

Public Service Commission

Complainant Terry A. Avera

Case no.:

v.

Respondent **FLORIDA POWER & LIGHT COMPANY**

**PETITION FOR INITIATION OF FORMAL PROCEEDINGS FOR RELIEF AGAINST
FLORIDA POWER & LIGHT COMPANY (HEREAFTER “FPL”)**

RE: Property address: 1755 NW 93rd Street, Miami, FL 33147
Billing account no.: 49283-70115

The parties

Complainant Terry A. Avera (hereafter “Avera”) by and through his undersigned counsel files this Petition for Initiation of Formal Proceedings for Relief (hereafter “complaint”) against FPL

Jurisdiction

1. This is a formal complaint, a petition for initiation of Formal Proceedings pursuant to rule 25-22.036.

2. Avera seeks authority from the Florida Public Service Commission (hereafter “PSC”) to engage in an activity subject to Commission jurisdiction pursuant to rule 25-22.036(1).

3. This complaint is appropriate as Avera complains of an act or omission by a person, FPL, subject to Commission jurisdiction and such act or omission affects Avera’s substantial interests and which is in violation of a statute enforced by the Commission pursuant to Commission Rule 25-22.036(2).

Factual Background

4. On October 3, 2017 Avera filed an informal complaint involving the disconnection of service in violation of Commission Rule 25-22.032(3) Protection from Disconnection service. The customer did not fail to pay any undisputed part of a bill, yet FPL discontinued the customer's service in violation of this Commission Rule.

5. On October 24, 2017 FPL issued its final Report.

6. On January 29, 2018 the PSC Process Review Team (PRT) scheduled its quarterly informal conference/staff meeting but failed to schedule the Avera informal complaint in violation of Commission Rule 25-22.032(1) in which the stated intent is to resolve customer complaints quickly through an informal Commission staff resolution of complaints.

7. On February 7, 2018 by email dated Avera's counsel again reminded Margarita Valdez of PSC's Office of Consumer Assistance and Outreach he was unceremoniously removed from his home in August, 2017, a violation of Commission Rule 25-22.032(3) Protection from Disconnection.

8. On February 7, 2018 Margarita Valdez of PSC's Office of Consumer Assistance and Outreach advise Avera he had a right to disagree with the outcome of the Commission staff's investigation in which case the informal complaint would be taken to the PRT meeting...

“scheduled when staff from the Office of General counsel, the Division of Consumer Assistance and Outreach, and staff from the appropriate technical division are available to meet” (describing an informal conference under Commission Rule 25-22.032(7)(b) and (d).

9. On February 27, 2018 Ms. Valdez emailed Avera's counsel, attached Avera's February 5, 2018 email to her email and advised she “forwarded (Avera's) concerns to FPL.”

10. On March 4, 2018 Rhonda L. Hicks, Chief, Bureau of Consumer Assistance notified Avera's counsel that:

she was "attempting to schedule (an informal conference) this month. Ms. Valdez will let you know when that meeting is scheduled." Ms. Valdez failed to do so in violation of the representation of Ms. Hicks and Commission Rule 25-22.032(8)(a),(e), (f), (g) and (h).

11. Under Commission Rule 25-22.032(7)(b), disconnection prohibited by Commission Rule 25-22.032(3), was within the Commission's jurisdiction. The PRT could find the subject matter within its jurisdiction, that the relief could possibly be granted by the Commission, the basis of the complaint was not an objection to current statutes, rules, company tariffs, or orders of the Commission, and that a violation of the applicable rule of the commission may have occurred, the office of Consumer Assistance and Outreach shall schedule an informal conference.

12. Thereafter at some unknown time in March, 2018, an informal conference meeting was scheduled as advised by the April 12, 2018 letter dated April 12, 2018 authored by Pamela H. Page, Senior attorney, Office of the Commission's Counsel who failed to identify the date of the informal conference. This informal conference was scheduled under Commission Rule 25-22.032(8) because the PRT identified the complaint for the same. However in violation of the rule subsection (8), and the March 4, 2018 representation of Ms. Hicks, the office of Consumer Assistance and Outreach, Ms. Valdez (who failed to advise Avera of the date of the informal conference as required under Commission Rule 25-22.032) failed to supply Avera with a Dispute Resolution form PSC/CAO 010 via certified mail required under Commission Rule 25-22.032(8)(a).

13. On April 12, 2018 Ms. Page issued a letter to Avera's counsel advising Avera's

informal complaint was reviewed by the PRT in accordance with Commission Rule 25-22.032 (at an informal conference under Commission Rule 25-22.032(8)).

14. Under Commission Rule 25-22.032(8)(f), each participant at the informal conference shall have the opportunity to present information and the parties may be encouraged to resolve the dispute. This rule was violated.

15. Under Commission Rule 25-22.032(8)(h), the PSC will issue a notice of proposed agency action or set the matter for hearing. At no time did Avera receive a notice of proposed agency action or was the matter set for hearing, in violation of the rule.

16. Under Commission Rule 25-22.032(6)(b) FPL was mandated to provide Avera its response to the complaint within 15 working days after the Commission Staff sends the complaint to FPL. FPL did not in violation of the rule.

17. On April 12, 2018 the PSC office of the General Counsel issued a written response advising Avera under Commission Rule 25-22.032(7)(c)(4), it did not appear there was a violation of Commission Rules including rule 25-22.032(3), Protection from Disconnection.

The rule, order, or statute that has been violated

18. Commission Rule 25-22.032(3) Protection from Disconnection. During the complaint process described in subsections (5)-(9), a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by Commission staff. However, the company may require the customer to pay that part of a bill which is not in dispute. If the company and the customer cannot agree on the amount in dispute, Commission staff will make a reasonable estimate to establish an interim disputed amount until the complaint is closed by Commission staff. If the customer fails to pay the undisputed portion of the bill, the company may discontinue the customer's service pursuant to Commission rules. See paragraphs 4, 7, 9, 11, 17 *supra*.

19. Commission Rule 25-22.032(1). See paragraph 6 *supra*.

20. Commission Rule 25-22.032(6)(b). See paragraph 16 *supra*.
21. Commission Rule 25-22.032(7)(b). See paragraph 11 *supra*.
22. Commission Rule 25-22.032(7)(c). See paragraph 11, 17 *supra*.
23. Commission Rule 25-22.032(8). See paragraphs 10, 12, 13 *supra*.
24. Commission Rule 25-22.032(8)(a) See paragraphs 10, 12 *supra*
25. Commission Rule 25-22.032(8)(e) See paragraph 10 *supra*
26. Commission Rule 25-22.032(8)(f) See paragraphs 10, 14 *supra*
27. Commission Rule 25-22.032(8)(g) See paragraph 10 *supra*
28. Commission Rule 25-22.032(8)(h). See paragraphs 10, 15 *supra*.

Actions Constituting Violations

29. On or about August 31, 2017 Florida Power & Light Company (hereafter “FPL”) notified Terry A. Avera (hereafter “Avera”) it conducted a thorough inspection of the electric service at the subject location. The notification falsely claimed the inspection revealed illegal meter tampering with FPL’s equipment (smart meter) and that the tampering caused the meter to improperly under-register the electricity that the location was utilizing. As a consequence, FPL immediately disconnected service and back-billed Avera for 5 years, \$10,205.55, plus investigation fees and a tamper penalty.

30. In fact the thorough inspection revealed no meter tampering by Avera or any other person and the conditions that led to the disconnection were caused directly by FPL.

31. Through FPL’s actions on or about August 31, 2017 Avera was constructively removed from his home in order for he and his family to obtain electricity elsewhere as necessitated to prevent Avera from dying of sleep apnea without the use of needed electricity-

generated machinery and death by that machinery, forming deadly bacteria, only eliminated through employment of electricity denied Avera as constitutional rights, to life, property and the pursuit of happiness, as deprived by FPL as a monopolistic state agent.

32. FPL was made aware of the exigent circumstances. Despite that knowledge, and Commission rule FPL has refused and failed to restore electric service immediately on October 3, 2017 to date.

33. See also paragraphs 4 through 18, *supra*

Name and Address of the Person Against Whom the Complaint Is Lodged

34. FPL, 700 Universe Blvd., June Beach, FL 33408 is the name and address of the person against whom the complaint is lodged.

The Specific Relief Requested

35. The specific relief requested is to have the inspector and Mr. Castillo issued their reports revealing no tampering occurred and to restore service and damages in excess of \$14,000,000.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on FPL, 700 Universe Blvd. June Beach, FL 33408 by email: FPL_FPSC_Complaints@FPL.com this 28th day of April, 2018.

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