



Public Service Commission

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COMMISSION
CLERK

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021248-RCM

DATE: JANUARY 23, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (JAEGER)
DIVISION OF CONSUMER AFFAIRS (PLESCOW)
DIVISION OF ECONOMIC REGULATION (KUMMER)

Handwritten signatures and initials: JAE, BO, JDS, etc.

RE: DOCKET NO. 021248-EI - COMPLAINT AGAINST FLORIDA POWER &
LIGHT COMPANY FOR ALLEGEDLY BEING MISINFORMED AND
MISTREATED BY COMPANY EMPLOYEES AND FOR IMPROPER USE OF
HIS LAND WITHOUT A LEGALLY RECORDED EASEMENT, BY ROBERT
SHUHI.

AGENDA: FEBRUARY 4, 2003 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\021248.RCM

CASE BACKGROUND

Mr. Shuhi filed his complaint (No. 447560E) with the Commission on April 5, 2002. In his correspondence to the Commission, he wrote that Florida Power & Light (FPL) had provided incorrect information to both his subdivision and him. He believed FPL had placed its facilities on his property in a location where there was not an easement, and then misleadingly claimed that it did have an easement for that location. He also complained about experiencing outages and he said the company had damaged his palm trees, while maintaining the facilities. Additionally, he wanted FPL to provide a letter giving an explanation for the outages experienced in his neighborhood and the facilities removed from his property.

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FPL was unable to provide documentation showing the company had an easement for the facilities in question. Therefore, on July 23, 2001, FPL de-energized the line, and offered to remove the facilities. However, Mr. Shuhi wants to be compensated by FPL for having the facilities on his property and the damaged palm trees. Further, Mr. Shuhi states that he will not allow the utility access to the facilities, so that FPL can remove its property, until he is compensated. Mr. Shuhi expressed concerns with the way FPL staff has treated him, and also with the Commission staff's handling of his complaint. Mr. Shuhi is concerned that staff accepts oral representations of the utility without requiring documentation.

On August 29, 2002, Mr. Shuhi requested an informal conference, and an informal conference was held on November 6, 2002. FPL stated that after the line had been de-energized, it would have removed the facilities, but that Mr. Shuhi would not and will not let FPL on to the property. Mr. Shuhi reiterated that he would not let the company on his property until FPL compensates him for the unauthorized use of his property and the damaged trees. Mr. Shuhi acknowledges and understands that the Commission can not award damages. Mr. Shuhi again expressed his concerns regarding FPL and PSC staff. A settlement was not reached, and the conference was closed.

Subsequently, staff opened this docket to address Mr. Shuhi's complaint on December 19, 2002. This recommendation addresses the proper disposition of Mr. Shuhi's complaint. The Commission has jurisdiction over the utility's rates, charges, fares, tolls, or rentals, and in fixing such charges may consider the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered pursuant to Sections 366.04 and 366.05, Florida Statutes. However, the Commission does not have jurisdiction to determine easements or award damages.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission dismiss Complaint No. 447560E filed by Mr. Robert Shuhi against Florida Power and Light Corporation?

RECOMMENDATION: Yes. The Commission should dismiss Complaint No. 447560E filed by Mr. Shuhi, as the gravamen of that complaint is that he is seeking a determination of whether Florida Power and Light Corporation had an easement, and whether he should be awarded damages for the improper use of his land and damage to the palm trees. (PLESCOW, JAEGER)

STAFF ANALYSIS: As stated above, Mr. Shuhi filed his Complaint on April 5, 2002, and an informal conference was held on November 6, 2002. No resolution was reached at this informal conference and staff opened this docket and filed this recommendation.

At the informal conference, Mr. Shuhi expressed the following concerns: (1) that FPL had improperly placed power lines on his property without a properly recorded easement, (2) that FPL misled him by claiming to have an easement even though FPL later discovered that it could not document an easement in an area where the lines had been placed; (3) that FPL, in maintaining these improperly placed lines and trimming trees next to these lines, had damaged palm trees belonging to Mr. Shuhi; and (4) that neither FPL nor PSC staff had listened to him when he stated that FPL did not have a properly recorded easement for the area where FPL had placed its lines.

These same concerns were addressed in a July 30, 2002, letter from Commission staff to Mr. Shuhi. In that letter, in regards to an easement and being provided false and misleading information, it was noted that Mr. Austin, a former employee of FPL, had advised Mr. Shuhi that FPL had a legal utility easement. The response further noted that FPL claimed "that the developer of Citrus Glen gave FPL permission to build the line in question on your [Mr. Shuhi's] property, and that the property was purchased . . . with full knowledge of the presence of the overhead facilities." The letter concluded that there may have been confusion about the existence of an easement, but that there was no evidence that FPL "knowingly and intentionally" provided false information. Also, the letter noted that FPL had de-energized lines which remained on

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Mr. Shuhi's property, and apparently stood willing and able to remove the property if Mr. Shuhi would allow FPL to have access.

Staff agrees with this analysis, and does not believe there was any intention to mislead. Therefore, whether there was or was not an actual easement, staff believes that the Commission should take no further action on this portion of Mr. Shuhi's complaint.

Mr. Shuhi also seeks compensation for the damage to his palm trees and "for almost ten years of FPL knowingly, intentionally, and wrongfully using my property" without a proper easement. Again, in staff's letter, it was noted that FPL had indicated a willingness to meet with Mr. Shuhi with an "FPL arborist to inspect the palms and formulate a restoration plan," but that Mr. Shuhi refused until all of his "remedies had been met." Moreover, the letter noted that FPL stood ready to remove all its property and that FPL disputed that any compensation for use of the property was applicable. Staff concluded that the Commission was not the proper forum to discuss either compensation for the damaged palm trees or compensation for the use of Mr. Shuhi's land.

At the informal conference, FPL reiterated these positions, and stated that the utility still stood ready to remove the poles and lines on Mr. Shuhi's property. Staff agrees with the response set forth in staff's letter dated July 30, 2002. As noted in that letter, the Commission "does not have authority to award damages or to reimburse a party for its losses. See Florida Power & Light Company v. Glazer, 671 So. 2d 211 (Fla. 3d DCA 1996)." Therefore, staff recommends that this portion of Mr. Shuhi's complaint be dismissed also.

Finally, Mr. Shuhi expressed concern about staff accepting FPL's oral representations, especially about the existence of an easement, without requiring documentation. By letter dated August 13, 2001, the Commission's Division of Consumer Affairs advised Mr. Shuhi as follows:

The PSC does not have authority to determine whether FPL's lines and poles are located within an easement or if the company has prescriptive rights for the current location of the facilities. Only a court of proper jurisdiction can resolve that dispute.

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Shuhi just was not satisfied with staff's actions. However, as noted in the August 13 letter, staff did not have the authority to determine whether FPL had an easement or some other prescriptive right. Moreover, the Commission does not have jurisdiction to resolve an easement question or award damages.

Based on all the above, staff recommends that Mr. Shuhi's complaint be dismissed as the Commission has neither the jurisdiction nor authority to determine easements or award damages.

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ISSUE 2: Should this docket be closed?

STAFF RECOMMENDATION: Yes, if the Commission approves Issue 1 above, then the Commission has no authority or jurisdiction to act on Mr. Shuhi's complaint and there are no further actions to be taken. Therefore the docket should be closed. (JAEGER)

STAFF ANALYSIS: If the Commission approves Issue 1 above, then the Commission has no authority or jurisdiction to act on Mr. Shuhi's complaint and there are no further actions to be taken. Therefore the docket should be closed.