

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Frederick Smallakoff
against Progress Energy Florida, Inc.
concerning alleged improper bills, Case No.
1059336E.

DOCKET NO. 120176-EI
ORDER NO. PSC-13-0184-PCO-EI
ISSUED: April 30, 2013

ORDER DENYING FREDERICK SMALLAKOFF'S REQUEST
FOR FORMAL PROCEEDING

On March 13, 2013 this Commission issued Order No. PSC-13-0124-PAA-EI in Docket No. 120176-EI, denying Mr. Smallakoff's complaint. That Order is proposed agency action and preliminary in nature. Any person whose substantial interests are affected by the proposed action may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code (F.A.C.). On April 3, 2013 the Commission Clerk received a hand-written letter from Mr. Smallakoff purporting to request a formal proceeding.

Pursuant to Rule 28-106.201, F.A.C., any request for a hearing must meet certain requirements including;

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

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FPSC-COMMISSION CLERK

Mr. Smallakoff's letter dated April 3, 2012 does not meet the requirements outlined in Rule 28-106.201, F.A.C., particularly with regard to subparts c, d, e, f and g as described above. Therefore Mr. Smallakoff's request for a hearing is denied, with leave for him to re-file a petition for a formal proceeding by the close of business on May 21, 2013. Any such petition must substantially conform to the requirements of Rule 28-106.201, F.A.C., a copy of which is attached as attachment A.

Based on the foregoing, it is

ORDERED that Mr. Smallakoff's request for a hearing is denied without prejudice and Mr. Smallakoff is given leave to re-file an appropriate petition in the form provided by Rule 28-106.201, F.A.C., which must be received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, no later than the close of business May 21, 2013. It is further

ORDERED that the provisions Order No. PSC-13-0124-PAA-EI, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition from Mr. Smallakoff, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk. It is further

ORDERED that in the event Order No. PSC-13-0124-PAA-EI becomes final, this docket shall be closed.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 30th day of April, 2013.



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

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

28-106.201 Initiation of Proceedings.

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

Rulemaking Authority 14.202, 120.54(3), (5) FS. Law Implemented 120.54(3) FS. History—New 4-1-97, Amended 9-17-98, 1-15-07, 2-5-13.