Florida Administrative Code, permits, but does not require, the Commission to deny a petition on proposed agency action if it is untimely filed. Whether to grant or deny an untimely petition is within the Commission's discretion. The Commission has granted such petitions in certain cases upon a showing of good cause why the petition is untimely.

In addition, the circumstances surrounding Mr. Grosse's petition are similar to those found in Order No. PSC-95-0630-FOF-TC, issued May 23, 1995, in Docket No. 940719-TC. In Docket No. 940719-TC, Vocal Motion, Inc. (Vocal Motion) attempted to file a petition for a formal proceeding via facsimile transmission on the due date. Vocal Motion, after learning that our Rules do not allow for such filings, sent its pleading to the Commission via overnight mail. On May 23, 1995, the Commission issued Order No. PSC-95-0630-FOF-TC, in Docket No. 940719-TC, stating that it was fair and appropriate to exercise Commission discretion in granting Vocal Motion's Petition for a Formal Proceeding. See also, PSC-95-1386-FOF-WS, issued November 8, 1995, in Docket No. 950695-WS (denying utility's motion to dismiss untimely filed objection to transfer application when the objection was filed five days late); and, PSC-96-1184-FOF-WS, issued September 20, 1996, in Docket No. 950966-WS (granting untimely petition for formal proceeding).

Staff recommends that the Commission treat Mr. Grosse's protest of Order No. PSC-96-0998-FOF-EI and request for a formal proceeding, as timely filed.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open.

STAFF ANALYSIS: This docket should remain open pending resolution of Mr. Eddie Grosse's complaint against Florida Power & Light Company.