

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

M E M O R A N D U M

APRIL 24, 1997

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

FROM: DIVISION OF LEGAL SERVICES (ELIAS) *RVE RT*
DIVISION OF ELECTRIC & GAS (GOAD) *RG*
DIVISION OF CONSUMER AFFAIRS (DURBIN) *RD*

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

AGENDA: 05/06/97 - REGULAR AGENDA - POST HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

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 FPL accounts at rental properties he owns to his residential account. Mr. Grosse stated that his tenants had the electric service in their name and that he was not the customer of record at the rental properties.

FPL's report to CAF stated that Mr. Grosse was the customer of record on three accounts that were transferred to his residential account on February 9, 1996. The accounts were:

1. Account #72037-41421, 2231 Filmore Street, #HSE, Miramar, Florida. Active from June 16, 1994 until September 19, 1995
2. Account #87065-27135, 2231 Filmore Street, Apartment 5, Miramar, Florida. Active from April 11, 1995 until August 18, 1995

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3. Account #02301-46474, 2233 Filmore Street, Miramar, Florida. Active from September 19, 1994 until August 18, 1995

FPL stated that the accounts were opened in Mr. Grosse's name and deposits were waived by referencing Mr. Grosse's residential account.

Final bills on the three accounts were left unpaid so the balances were transferred to Mr. Grosse's residential account at 3501 South 130th Avenue, Miramar, Florida. The transferred balance of \$871.12 consisted of:

1. \$172.19 from account #87065-27135.
2. \$197.61 from account #02301-46474.
3. \$501.32 from account #72037-41421.

The bills for the accounts in question came directly to Mr. Grosse's office at 1689 North Hiatus Road, Pembroke Pines. Mr. Grosse issued checks in payment of the accounts without questioning their validity.

On April 1, 1996, Mr. Grosse was advised that based on the information reviewed by CAF staff, it appeared that the accounts were established by Mr. Grosse. Therefore, FPL was not in violation of the rules of the Florida Public Service Commission in transferring the outstanding balances to Mr. Grosse's account. Pursuant to Mr. Grosse's request an informal conference was held on June 3, 1996. No resolution was achieved at the informal conference.

On August 5, 1996, the Commission issued Order No. PSC-96-0998-FOF-EI, Notice of Proposed Agency Action - Order Affirming Liability for Unpaid Balance. The Commission found that Mr. Grosse was liable for the balance due on these accounts, totalling \$871.12. Mr. Grosse filed a protest which was found by the Commission to be timely filed by Order No. PSC-96-1355-FOF-EI, issued November 18, 1996. The matter was referred to the Division of Administrative Hearings on December 9, 1996. By Notice issued January 9, 1997, the Administrative Law Judge, a final hearing was scheduled for February 14, 1997. Mr. Grosse did not appear at the hearing.

On February 19, 1997, the Administrative Law Judge entered a Corrected Recommended Order. The Order recommends that Mr. Grosse's request for an administrative hearing be dismissed and

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that he be found liable for the outstanding balance. No exceptions to the Corrected Recommended Order were filed. A Copy of the Corrected Recommended Order is attached to this recommendation as Attachment A.

DISCUSSION OF ISSUES

ISSUE 1: Should the Administrative Law Judge's Corrected Recommended Order be adopted as this agency's final order?

RECOMMENDATION: Yes. Mr. Grosse's request for an administrative hearing should be dismissed. Order No. PSC-96-0998-FOF-EI, Notice of Proposed Agency Action - Order Affirming Liability for Unpaid Balance, should be revived as final, effective the date of the Commission's vote. Mr. Grosse is liable to Florida Power and Light Company for the outstanding balance of \$871.12.

STAFF ANALYSIS: By failing to appear at the duly noticed final hearing, Mr. Grosse failed to establish the allegations of his complaint. The Administrative Law Judge's determination that based on this failure, his request for a hearing should be dismissed is appropriate. Based on the dismissal of the request for a hearing, it is appropriate to revive the PAA Order which Mr. Grosse protested. Therefore, the Administrative Law Judge's Corrected Recommended Order should be adopted as this agency's final order. Mr. Grosse's request for an administrative hearing should be dismissed. Order No. PSC-96-0998-FOF-EI, Notice of Proposed Agency Action - Order Affirming Liability for Unpaid Balance should be revived as final, effective May 6, 1997, the date of the Commission's vote. Mr. Grosse is liable to Florida Power and Light Company for the outstanding balance of \$871.12.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Absent a timely filed Motion for Reconsideration or Notice of Appeal, no further action will be required. Therefore, the docket should be closed.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS



EDDY GROSSE,)	
)	
Petitioner,)	CASE No. 96-5784
)	
vs.)	
)	
FLORIDA POWER AND LIGHT)	
COMPANY,)	
)	
Respondent,)	
)	
and)	
)	
FLORIDA PUBLIC SERVICE)	
COMMISSION,)	
)	
Intervenor.)	

CORRECTED RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Administrative Law Judge, Susan E. Kirkland, held a formal hearing in this case on February 14, 1997, in Miami, Florida, by video teleconference.

APPEARANCES

- For Petitioner: No Appearance.
- For Respondent: Robert E. Stone, Esquire
Post Office Box 029100
Miami, Florida 352446
- For Intervenor: William Cochran Keating IV, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0863

STATEMENT OF THE ISSUES

Whether Petitioner is responsible for the payment of electric use at a customer's rental property.

PRELIMINARY STATEMENT

On March 12, 1996, Petitioner, Eddy Grosse, filed a complaint with the Intervenor, Florida Public Service Commission, concerning billing to his account for electric use of tenants of his rental property. An informal conference was held on June 3, 1996, and no resolution was achieved. On August 5, 1996, the Florida Public Service Commission entered a Notice of Proposed Agency Action Order Affirming Liability for Unpaid Balance, proposing that Eddy Grosse be found liable for the unpaid balance of \$871.12 for electric use. Mr. Grosse requested an administrative hearing on August 26, 1996. On December 9, 1996, the Florida Public Service Commission forwarded the case to the Division of Administrative Hearings for assignment to an Administrative Law Judge.

On December 23, 1996, the Florida Public Service Commission filed a Motion for Leave to Intervene. The motion was granted by order dated January 9, 1997.

Petitioner failed to appear at the final hearing. Respondent, Florida Power and Light Company moved to dismiss the case at the final hearing. The motion was granted to the extent that a Recommended Order would be entered recommending that the case be dismissed.

FINDINGS OF FACTS

1. Petitioner, Eddy Grosse, filed a complaint against Respondent, Florida Power and Light Company, alleging that he was not responsible for electric use of tenants of his rental property who failed to pay for their electric use.

2. On August 5, 1996, the Intervenor, Florida Public Service Commission entered a Notice of Proposed Agency Action Order Affirming Liability for Unpaid Balance, holding that Mr. Grosse was liable to the Respondent for the unpaid balance of \$871.12.

3. Mr. Grosse requested an administrative hearing on August 26, 1996.

4. The case was forwarded to the Division of Administrative Hearings on December 9, 1996. On January 9, 1997, the undersigned Administrative Law Judge issued a Notice of Hearing by Video, scheduling the final hearing for February 14, 1997. The Notice was sent to Mr. Grosse.

5. The hearing was scheduled to commence at 9:00 a.m. Because of technical difficulties with the video equipment the hearing actually commenced at 10:00 a.m. Mr. Grosse did not appear at the final hearing and did not notify the Division of Administrative Hearings that he would not be appearing.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

7. Petitioner has the burden to establish that the allegations of his complaint are correct. Petitioner did not appear and did not present any evidence; thus, Petitioner has failed to establish the allegations of his complaint. His request for an administrative hearing should be dismissed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order should be entered dismissing Petitioner's Petition for an Administrative Hearing and finding Petitioner liable for the unpaid balance of \$871.12.

DONE AND ENTERED in Tallahassee, Leon County, Florida, this 19th day of February, 1997.

Susan B. Kirkland

SUSAN B. KIRKLAND

Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675 SUNCOM 278-9675
Fax Filing (904) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of February, 1997.

COPIES FURNISHED:

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Mr. Eddy Grosse
3501 Southwest 130 Avenue
Hollywood, Florida 33027

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ATTACHMENT A
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.