STATE OF FLORIDA

OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK
(850) 413-6770

Public Service Commission

January 30, 2013

Thomas D. Hall, Clerk
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: Edward McDonald vs. Florida Public Service Commission
PSC Docket No. 110305-EI

Dear Mr. Hall:

Enclosed please find a certified copy of a Notice of Appeal, which was filed with the Public Service Commission on January 30, 2013, along with its attachment, Order No. PSC-12-0668-FOF-EI. This appeal was filed on behalf of the Edward McDonald.

If you have any questions, please feel free to contact me.

Sincerely,

Hong Way for
Ann Cole
Commission Clerk

AC: mhm
Enclosure

cc: Mr. Edward McDonald
James D. Beasley, Esquire
Ms. Paula K. Brown
Samantha Cibula, Office of the General Counsel

110305-EI

RECEIVED-FPSC
13 JAN 30 AM 10:29
COMMISSION CLERK

IN TNE SUPREME COURT OF FLORIDA

EDWARD MCDONALD,
APPELLANT

V. CASE NO._____

FLORIDA PUBLIC SERVICE COMMISSION,
DEFENDANT

in the FLORIDA PUBLIC SERVICE COMMISSION Order No. PSC-12-0668-EI is to be REVIEWED

NOTICE OF APPEAL

Notice is given that Edward McDonald,APPELLANT, appeals to the Florida Supreme Court, the order of the FLORIDA PUBLIC SERVICE COMMISSION RENDERED DECEMBER 31, 2012 (attahed hereto)) The order denies appellant the right to a hearing before an administrative law judge appointed by the Division of Aministrative Hearings.

Appellant's substantial interest were at issue and the material facts were disputed.

CERTIFICATE OF SERVICE

A copy of this NOTICE OF APPEAL was forwarded by U.S. Mail this 28th day of January 2013 to FLORIDA PUBLIC SERVICE COMMISSION ; Office of Clerk & General Counsel, FPSC, 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

APPELLANT AFFIRMS UNDER PENALTY OF PERJURY HE IS INDIGENT AND WILL SUBMIT AN AFFIDAVIT OF INDIGENCY AS REQUIRED BY SECTION 57.085(2)

COM ____
AFD ____
APA ____
ECO ____
ENG ____
GCL ____
IDM ____
TEL ____
CLK MM

Edward McDonald

Edward McDonald
7203 N. 41st St.
Tampa, FL 33604-2425
(813) 374-3837

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT THAT WAS FILED WITH THE FLORIDA PUBLIC SERVICE COMMISSION
BY: Tony Wang
ANN COLE, COMMISSION CLERK
(or Commission Clerk designee)

DOCUMENT NUMBER-DATE
00589 JAN 30 13
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of formal proceedings of Complaint No. 1006767E of Edward McDonald against Tampa Electric Company, for alleged improper billing.	DOCKET NO. 110305-EI ORDER NO. PSC-12-0668-FOF-EI ISSUED: December 31, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER DENYING MOTION FOR RECONSIDERATION, MOTION TO STAY PROCEEDING, AND MOTION TO STRIKE AND DISMISSING COMPLAINT WITH PREJUDICE

BY THE COMMISSION:

Case Background

On November 4, 2011, Mr. Edward McDonald (Mr. McDonald) filed a formal complaint against Tampa Electric Company (TECO) asserting that (1) he did not owe TECO the $915.94 shown as outstanding balance on his account; and (2) TECO owed him $3,500 in alleged overpayments and $5,000 in alleged attorneys' fees he incurred in circuit court. TECO offered Mr. McDonald a settlement regarding the outstanding $915.94, and Mr. McDonald refused TECO's offered settlement. On February 7, 2012, Proposed Agency Action (PAA) Order No. PSC-12-0053-PAA-EI denied Mr. McDonald's request for relief.

On February 29, 2012, Mr. McDonald filed a pleading entitled, "Initiation of Formal Proceedings," protesting the PAA Order and requesting a formal hearing. On May 23, 2012, Order No. PSC-12-0252-FOF-EI dismissed Mr. McDonald's request for a formal hearing for failure to state a cause of action and for its nonconformance with Rule 28-106.201, Florida Administrative Code (F.A.C.).

On June 12, 2012, Mr. McDonald filed an amended petition for a formal hearing in response to the order dismissing his initial petition. On September 21, 2012, Order No. PSC-12-0485-FOF-EI dismissed Mr. McDonald's amended petition for a formal hearing with prejudice for failure to cure the defects of the original request for a formal hearing. On September 24, 2012, Consummating Order No. PSC-12-0489-CO-EI was issued in the docket, closing the docket file and the original complaint.

On October 8, 2012, Mr. McDonald filed a request for Oral Argument, Motion for Reconsideration, and a Motion to Stay the Proceedings. On October 11, 2012, TECO filed its response to the Motion for Reconsideration and Motion to Stay. TECO did not request Oral Argument. On October 17, 2012, Mr. McDonald filed a Motion to Strike TECO's response to his Motion for Reconsideration. On October 16, 2012, Mr. McDonald filed another complaint based on the same facts in this docket regarding disconnection of his services. He alleged that the interruption of service was without the required five days disconnection notice in violation of Rule 25-6.005, F.A.C. He also alleged that his bill was inaccurate and his reconnection fees were excessive. Mr. McDonald's services were disconnected after the docket file was closed.

On October 22, 2012, TECO filed a letter in response to Mr. McDonald's complaint regarding the interruption of services. TECO asserted that it was not served a copy of the complaint but stated that the disconnection was in compliance with the Commission's rules, and that Mr. McDonald's services were reconnected that same day after he paid the outstanding balance on his account.

On October 30, 2012, Mr. McDonald filed his response to TECO's October 22, 2012 letter. Mr. McDonald asserted that the complaint regarding the disconnection of services should be severed from this docket as it alleges impermissible conduct by TECO and disputed billing amounts. On November 6, 2012, Mr. McDonald submitted another letter stating that TECO's representative acknowledged that the bill was inaccurate and the disconnection notice did not conform to the Commission's rules as he alleged in his October 16, 2012 complaint.

On November 7, 2012, TECO filed its response to Mr. McDonald's November 6, 2012 letter. TECO stated that its representative did not acknowledge anything to Mr. McDonald. Instead, its representative's contact with Mr. McDonald was to explain his payment obligations. On November 16, 2012, Mr. McDonald filed a notice of filing complaint.

We are vested with jurisdiction over this matter pursuant to Chapters 120 and 366, Florida Statutes (F.S.), and Chapter 28-106.201, F.A.C.

Discussion

Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order.[1] The alleged overlooked fact or law must be such that if it was considered, the [Commission] would reach a different decision than the decision in the order.[2] In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.[3]

---

[1] See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

[2] See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962).

[3] See Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817(Fla. 1st DCA 1958). See also Order No. PSC-07-0783-FOF-EI, issued September 26, 2007, in Docket No. 050958-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost

Furthermore, it is not necessary to respond to every argument and fact raised by each party, and "[a]n opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant."[4]

Mr. McDonald's Motion for Reconsideration, Motion to Stay the Proceedings, Motion to Strike, and Complaint Regarding Interruption of Services

In his Motion for Reconsideration and Motion to Stay, Mr. McDonald asserted that final Order No. PSC-12-0485-FOF-EI, issued on September 21, 2012, did not address his amended petition and his amended petition is still pending before the Commission. He also alleged that the order did not address his Renewed Motion for Continuance and Motion for Summary Judgment, and the Consummating Order should not have been issued in this docket and is therefore moot. He further alleged that he provided sufficient cases, statutes, and rules in his petitions to prevent the dismissal of his compliant with prejudice. Therefore, he requested that the Commission stay the proceedings until the "fraudulent assertions" he highlighted in his pleadings can be examined.[5]

In his Motion to Strike, Mr. McDonald asserted that TECO's response should be stricken because TECO waived its right to plead further in the proceedings, and TECO's Motion is not responsive, as TECO provided no rebuttal to his allegations of fraud or rebuttal regarding his Motion for Summary Judgment.[6]

In his complaint regarding interruption of services, Mr. McDonald did not request any relief. He asserted that TECO's billing and interruption of service violated the Florida Administrative Code in that he was not given five days notice before the termination of his services, and the bill did not meet the standards established by the Commission's rules. Mr. McDonald asserted that TECO violated the Commission's rules in disconnecting his services because the amount listed for restoration of services was inaccurate.[7] In his November 6, 2012, letter, Mr. McDonald asserted that TECO's staff acknowledged the inaccuracy in his billing statement.

TECO's Response to Mr. McDonald's Motion for Reconsideration, Motion to Stay, Motion to Strike, and Complaint Regarding Interruption of Services

In its response to Mr. McDonald's Motion for Reconsideration, TECO stated that the sole permissible purpose of a motion for reconsideration is to bring to the Commission's attention factual or legal points that were overlooked or not considered in rendering its decision and not to

---

Recovery Clause by Tampa Electric Company; Order No. PSC-07-0561-FOF-SU; issued July 5, 2007, in Docket No. 060285-SU, In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven; and Order No. PSC-06-1028-FOF-EU, issued December 11, 2006, in Docket No. 060635-EU, In re: Petition for determination of need for electrical power plant in Taylor County By Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

[4] See Jaytex Realty, 105 So. 2d at 818.

[5] See Mr. McDonald's Motion for Reconsideration, Pages 1-2.

[6] See Mr. McDonald's Motion to Strike, Page 1.

[7] See Mr. McDonald's Complaint filed on October 16, 2012, Page 1.

reargue the case by the losing party who disagrees with the order. TECO noted that Mr. McDonald's motions failed to show any factual or legal oversights or any legitimate ground for staying the order dismissing the complaint with prejudice on September 21, 2012, or the Consummating Order that was issued on September 24, 2012. TECO requested the denial of Mr. McDonald's motions.[8]

In TECO's response to Mr. McDonald's complaint regarding interruption of services, TECO asserted that the interruption was for non-payment and was in conformance with the Commission's rules. TECO maintained that a TECO representative spoke with Mr. McDonald before the disconnection and explained the disconnection process before Mr. McDonald's services were disconnected. TECO stated that the disconnection was for a new past due amount over and above the disputed amount in Mr. McDonald's original complaint that gave rise to the docket. However, TECO affirmed that its representative did not acknowledge any inaccuracies in the billing as Mr. McDonald alleged in his November 6, 2012 letter, and Mr. McDonald's services were reconnected after he paid the past due amount.[9]

Analysis

A. Mr. McDonald's Motion for Reconsideration, Motion to Stay the Proceedings, and Motion to Strike

A Motion for Reconsideration must demonstrate any omission in facts or law, which if considered would have given an opposite ruling by this Commission.[10] Here, Mr. McDonald's Motion for Reconsideration did not demonstrate any omission of fact or law that would have resulted in a different ruling than that in Order No. PSC-12-0485-FOF-EI, issued on September 21, 2012. Therefore, we deny the Motion. Mr. McDonald also alleged that this Commission did not address his Renewed Motion for Continuance and his Motion for Summary Judgment. However, Order No. PSC-12-0485-FOF-EI, issued on September 21, 2012 dismissed Mr. McDonald's request for a formal hearing, his Renewed Motion for Continuance, and his Motion for Summary Judgment. Likewise, Mr. McDonald's Motions to Stay the Proceedings and to Strike failed to provide any legal basis for staying the proceeding or striking TECO's responses. We therefore find it appropriate to deny these Motions.

B. Mr. McDonald's Complaint Regarding Disconnection of Services

Mr. McDonald did not request a relief in his complaint regarding disconnection of services. Mr. McDonald's services were disconnected for an outstanding balance after the docket file closed. The disconnection of Mr. McDonald's services is directly related to issues resolved in this docket since the service disconnection is a result of the outstanding balance on

---

[8] See TECO's Response to Petitioner's Motion for Reconsideration and Motion for Stay, Pages 1-2.
[9] See TECO's letters dated October 22, 2012, Page 1 and dated November 7, 2012, Page 1.
[10] See Order No. PSC-11-0224-FOF-EI, issued on May 16, 2011, in Docket No. 100009-EI, In re: Nuclear cost recovery clause; and Order No. PSC-09-0156-FOF-TP, issued on March 16, 2009, in Docket No. 070736-TP, In re: Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida (denying Motion for Reconsideration).

Mr. McDonald's electricity account, the same account that was in dispute. On February 7, 2012, Proposed Agency Action (PAA) Order No. PSC-12-0053-PAA-EI was issued in the docket denying Mr. McDonald's request for relief against TECO and finding that TECO complied with the requirements of its tariff with regards to the outstanding balance on the account. A consummating order issued on September 24, 2012, made the PAA order final and effective, and the time for appeal has passed. Therefore, Mr. McDonald's complaint is barred by the Doctrine of Administrative Finality.

Once the docket was closed, TECO was not prohibited from disconnecting Mr. McDonald's services for past due balances in accordance with its Commission approved tariff. Additionally, Mr. McDonald's services were reconnected the same day it was disconnected after he paid his outstanding balance. Therefore, we find it appropriate to dismiss the complaint regarding interruption of services with prejudice as being moot and barred by the Doctrine of Administrative Finality.

Ruling

We find it appropriate to deny Mr. McDonald's Motion for Reconsideration for failure to identify any errors or omissions in Order No. PSC-12-0485-FOF-EI that require modification to or reversal of the order. We also deny Mr. McDonald's Motion to Stay the Proceedings and the Motion to Strike as the Motions fail to demonstrate any legal basis for staying the proceedings or striking TECO's responses. We also dismiss Mr. McDonald's complaint regarding interruption of services with prejudice as being moot and barred by the Doctrine of Administrative Finality.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mr. Edward McDonald's Motion for Reconsideration is hereby denied. It is further

ORDERED that Mr. Edward McDonald's Motion to Stay the Proceedings is hereby denied. It is further

ORDERED that Mr. Edward McDonald's Motion to Strike is hereby denied. It is further

ORDERED that Mr. Edward McDonald's complaint regarding interruption of services is hereby dismissed, with prejudice. It is further

ORDERED that this docket shall be closed when the time for an appeal has run.

By ORDER of the Florida Public Service Commission this 31st day of December, 2012.

HONG WANG
Chief Deputy Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

PER

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.