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State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: September 22, 2011

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Robinson)
Division of Economic Regulation (Draper) *PER M EST*

RE: Docket No. 110219-EI – Complaint No. 973806E of Casey E. and Allison L. Seaman against Progress Energy Florida, Inc., for alleged improper billing.

AGENDA: 10/04/11 – Regular Agenda: **Issue 1 – Motion to Dismiss** – No Oral Argument requested. Participation is at Commission's discretion.
Issue 2 – Proposed Agency Action – Interested Persons May Participate.

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\110219.RCM.DOC

Case Background

On July 8, 2011, Mr. Casey E. Seaman and Mrs. Allison Seaman (Mr. and Mrs. Seaman or the Seamans) filed a formal complaint (Complaint) against Progress Energy Florida (PEF) alleging that PEF's meter No. 5834154 (old meter or meter No. 5834154) malfunctioned resulting in an increase in their electricity charges.

The Seamans first contacted the Commission on October 13, 2010, by filing an informal complaint against PEF alleging that their electric billing was excessive during August and September 2010 because meter No. 5834154 was defective. The Seamans disputed the amount of \$900, an amount, they allege, was in excess of their normal average monthly bill.

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Staff consulted PEF regarding the Seamans' informal complaint. According to staff's informal complaint closure letter prepared by the Process Review Team, PEF performed a meter test at the Seamans residence on September 20, 2010, and found the meter to be functioning within the Commission's guidelines. On September 22, 2010, the Seamans contacted PEF and advised that the home was getting too much voltage. PEF's technician found the voltage to be within guidelines specified in Rule 25-6.046, Florida Administrative Code (F.A.C.) (120 volts, plus or minus 5 percent tolerance), but replaced meter No. 5834154 with a new meter. On January 11, 2011, meter No. 5834154 was tested again at PEF's meter testing facility in St. Petersburg, with the Commission's Engineering Specialist Supervisor from the Tampa District office present. The meter test revealed that the meter functioned properly.

During the informal complaint process, staff had several telephone conversations with the Seamans. In addition, staff responded to the Seamans' inquiries and provided updates to the Seamans in letters dated November 9, 2010, February 7, 2011, and June 17, 2011. The Seamans were also in contact with PEF during that time period regarding the alleged faulty meter.

The informal complaint process was closed on June 17, 2011, when staff sent the Seamans a complaint closure letter, a copy of which is attached as Attachment A. Staff advised the Seamans that it did not appear that PEF violated any Commission rules or tariff provisions, and therefore the informal complaint process, as specified in Rule 25-22.032, F.A.C., was concluded. However, the letter also advised the Seamans of their right to file a formal petition for relief against PEF, if they disagreed with staff's complaint closure letter.

On July 8, 2011, Mr. and Mrs. Seaman filed a formal complaint with the Commission. In their formal complaint, Mr. and Mrs. Seaman rejected staff's conclusion as outlined in staff's complaint closure letter and denied any financial responsibility for any excessive charges based on the alleged malfunctioning meter. Mr. and Mrs. Seaman allege that staff's letter shows: (a) a significant rise in their daily kWh consumption which Commission staff characterizes as "an anomaly" disproportionate with kWh usage for prior years; (b) an increase in kWh usage from an average of 80 kWh per day to 180 kWh per day, an increase of 125 percent; and (c) that after the old meter No. 5834154 was replaced by the new meter No. 5488188 on September 22, 2010, the kWh usage "dramatically decreased." Mr. and Mrs. Seaman assert that staff's letter proves that their meter was faulty, and they should not be held responsible for the excessive charges from the inaccurate usage readings.

On July 28, 2011, PEF filed its Motion to Dismiss alleging that the Seamans' complaint failed to meet established pleading requirements and states no cause of action for which relief can be granted. PEF attached the complaint closure letter as Exhibit A to its Motion to Dismiss. Mr. and Mrs. Seaman did not file a response to PEF's dismissal motion. Neither party requested oral argument.

This matter is before the Commission for the purpose of resolving PEF's Motion to Dismiss and to address Mr. and Mrs. Seaman's request for relief. Issue 1 addresses PEF's Motion to Dismiss, and Issue 2 addresses Mr. and Mrs. Seaman's request for relief.

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The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission grant PEF's Motion to Dismiss?

Recommendation: No. The Commission should deny PEF's Motion to Dismiss. (Robinson, Draper)

Staff Analysis:

Standard of Review of a Motion to Dismiss

A motion to dismiss questions the legal sufficiency of a complaint.¹ In order to sustain a motion to dismiss, the moving party must show that, accepting all allegations as true and in favor of the complainant, the petition still fails to state a cause of action for which relief may be granted.² A court may not look beyond the four corners of the complaint in considering its legal sufficiency.³

PEF's Motion to Dismiss

PEF seeks dismissal of the complaint because:

- The Seamans' complaint does not satisfy the requirements of Rule 25-22.036, F.A.C.
- The Seamans' complaint fails to state a cause of action upon which relief can be granted, as the Seamans have failed to particularly allege a set of facts that constitute a violation of any rule, order, or statute.
- Contrary to the Seamans' contention, the electric meter in question was functioning within the Commission's accepted standards.
- Commission staff report shows that the old meter No. 5834154 was functioning within the Commission's approved guidelines as the "meter test results indicated that the meter was registering at a weighted average of 100.00%, which is within acceptable limits of the Commission approved guidelines."
- The Seamans' complaint contradicts Commission staff's report as staff determined the meter complied with Commission rules.

¹ Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

² *Id.* at 350.

³ Barbado v. Green and Murphy, P.A., 758 So. 2d 1173, 1174 (Fla. 4th DCA 2000) (citing Bess v. Eagle Capital, Inc., 704 So. 2d 621 (Fla. 4th DCA 1997)).

Analysis

The Commission may grant a motion to dismiss upon a finding that the pleading fails to state a cause of action upon which relief can be granted.⁴ Rule 25-22.036(2), F.A.C., outlines the procedure for filing a formal complaint. A pleading that conforms to this rule outlines the act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought. Here, Mr. and Mrs. Seaman allege that the old meter No. 5834154 was faulty resulting in excessive charges, and that once the old meter was replaced, their electric kWh usage and charges reflected their normal usage and charges over the past year. Therefore, they allege that they should not be liable for the excessive charges. Staff believes that if true, the Seamans allegations are sufficient to constitute a cause of action.

In considering PEF's assertion that the complaint does not conform to the pleading requirements, staff believes that the Seamans should be given the benefit of the doubt, as pro se petitioners. Staff is also aware of PEF's assertions that the Seamans' complaint contradicts staff's complaint closure letter from the informal complaint process, and that the meter, when tested, met the Commission's guidelines. The Seamans allege that a faulty meter resulted in an inaccurate kWh usage reading for which they seek relief from the Commission. In accordance with the standard for determining the legal sufficiency of a complaint, staff may not look beyond the four corners of the complaint. Staff, therefore, believes the Seamans' complaint, assuming the allegations are true and giving the Seamans the benefit of the doubt regarding conformance to the pleading requirements, is sufficient to constitute a cause of action.

Conclusion

Considering the alleged facts as true and in the light most favorable to the Seamans, staff recommends that the Commission deny PEF's Motion to Dismiss, as, if true, the Seamans allegations are sufficient to constitute a cause of action.

⁴ See Order No. PSC-11-0117-FOF-PU, issued on February 17, 2011, in Docket No. 100312-EI, Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes (granting motion to dismiss with prejudice).

Issue 2: Should the Seaman's request for relief from the financial responsibility of their electric bill due to an alleged faulty meter be granted?

Recommendation: No. Meter No. 5834154 (old meter) was tested twice pursuant to Rules 25-6.059 and 25-6.060, F.A.C., and met the Commission's guidelines for accuracy. Therefore, there is no conflict in the accuracy of the meter testing that needs resolution by the Commission at this time. (Robinson, Draper)

Staff Analysis: Rule 25-6.052, F.A.C., establishes the accuracy requirements and test plans for metering devices. Rule 25-6.059, F.A.C., states that a utility shall, without charge, test the accuracy of a meter for a customer upon request. The meter must be tested in conformance with Commission rules. Rule 25-6.060, F.A.C., dictates that in the event of a dispute, the customer's meter can be tested and the test supervised by a Commission representative. A report of the test must be made to the customer by the Commission. Pursuant to Rule 25-6.059(5), F.A.C., any conflict in the accuracy of the meter testing will be resolved by the Commission.⁵ In accordance with Rule 25-22.032(8)(g-h), F.A.C., the Commission may address a customer's complaint at an agenda conference through the issuance of a proposed agency action or by setting the matter for hearing pursuant to Section 120.57, F.S.

In their complaint, the Seamans expressed their disagreement with the resolution of the informal complaint process as stated in staff's complaint closure letter. The Seamans assert that staff's letter stating a significant increase in their daily kWh usage from August 13, 2010, through September 22, 2010, and the dramatic decrease in their daily kWh usage after the meter was replaced sufficiently proves that the old meter was faulty. The Seamans also declare that their home was unoccupied for most of August 2010. Therefore, they contend, the faulty meter must be the reason for the inaccurate usage readings.

Pursuant to Rule 25-22.032, F.A.C., the Process Review Team did a thorough analysis of the Seamans' complaint and provided a complaint closure letter dated June 17, 2011 to the Seamans. In the complaint closure letter, staff explained that PEF performed a meter test at the Seamans' residence on September 20, 2010, and the test showed the old meter No. 5834154 to be functioning properly. The old meter No. 5834154 was again tested and determined to be functioning properly at PEF's meter testing facility on January 11, 2011, and Mr. Velazquez, Engineering Specialist Supervisor from the Commission's Tampa District office, was present. The Seamans were provided a copy of the meter test report, which showed the meter to be functioning within the guidelines established in Rule 25-6.052, F.A.C., which outlines the accuracy requirements and test plans for metering devices.

Staff agrees with the Seamans that their consumption during the months of August and September 2010 appears to be unusually high. However, the Seamans were informed that high electric usage can be associated with poor home repair, insufficient home and attic insulation, heating, ventilation, and air conditioning units. Additionally, the Seamans' stated their residence

⁵ Rule 25-6.059(5), F.A.C., states: "The utility may, at its discretion, conduct its own test of the meter in conformance with the testing standards established by these rules. In the event that separate tests of the same meter conflict as to whether the meter meets the accuracy standards established by these rules, at the request of the utility or the customer, the Commission will resolve the matter."

is “quite large” and has two air conditioning units, one of which was replaced because of audible popping sound within the time frame of the spike in kWh usage.

The complaint closure letter also notes that PEF offered to conduct a home energy audit since faulty appliances can cause excessive usage; however, Mr. Seaman declined, stating that the home is already energy efficient. Staff also notes that the complaint closure letter states that attempts at resolving the informal complaint between the parties failed because both party refused the terms offered for the resolution of the complaint.

Staff agrees with the Process Review Team’s complaint closure letter that “it is not always possible for utilities to identify and explain the increase or decrease in a customer’s electric consumption [and] Commission rules do not require PEF to show how energy was consumed.”

Conclusion

The old meter No. 5834154 was tested twice. Both tests met the Commission’s guidelines for accuracy, and the meter tests conformed to the Commission rules. In addition, staff conducted a thorough analysis of the complaint, as evidenced in the complaint closure letter. Mr. and Mrs. Seaman have not provided any documentation or evidence to refute the accuracy of the meter tests. Therefore, there is no conflict in the accuracy of the meter testing that needs resolution by the Commission at this time.

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Issue 3: Should the docket be closed?

Recommendation: Yes. If the Commission agrees with staff regarding issues 1 and 2, then if no person whose substantial interests are affected by the proposed agency action for Issue 2 files a protest within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Robinson, Draper)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a Consummating Order.

COMMISSIONERS:
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STATE OF FLORIDA



DIVISION OF SAFETY, RELIABILITY &
CONSUMER ASSISTANCE
DANIEL M. HOPPE, DIRECTOR
(850) 413-6480

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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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 H).

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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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,

Signed copy mailed on date of letter

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