

In re: Complaint Nos. 445185E, 446514E, 446515E, and 446516E filed by Mr. Jude Alcegueire against Florida Power & Light Company for high bills and other alleged violations of Commission rules and statutes.

DOCKET NO. 041169-EI
ORDER NO. PSC-05-0037-PCO-EI
ISSUED: January 11, 2005

ORDER DENYING EXTENSION OF TIME

On December 17, 2004, the Commission issued Proposed Agency Action Order No. PSC-04-1252-PAA-EI (PAA Order) dismissing Mr. Alcegueire's complaints against Florida Power & Light Company (FPL). On page 6 of the PAA Order, in the Notice of Further Proceedings or Judicial Review, the Commission stated that 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, which must be received by the Division of the Commission Clerk and Administrative Services by the close of business on January 7, 2005.

The Commission also stated that if no petition was filed by that date the PAA Order would become final and effective and the docket would be closed. The Commission's Notice of Further Proceedings is consistent with the provisions of Rule 25-22.029, Florida Administrative Code, entitled "Point of Entry into Administrative Proceedings," which provides that a person must file a request for an administrative hearing within 21 days of the issuance of the notice of proposed action.

Uniform Procedural Rule 28-106.111, Florida Administrative Code, which also addresses the point at which a person becomes subject to the rights and obligations of Florida's Administrative Procedure Act, allows an extension of time for filing a request for hearing if requested before the time for filing expires. Subsection (3) of that rule states:

(3) An agency may, for good cause shown, grant a request for extension of time for filing an initial pleading. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to said extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

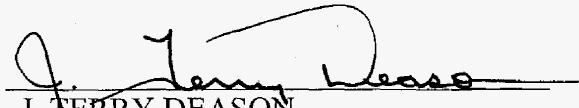
By letter dated December 28, 2004, Mr. Alcegueire requested an extension of time. Mr. Alcegueire's reason for requesting an extension of time appears to be that he did not receive a letter from Commission staff mailed to him before the Commission considered his complaint at its November 30, 2004, Agenda Conference, and he therefore did not have time to respond to the

staff recommendation on which the Commission based its decision in the PAA Order.¹ Mr. Alcegueire states that an extension of time should be granted in order to correct what Mr. Alcegueire considers an administrative failure to provide him due process of law by providing him with the time to present his side of the story.

Mr. Alcegueire's letter does not comply with Rule 28-106.111(3), Florida Administrative Code, permitting extensions of time to file a protest. Mr. Alcegueire does not identify good cause for the extension, and he does not certify that he contacted FPL and FPL agreed to the extension. It also appears that Mr. Alcegueire may be asking the Commission to reconsider its PAA Order based on his claim that he was given insufficient time to respond in writing to the staff recommendation. Under Rule 25-22.060(1)(a), Florida Administrative Code, however, the Commission will not entertain a motion for reconsideration of a Notice of Proposed Agency Action. Mr. Alcegueire's recourse at this point in the complaint proceeding is to request a formal administrative hearing. Mr. Alcegueire's December 28, 2004, request for an extension of time is therefore denied.

Pursuant to Rule 28-106.111(3), a request for an extension of time tolls the time for filing a protest to the Commission's PAA order until the request for an extension of time is addressed. The original date to timely file a protest to the PAA Order was January 7, 2005. Therefore, if Mr. Alcegueire decides to file a protest, it must be received by the Director, Division of the Commission Clerk and Administrative Services within 10 days from the date this Order is issued. As the PAA Order states, the protest must comport with the provisions of Rule 28-106.201, Florida Administrative Code.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 11th day of January, 2005.


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

MCB

¹ It should be noted here that consideration of the staff's original recommendation scheduled for the November 2, 2004, Agenda Conference was deferred at Mr. Alcegueire's request. Further, Mr. Alcegueire did receive the staff recommendation for the November 30, 2004, Agenda Conference, and was informed that he could participate in the Agenda by phone, but he declined to do so.

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.