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COMMISSION
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July 28, 2011

VIA HAND DELIVERY

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Complaint No. 973806E of Casey E. and Allison L. Seaman against Progress Energy Florida, Inc. for alleged improper billing and request for formal hearing;*
Docket No. 110219-EI

Dear Ms. Cole:

Pursuant to Rule 28-106.204, F.A.C., enclosed for filing on behalf of Progress Energy Florida, Inc. is the original and seven (7) copies of its Motion to Dismiss in the above referenced docket.

Thank you for your assistance in this matter. Should have any questions, please feel free to contact me at (727) 820-5184.

Sincerely,

John T. Burnett lms
John T. Burnett

- COM _____
- APA _____
- ECR _____
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- ADM _____
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- CLK _____

cc: Parties of Record

JTB/lms
Enclosures

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Mr. Casey E. Seaman)
 & Ms. Allison L. Seamen Against)
 Progress Energy Florida, Inc.)
_____)

Docket No. 110219-EI

Filed: July 28, 2011

**PROGRESS ENERGY FLORIDA’S MOTION TO DISMISS THE PETITION TO
REQUEST A FORMAL HEARING ON FPSC COMPLAINT NUMBER 973806E**

Progress Energy Florida, Inc. (“PEF” or the “Company”), pursuant to Rule 28-106.204, Fla. Admin. Code, files this Motion to Dismiss the Petition to Request a Formal Hearing on FPSC Complaint Number 973806E, filed by Mr. Casey E. Seaman and Ms. Allison L. Seaman (the “Petitioners”) on July 8, 2011 (the “Petition”). The Petition should be dismissed because it does not satisfy the requirements of Rule 25-22.036(3), Fla. Admin. Code, and because it does not state a cause of action upon which relief can be granted. For these reasons, PEF respectfully requests that the Commission dismiss the Petition.

In support, PEF states:

1. The Petition does not satisfy the requirements of Rule 25-22.036, Fla. Admin. Code

A petition to initiate a formal proceeding based on a customer complaint is “appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant’s substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.” Rule 25-22.036(2), Fla. Admin. Code. The rule states that each complaint shall contain: “1. The rule, order, or statute that has been violated; 2. The actions that constitute the violation; 3. The name and address of the person against whom the complaint is lodged; and 4. The specific relief requested, including any penalty sought.” *Id.* at (3)(b).

The Petition does not comply with the requirements of Rule 25-22.036(3)(b). The Petition does not identify any rule, order, or statute that has been violated; it does not allege what actions constitute the alleged violation; and it does not identify the specific relief the Petitioners are seeking. The Petition essentially states that the Petitioners disagree with the conclusions of the Commission's investigation of their complaint. However, a petition for relief is required to include specific information so that the Commission and the affected utility are aware of the legal issues in play, the purported facts that support the petitioners' position, and what relief the petitioners are seeking. As discussed below, these requirements are not mere formalities, but are required to enable a full and fair determination of the merits of the complaint. In this case, because the Petition omits information required by Rule 25-22.036(3)(b), it is therefore deficient as a matter of law. The failure to adhere to these pleading requirements requires dismissal of the Petition.

2. The Petition fails to state a cause of action upon which relief may be granted.

Florida is a fact pleading jurisdiction. See *Deloitte & Touche v. Gencor Indus., Inc.*, 929 So. 2d 678 (Fla. 5th DCA 2006); *Louie's Oyster, Inc. v. Villaggio Di Las Olas, Inc.*, 915 So. 2d 220 (Fla. 4th DCA 2005). Fact pleading requires that "at the outset of a suit, litigants must state their pleadings with sufficient particularity for a defense to be prepared." *Horowitz v. Laske*, 855 So. 2d 169, 173 (Fla. 5th DCA 2003). Moreover, "[a]ccording to our Rule 25-22.036, F.A.C., to initiate a formal proceeding, a complaint must allege actions that constitute a violation of our rules, orders, or statutes." *In re: Complaint of Sallijo A. Freeman Against Fla. Power & Light Co. for Violation of Rule 25-6.105, F.A.C.*, Order No. PSC-08-0380-PCO-EI, Docket No. 080039-EI (June 9, 2008).

In this case, the Petitioners have failed to particularly allege a set of facts that constitute a violation of any rule, statute, or order. The Petition and the information it incorporates by reference demonstrate that, contrary to Petitioners' contention, the electric meter in question was functioning within the Commission's accepted standards. Although the general rule is that the Commission cannot look beyond the four-corners of a complaint when ruling on a motion to dismiss, courts have recognized that documents attached to, or incorporated by reference into, a complaint can be considered. *See Magnum Capital, LLL v. Carter & Assocs., LLC*, 905 So. 2d 220, 221 (Fla. 1st DCA 2005) ("if documents are attached to a complaint and conclusively negate a claim, the pleadings can be dismissed."); *Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So. 3d 1246, 1249-50 (Fla. 2d DCA 2011) ("Accordingly, since the complaint impliedly incorporates the terms of the agreement by reference, the trial court was entitled to review the terms of that agreement to determine the nature of the claim being alleged."). This Commission has also recognized that documents incorporated into a complaint are properly considered when ruling on a motion to dismiss. *See, e.g., In re: Complaint of Rosario Rojo against Fla. Power & Light Co., Case No. 858880E*, Docket No. 110069-EI, Order No. PSC-11-0285-FOF-EI (June 29, 2011) (When ruling on a motion to dismiss, "only the petition and the documents incorporated therein can be reviewed . . .") ("*Rojo*").

The Petitioners "deny any financial responsibility due to the malfunction of Progress Energy's equipment" and argue that they "should not be held responsible for the excessive charges incurred from the inaccurate usage readings." *See* Petition, pp. 1 & 2. As support for these contentions, the Petitioners cite to four (4) separate sections of the final report of Mr. Neal Forsman, Florida Public Service Commission Regulatory Program Administrator, dated June 17, 2011 (herein "Report" attached as Exhibit "A"). The Petition states that it "is [Petitioner's]

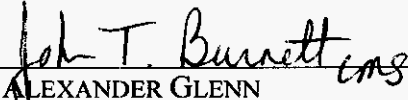
intention to formally disagree with this resolution of our complaint. . . . ” By repeatedly referencing this report, the Petition has incorporated its terms by reference, and therefore the entire Report should be considered in ruling upon this Motion. *See Veal; Rojo*.

The Report itself contradicts Petitioners’ claim that the meter in question (meter number 5834154) was malfunctioning; in such a case the Report negates the allegations of the Petition. *See Hunt Ridge at Tall Pines, Inc. v. Hall*, 766 So. 2d 399, 401 (Fla. 2d DCA 2000) (“Where complaint allegations are contradicted by exhibits attached to the complaint, the plain meaning of the exhibits control and may be the basis for a motion to dismiss.”); *Magnum Capital*. For example, the Report states that “PEF performed a meter test on meter number 5834154 at your residence on September 20, 2010” prior to the filing of the Petitioners’ complaint, and that “the meter test results affirmed that meter number 5834154 was functioning properly within FPSC approved guidelines.” *See Ex. A*, p. 5. The Report continues to describe a refereed meter test coordinated between PEF and the Commission that occurred on January 11, 2011, where the “meter test results indicated that the meter was registering at a weighted average of 100.00%, which is within acceptable limits of guidelines approved by the FPSC.” *Id.* The Report shows that meter 5834154 was functioning within the guidelines established by the Commission, and therefore the Petition has failed to assert a violation of any Commission order, rule, or statute. As such, the Petition fails to satisfy the requirements of Rule 25-22.036(2) and fails to state a cause of action upon which relief can be granted.

Because the allegations of the Petition are contradicted by the Report, incorporated by reference in to the Petition, the Petition should be dismissed.

WHEREFORE, for the reasons discussed above, PEF respectfully requests that this Commission dismiss the Petition with prejudice.

Respectfully,

A handwritten signature in black ink that reads "John T. Burnett" with a stylized flourish at the end.

R. ALEXANDER GLENN

General Counsel

JOHN T. BURNETT

Associate General Counsel

Progress Energy Service Company, LLC

Post Office Box 14042

St. Petersburg, Florida 33733-4042

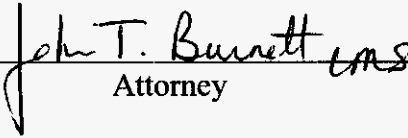
Phone (727) 820-5587 / Fax: (727) 820-5249

Attorneys for

PROGRESS ENERGY FLORIDA, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via regular U.S. mail (* via hand delivery) to the following this 28th day of July, 2011.



Attorney

<p>Pauline Robinson, Esq. * Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850</p> <p>Casey E. and Allison L. Seaman 208 NE 70th Street Ocala, FL 34479</p>	<p>Office of Public Counsel J.R. Kelly/Joseph A. McGlothlin c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400</p>
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DIVISION OF SAFETY, RELIABILITY &
CONSUMER ASSISTANCE
DANIEL M. HOPPE, DIRECTOR
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Public Service Commission

June 17, 2011

Certified and Regular Mail

Ms. Allison Seaman
Mr. Casey Seaman
208 NE 70th St.
Ocala, FL 34479-1382

RE: Florida Public Service Commission Complaint Number 973806E

Dear Ms. Seaman and Mr. Seaman:

This letter is in further response to FPSC complaint number 973806E, initially filed with the Florida Public Service Commission (FPSC) on October 13, 2010, against Progress Energy Florida (PEF). It also serves as follow-up to Violet Faria's letter to you dated November 9, 2010 and Margarita Valdez' letter to you dated February 7, 2011. This letter is also in response to our telephone conversation on February 3, 2011. For your information and review, I have enclosed a copy of Ms. Faria's and Ms. Valdez' letters.

Summary

In response to Ms. Valdez' letter, you voiced continued disagreement with actions taken by PEF to resolve your complaint. Furthermore, you expressed dissatisfaction with the FPSC's investigative efforts and its conclusion of your complaint. Subsequently, in contemplation of your further queries concerning final disposition of this case, I have taken the opportunity to carefully review your case file and analyze the presented documentation in correlation with applicable FPSC Rules as set forth in the Florida Administrative Code. I have also reviewed and discussed the details of Ms. Valdez' investigation and findings with her. After thoroughly examining the details and facts presented in this matter, I believe that Ms. Valdez' investigation of this matter has been capaciously conducted to assure that all of your documented concerns and issues have been addressed.

To emphasize and clarify what was previously explained in Ms. Valdez' letter, I would like to recapitulate the facts that have led to FPSC staff conclusions in this matter. Following is a summation of my analysis, which I believe addresses each of the concerns you have identified regarding this matter.

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FPSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

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High Bills

FPSC Account Energy Consumption Summary

In his communications with the FPSC, Mr. Seaman made clear that the primary purpose for filing complaint number 973806E was to dispute billing in excess of your average monthly billed amount. Mr. Seaman indicated that your monthly electric bill averages about \$350.00. He reported that your August 2010 bill was about \$580.00, which was not credible because you and he were not residing in your home for two weeks of the billing period. Mr. Seaman reported that your September 2010 bill was about \$900.00.

Although Ms. Valdez addressed your high bill concerns in her letter, I have further investigated your concerns in more detail as part of my review. In order to more clearly understand your kilowatt-hours (kWh) consumption history, I reviewed PEF's electric consumption history for your residence for the 26-month period of April 15, 2009, through May 12, 2011, which encompassed 787 days. For evaluation purposes, I prepared the enclosed Daily Average Kilowatt-Hour Consumption Comparison Summary (CCS) for that period of time.

Comparison Chart 1 reflects a side-by-side comparison of the 394-day period of April 15, 2009, through April 14, 2010, as compared to the corresponding 393-day period of May 13, 2010, through May 12, 2011. During the 394-day period in 2009/2010, you consumed 26,498 kWh, an average daily usage of 67 kWh (line 15, column E). For the corresponding 393 day period in 2010/2011, you consumed 33,071 kWh, an average daily usage of 84 kWh (line 15, column J), an increase in usage of 25.37 percent for the entire period.

As evident from Comparison Chart 1, for the August 13, 2010, through September 22, 2010, there was a significant rise in your daily kWh consumption. Under normal circumstances, large spikes in kWh usage are predictable and usually associated with seasonal temperature variances during summer and winter months. However, in this case, the spike in kWh appears to be an anomaly and is in fact disproportionate with kWh usage recorded for the same period the previous year, as reflected on Comparison Chart 3.

Comparison Chart 2 reflects kWh usage for the 121-day period of April 14, 2010, through July 14, 2010, just prior to the disputed spike billing periods beginning on August 13, 2010. The 2010 kWh usage reflected on lines 16-20, columns F-J is compared with the corresponding 121-day period in 2009 reflected on lines 16-20, columns A-E. As indicated, for the 121-day period in 2009, your account was billed a total of 8,145 kWh usage, an average daily usage of 67 kWh. For the corresponding 121-day period in 2010, you consumed a total of 8,611 kWh, an average daily usage of 71 kWh. This indicates a slight increase from the previous years, which reflects a normal variance and is very consistent usage from one year to the next. Comparison Chart 2 does not reflect any unusual trends or extraordinary anomalies that would indicate skewed or disproportionate kWh consumption.

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Comparison Chart 3 reflects a side-by-side comparison of the 92-day period of August 13 2009, through October 15, 2009, as compared to the corresponding disputed 70-day period of August 13, 2010, through September 22, 2010. The final reading for former meter number 5834154 was taken September 22, 2010. Comparison Chart 3 reflects a dramatic increase from the 2009 period versus the 2010 period. During the specified time period in 2010, your kWh usage increased from an average of 80 kWh per day to an average of 180 kWh (line 24, column J), an increase of 125 percent.

It is also significant to note that as you reported, your kWh usage dramatically decreased when old meter number 5834154 was replaced with new meter number 5488188 on September 22, 2010. The first reading after new meter number 5488188 was installed was on October 12, 2010. The first reading for meter number 5488188 yielded an average daily usage of 60 kWh, a decrease of 66.7 percent - from 180 kWh to 60 kWh. The high usage during the identified disputed period appears to be an anomaly and is in fact disproportionate with kWh usage recorded for the same period the previous year.

Comparison Chart 4 reflects a side-by-side comparison of the 210-day period of November 13 2009, through May 13, 2010, as compared to the corresponding 212-day period of November 11, 2010, through May 12, 2011, after new meter number 5488188 was set in place. Comparison Chart 4 further reflects that similar to Comparison Chart 2, kWh usage has been very consistent and is once again proportionate with the typical kWh usage history for your account. There were no unusual trends or extraordinary anomalies identified that would indicate skewed or disproportionate kWh consumption after the meters were exchanged.

Account Audit

In order to more clearly understand your account billing history, I conducted an audit of PEF's billing statements and ledger for your account. I prepared the enclosed Account Audit Summary (AAS) for your account. To assist you in more clearly understanding the charts, I will be referencing significant data from the AAS that warrants special emphasis. Following is a chronological summary of significant transactions for the time period of October 15, 2008, through May 19, 2011.

- **November 13, 2008** - As indicated on line 3, column K of the AAS your account balance on November 13, 2008 was \$384.36.
- **November 13, 2008, through July 14, 2010** - Specific identified electric account debits and credits during this period of time are reflected on lines 3 - 78. My audit indicates that these debits and credits were properly applied to your account and that your account balance of \$392.72 as of July 14, 2010, is accurate. All usage billed during this period of time was recorded on meter number 5834154.
- **August 13, 2010** - Line 81, column H reflects your billing statement for the period of July 14, 2010, through August 13, 2010. During this period of time, your account was

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billed new charges totaling \$494.83, which was later disputed by you. Your account balance on August 13, 2010, was \$833.50 as reflected on line 81, column K.

- **September 14, 2010** - Line 85, column H reflects your billing statement for the period of August 13, 2010, through September 14, 2010. During this period of time, your account was billed new charges totaling \$975.63, which was later disputed by you. Your account balance on September 14, 2010, was \$1,168.08 as reflected on line 85, column K.
- **October 12, 2010** - Lines 88 - 91 reflect your billing statement for the period of September 14, 2010, through October 12, 2010.
 - Line 89, columns C, D, & E reflect usage recorded on meter number 5834154 for the period of September 14, 2010, through September 22, 2010, the date the meter was removed. The final reading for meter number 5834154 was 16385 (line 89, column D), which reflected recording usage totaling 1,692 kWh (line 89, column E).
 - Line 90, columns C, D, & E reflect usage recorded on new meter number 5488188 the period of September 22, 2010, the date the meter was installed through the meter reading (line 90, column D) on October 12, 2010, which reflected recording usage totaling 1,198 kWh (line 90, column E).
 - Line 91, column E reflects the total billed kWh for the period of September 14, 2010, through October 12, 2010. The total amount billed for new consumption for this period was \$379.03 (line 91, column H). Your total account balance on October 12, 2010, was \$1,568.46 as reflected on line 91, column K.
- **October 12, 2010, through May 19, 2011** - Specific identified electric account debits and credits during this period of time are reflected on lines 88 - 122. My audit indicates that these debits and credits were properly applied to your account and that your account balance of \$961.35 as of May 19, 2011, is accurate. All usage billed during this period of time was recorded on new meter number 5488188.

Home Energy Audit

Typically, high electric bills are closely associated with several deficient energy conservation factors such as poor home repair, insufficient home and attic insulation, heating, ventilation, and air conditioning (HVAC) inefficiencies, wasteful electric consumption practices, poor temperature control management, etc. PEF offers an energy management program called Home Energy Audit (HEA), which is frequently utilized by the company when customers express high electric bill concerns. HEA is a home inspection program conducted by one of PEF's energy management staff. The program is designed to assist PEF customers in decreasing electric consumption, thus electric cost. Through careful inspection of the home, energy improvement opportunities can be determined and sound energy savings recommendation and tips can be offered.

As Ms. Valdez indicated on page three of her letter, PEF reported that its representative Ms. Cleland called and spoke with Mr. Seaman on October 15, 2010, regarding your high bill concerns. Documentation indicates that Mr. Seaman advised her that your

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residence is quite large. He further advised her that your home contained two air conditioning (AC) units, one of which was recently replaced because of audible popping sound. Knowing that faulty appliances can cause excessive kWh usage, Ms. Cleland offered Mr. Seaman a HEA. She reported that he declined the HEA stating that your home is already energy efficient. Subsequently, an opportunity to identify possible energy savings was missed.

***Alleged Faulty Meter
Meter Testing***

The crux and focus of your complaint seems to have been Mr. Seaman's continuing assertion that your electric billing was excessive because old meter number 5834154 was defective. He further contended that as soon as old meter number 5834154 was replaced with new meter number 5488188, your billed electric consumption decreased significantly.

Metering devices are fundamental to fair and accurate customer billing and are the foundation of the FPSC's billing rules for regulated electric companies. As such, meter reliability standards and guidelines have been established in order to ensure billing accuracy. The authority of these standards and guidelines is based on the accuracy of the customer's electric meter.

Ms. Faria and Ms. Valdez thoroughly addressed your expressed meter concerns in each of their letters. In brief, I will summarize their findings regarding Mr. Seaman's alleged defective meter concerns.

As explained in Ms. Faria's letter and on page 2 of Ms. Valdez' letter, PEF performed a meter test on meter number 5834154 at your residence on September 20, 2010, prior to the filing of complaint number 973806E. As further stated in Ms. Valdez' letter, the meter test results affirmed that meter number 5834154 was functioning properly within FPSC approved guidelines. For your information and review, I have enclosed a copy of the meter test results.

FPSC Rule 25-6.060, F.A.C. allows for a witnessed meter test, during which a customer's meter will be removed and bench tested. At the request of Ms. Valdez, a refereed meter test was coordinated between the FPSC and PEF. On January 11, 2011, meter number 5834154 was tested at PEF's meter testing facility in St. Petersburg. Present for the testing from the FPSC, was Antonio Velazquez, Engineering Specialty Supervisor. The meter test results indicated that the meter was registering at a weighted average of 100.00 %, which is within acceptable limits of guidelines approved by the FPSC. Enclosed for your information and review is a copy of the refereed meter test report.

It is not always possible for utilities to identify and explain the increase or decrease in a customer's electric consumption. FPSC rules do not require PEF to show how energy was consumed. Only customers have the ability to control how their electric service is used and manage the amount of consumption. As outlined in FPSC Rule 25-6.103, F.A.C., PEF is obligated to demonstrate that the energy consumed was recorded accurately. PEF is required

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to make an adjustment in the event of meter error. In your case, meter number 5834154 tested accurately on two occasions; there is no documentation or evidence to support meter error with meter number 5834154.

If you remain in dispute of PEF's meter test results and the FPSC's witnessed meter test results, FPSC Rule 25-6.059, F.A.C. - **Meter Test by Request** allows you an opportunity to request that PEF make arrangements for a meter test to be conducted by an independent meter testing facility of your choosing. This Rule states that you, as the customer of record, shall be responsible for negotiating and paying to the independent meter testing facility any fee charges for such a test. The Rule also states that you, as the customer of record, shall be responsible for all the costs incurred by PEF related to the meter test by an independent testing facility. If you choose this option, PEF must provide you a detailed estimate of costs it expects to incur related to the meter test and may require payment of such costs prior to the actual meter test. Conversely, you, as the customer of record, shall provide PEF a detailed estimate of charges from the independent testing facility for the meter test prior to the actual test. Furthermore, if the meter is found to be running fast in excess of the limits established by FPSC rules, any payment collected by PEF related to the meter test shall be refunded. However, if the meter is found to be within the limits established by FPSC rules, PEF may retain any payments collected by the company related to the meter test. For your information and review, I have enclosed a copy of FPSC Rule 25-6.059, F.A.C. If you wish to pursue a meter test request to be conducted by an independent meter testing facility of your choosing, you may contact Claire Reciniello, PEF Consumer Affairs Analyst, at telephone number, 727-523-7609.

High electric usage can also be caused by faulty inside wiring, defective and malfunctioning HVAC equipment, damaged appliances, and several other factors. However, inside wiring, equipment, and appliances are the responsibility of the customer, not the electric utility. Subsequently, the FPSC cannot ask PEF to inspect and/or repair your equipment. If you wish to have an inspection and analysis of your inside wiring, equipment, and appliances, you would need to hire your own electrician.

Alleged Excessive Voltage

Your case file documents that Mr. Seaman called PEF on September 22, 2010, and reported a fire that was allegedly caused by excessive voltage being provided by PEF. It should be noted that FPSC technical and engineering staff are in agreement that although excessive incoming voltage and the back-feed of electric power can create a safety hazard, neither would cause your electric meter to inaccurately record your kWh consumption. The remainder of your concerns in this matter were thoroughly investigated and addressed in Ms. Faria's letter and again in Ms. Valdez' letter on page two. I can contribute nothing further in response to this matter.

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Disputed Deposit

During my telephone conversation with Mr. Seaman on February 3, 2011, he expressed his belief that your account was being assessed a deposit in the amount of \$800.00 as retaliation for filing a FPSC complaint. As reflected on the enclosed AAS, your account has not been billed a deposit. However, I would like to reiterate what Ms. Valdez explained on page four of her letter. In accordance with FPSC Rule 25-6.097(3) F.A.C., upon reasonable written notice of not less than 30 days, PEF may assess a deposit not exceeding an amount equal to twice the average charges for actual electric usage for the twelve month period immediately prior to the date of notice.

Dissatisfaction with FPSC Staff Investigation and Complaint Process

During my telephone discussion with Mr. Seaman on February 3, 2011, he expressed dissatisfaction with the FPSC complaint process and investigation of your complaint by FPSC staff. He indicated that FPSC staff in the Division of Service, Safety and Consumer Assistance, Bureau of Consumer Assistance (BCA) do not have the knowledge of electrical systems and should not be allowed to investigate this complaint because they are unable to interpret false information provided by PEF. I would like to provide clarification regarding the FPSC complaint process and the scope of complaint investigation by staff.

It is the FPSC's purpose and intent that disputes between customers and regulated utilities be resolved as quickly, effectively, and inexpensively as possible. FPSC Rule 25-22.032 F.A.C. Customer Complaints establishes informal customer complaint procedures that are designed to address disputes, subject to the FPSC's jurisdiction, that occur between regulated utility companies and individual customers. It provides for expedited processes for customer complaints that can be resolved quickly by the customer and the company.

Each regulated utility assigns a designated representative from its executive or management level staff as a liaison between the customer, the utility, and the FPSC. All of the FPSC's communications and investigation efforts with the company are directed to and coordinated with that designated liaison. The designated liaison coordinates the company's internal investigations and reports back to the FPSC. The FPSC does not speak to or deal directly with individual company staff in order to provide the all-encompassing level of detailed investigation that you have expectations for.

Furthermore, the FPSC does not investigate the functionality of customer owned equipment or the impact such damaged or out of service equipment may have on electric consumption. The FPSC does not provide electrical system evaluations, equipment analysis, or energy consulting. FPSC engineer specialists primarily oversee electric safety and reliability compliance in accordance with rules and regulations established in Chapter 25-6, F.A.C. Although our engineer specialists may become involved in witnessed meter testing, their function is limited to being present and witnessing the test only, and providing the customer with a report of the test results. The actual testing is performed by the regulated electric utilities' staff since it is the utilities' property.

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I can assure you that within the boundaries of FPSC Rule 25-22.032 F.A.C., your case has been carefully and thoroughly investigated and reviewed. I and other pertinent FPSC staff fully understand every issue and concern you have expressed. When your complaint was assigned to the Process Review Group phase, all facts and documentation were capaciously deliberated and analyzed before final recommendations and conclusions were determined. However, although you have been seeking immediate favorable solutions and actions, the FPSC must follow the process as prescribed by the Florida Administrative Code.

In further accordance with FPSC Rule 25-22.032 F.A.C., if, during the course of an informal complaint investigation, it appears that a company may have committed a rule infraction, tariff breach, or violated a FPSC Order that requires enforcement proceedings, such actions are determined by the appropriate technical division within the FPSC. If, during the informal complaint process, it is apparent that a violation or infraction is associated with a FPSC rule that contains a disposition directive ordering credit adjustment or reimbursement; the FPSC may instruct the utility to effect such required adjustment. Otherwise, the violation becomes an enforcement issue to be referred to and handled by the appropriate FPSC technical division.

If it is determined that enforcement proceedings or further action is necessary, however, such proceedings are intended to hold the company accountable for non-compliance and to reinforce conformity in the identified area. The proceedings are not a means to award recompense to customers for matters not specified in FPSC rules. The FPSC does not have the authority to compel a utility to apply credit adjustments beyond the terms of its tariff or FPSC rules. Such adjustments are at the sole discretion of the utility.

PEF's Case Resolution

In order to attempt to resolve your complaint with PEF to your full satisfaction, PEF was asked to contemplate the possibility of entering into a settlement agreement with you. On your behalf, PEF was asked to consider a credit adjustment to your account for 7,000 kWh, based on the enclosed CCS and my previously explained analysis of the CCS. The following chart demonstrates how the proposed 7,000 kWh adjustment was calculated.

Proposed Credit Adjustment Calculations		
Symbol	Amount	Description
	180	Average daily kWh usage for disputed billing periods – line 24, column J of the CCS
-	80	Previous year (2009) average daily kWh usage – line 24, column E
=	100	kWh Variance - Disputed average daily kWh usage
x	70	Days – Number of days in disputed billing period – line 24, column I of the CCS
=	7,000	kWh – Total number of disputed kWh for disputed billing period. The total kWh credit adjustment Ms. Seaman is seeking.

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PEF reported that upon further consideration, it has declined the proposed credit adjustment proposal of 7,000 kWh. PEF maintains that it did its due diligence in its investigation of your complaint. PEF completed one meter test and then performed another meter test that was witnessed by FPSC engineering staff. Both tests confirmed that the meter was accurately recording consumption.

However, with the hope of providing a fair and reasonable resolution to your complaint, PEF has agreed to payment arrangements whereby it will bill the disputed balance of \$900.00 over a 24 month period. The monthly charge for this payment arrangement will be approximately \$37.50, plus your regular monthly bill. As a courtesy, PEF has also agreed to credit your account for late payment charges, totaling \$135.78 that were billed to your account from September 2010 to June 2011.

During the open investigation of a FPSC complaint, a customer is protected from disconnection of service for non-payment of the established disputed amount. However, it is important to note that there is no FPSC rule prohibiting a utility from billing a customer late charges and interest charges based on the unpaid disputed amount during the open complaint period. Subsequently, any late charges billed to your service account for non-payment of the established disputed amount are legitimate charges. As I previously mentioned, the FPSC cannot compel a utility to issue late payment charge credit adjustments beyond the terms of its tariff or the Florida Administrative Code.

If you are interested in further discussing PEF's resolution proposal, please contact Ms. Claire Reciniello, PEF Consumer Affairs Analyst at (727) 523-7609. Additionally, please be advised that the FPSC does not have the authority to compel utilities to make payment arrangements for services provided. Such arrangements are at the discretion of the utility.

Current Account Status

When complaint number 973806E was filed, a disputed amount of \$900.00 was established. In accordance with FPSC Rule 25-22.032(3), F.A.C., while your complaint has been open and under investigation, your account has been protected from disconnection for non-payment of that disputed amount. However, PEF may require you to pay that part of your outstanding balance that is above the disputed amount. Currently, as reflected on the enclosed AAS, PEF's records reflect that as of May 29, 2011, your unpaid account balance is \$961.35 (line 122, column K), which includes a previous unpaid balance of \$979.48 plus new charges totaling \$184.65 (line 121, column I-I).

Once complaint number 973806E is closed, your account will no longer be protected from disconnection for the established disputed amount. At the time of closing, any remaining account balance will be subject to immediate payment or your electric service will be subject to interruption after proper notice. Therefore, you may wish to seek acceptable payment arrangements with PEF directly.

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Mr. Casey Seaman
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Conclusion

In conclusion, I concur with the findings of Ms. Valdez' investigation and her conclusions as expounded in her letter. The FPSC's investigation of this matter has been thoroughly conducted to assure that PEF has complied with all applicable statutes, rules, tariffs, and orders of the FPSC.

My review of these matters indicates that your account was properly billed in accordance with FPSC rules and PEF's tariffs. Based on documentation obtained by the FPSC, an audit of your account verifies that your account balance is accurate. You have presented no documentation or evidence that supports your contention that you have been improperly billed. Furthermore, there is nothing to support that you, as customer of record, are not responsible for payment in full of your account balance.

My investigation and resultant conclusion is that it does not appear that PEF has violated any jurisdictionally applicable provision of the Florida Statutes, the Florida Administrative Code, or its tariff in the handling of your account. The FPSC is unable to grant you the redress you are seeking from PEF. Therefore, at this point, all due consideration has been given to your complaint and the informal complaint process as specified in FPSC Rule 25-22.032, F.A.C., ***Customer Complaints***, has been concluded. Furthermore, there is nothing to support that you, as customer of record, are not responsible for payment in full of your account balance.

If you disagree with this resolution of the complaint, you may file a formal petition for relief against PEF with the FPSC's Office of the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850. If you wish to file other than by mail, the preferred method, you may do so via E-mail at filings@psc.state.fl.us. However, a request for a formal hearing cannot be received via fax. If you decide to file via E-mail, you must attach your request as a Word document and include an electronic signature such as - /s/ (your name).

The formal petition must be filed pursuant to the provisions of Chapter 120, Florida Statutes, the Uniform Rules of Administrative Procedure found in Chapter 28-106, Florida Administrative Code, and the Commission's procedural rules, in particular, Rule 25-22.036, Florida Administrative Code. The company will have the opportunity to respond to your petition, which would be addressed by the Commission pursuant to the statutes and rules cited above. However, you should be aware that if it is determined that your formal complaint application does not fulfill the requirements specified in PSC rule 25-22.036, F.A.C. or if the Commission is unable to grant the relief you are seeking, your formal petition may be dismissed.

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If you have any questions or concerns, please do not hesitate to contact me. This complaint will be closed on July 6, 2011. I can be reached via toll-free number 1-800-342-3552, my direct line 1-850-413-6459, or via e-mail at -- nealforsman@psc.state.fl.us.

Sincerely,



Neal E. Forsman
Regulatory Program Administrator
BCA Process Review Group
Florida Public Service Commission
Division of Safety, Reliability &
Consumer Assistance

cc: Progress Energy Florida
Enclosures