

State of Florida



Public Service Commission

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

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

DATE: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Sandy) *JSC*
Office of Consumer Assistance and Outreach (Calhoun, Plescow, Valdez De
Gonzalez) *AC*
Division of Economics (Coston) *JGH*

RE: Docket No. 20220058-EI – Complaint by Chris Rosa against Duke Energy
Florida, LLC.

AGENDA: 08/02/22 – Regular Agenda – Motion to Dismiss for Issue 1 (Oral Argument Not
Requested; Participation at the Commission’s Discretion); Proposed Agency
Action for Issue 2 (Interested Persons May Participate)

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On September 29, 2020, Ms. Chris Rosa (Ms. Rosa) filed informal complaint number 1349979E, alleging improper billing against Duke Energy Florida, LLC. (Duke) with the Commission. Ms. Rosa alleges that her account was wrongfully billed when Duke mistakenly did not remove her from the Budget Billing Program (Budget Billing) after renewable generation equipment was installed at her home.

After a thorough review, Division of Consumer Assistance and Outreach (CAO) staff closed Ms. Rosa’s informal complaint on January 19, 2022, concluding that Duke did not violate any Commission rules or its tariffs in the handling of this matter.

On March 14, 2022, Ms. Rosa filed a formal complaint against Duke, alleging the same material facts as contained in her informal complaint. Ms. Rosa's formal complaint again alleged improper billing by Duke, specifically that Ms. Rosa does not owe Duke "past due" charges.

On March 25, 2022, Duke filed a Motion to Dismiss (Motion) Ms. Rosa's formal complaint. Duke states that Ms. Rosa's complaint fails to cite any statute, rule, or order which Duke allegedly violated and should, therefore, be dismissed for failing to meet the pleading requirements of Rule 25-22.036, Florida Administrative Code (F.A.C.). Duke further contends that the complaint, even when read in the light most favorable to Ms. Rosa, fails to specify a cause of action or the relief being sought and should, therefore, be dismissed.

This recommendation addresses whether Duke's Motion should be granted (Issue 1) and the appropriate disposition of Ms. Rosa's formal complaint against Duke (Issue 2). The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission grant Duke's Motion to Dismiss Ms. Rosa's formal complaint?

Recommendation: No, the Commission should deny Duke's Motion. (Sandy)

Staff Analysis:

Legal Standard

To sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted.¹ The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations. A sufficiency determination is confined to the petition and documents incorporated therein and the grounds asserted in the motion to dismiss.² All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.³

Duke's Motion to Dismiss

Ms. Rosa alleges that her account was wrongfully billed when Duke did not remove her account from Budget Billing status after renewable generation equipment was installed at her home on June 17, 2019.

Duke alleges that Ms. Rosa's complaint fails to meet the pleading requirements for a formal complaint because it does not "identify the rule, order, or statute that Duke allegedly violated, nor does she describe any actions taken on behalf of Duke that constitute a violation of any rules, statutes, company tariff, or Commission Orders." As such, Duke contends that it cannot "adequately research, prepare and formulate a defense." For formal administrative proceedings authorized by Chapter 120, F.S., the Uniform Rules of Procedure contained in Chapter 28-106, F.A.C., apply. In addition to the Uniform Rules which govern all administrative proceedings, the Commission has adopted specific procedural rules to govern proceedings before it, which are contained in Chapter 25-22, F.A.C. As cited by Duke, Rule 25-22.036, F.A.C., requires that a formal complaint must 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

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

² *Varnes* at 350.

³ See, e.g., *Ralph v. City of Daytona Beach*, 471 So. 2d 1173 (Fla. 4th DCA 2000); *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1986); *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 715 (Fla. 1st DCA 1963).

4. The specific relief requested, including any penalty sought.

Duke's Motion alleges that between June 2019 and March 2021, Ms. Rosa and Duke were in regular communication regarding a number of billing charges, billing statements reflecting those charges, and outstanding balances that had allegedly gone unpaid, i.e., an unpaid balance of \$370.04 as of April 2021. Ms. Rosa appeared to believe that her account would be automatically removed from Budget Billing after her net metering started in June 2019. When Ms. Rosa contacted Duke regarding the bills still showing her Budget Billing status, she alleges that a Duke representative advised her not to remove the account from Budget Billing because she would eventually have a credit deferred balance. Duke has no record of this conversation. Duke's records show Ms. Rosa made a request to remove her account from Budget Billing on December 31, 2019. The account was removed from Budget Billing that same day and the deferred credit balance was applied to the account balance.

Duke's Motion further alleges that the CAO staff has reviewed the substance of Ms. Rosa's complaint during an informal complaint process and concluded that Duke did not violate any Commission rules or its tariffs in the handling of this matter. However, Duke's Motion acknowledges Ms. Rosa's disagreement with how Duke characterizes the material facts that are the basis of Ms. Rosa's formal complaint. Further, it appears as if Ms. Rosa also disagrees with CAO staff's characterization of the material facts that are the basis of her complaint in this matter.

Analysis and Conclusion

The Commission has previously held pro se litigants such as Ms. Rosa to a relaxed pleading standard, in order to prevent delay and promote resolution of litigants' claims.⁴ Staff believes that the petition states a cause of action – a dispute with respect to Duke's billing – that is within the Commission's jurisdiction as provided in Section 366.04(1), F.S.

Staff believes the facts and law in this docket are sufficiently developed and a complaint in strict compliance with the rule is not necessary in order for the Commission to make a decision at this time. The extensive documentation in this docket, including the informal complaint files, Ms. Rosa's formal complaint, Duke's Motion to Dismiss, and the documented correspondence between staff and Ms. Rosa provides significant information about Ms. Rosa's factual assertions and requested relief. Staff believes this information is sufficient to allow the Commission to make a decision on the substance of Ms. Rosa's complaint, and does not believe it would be an efficient use of the parties' resources to require Ms. Rosa to amend her complaint merely to comply with the technical pleading rules. Therefore, staff recommends that the Commission deny Duke's Motion to Dismiss. Instead, staff recommends that the Commission proceed to make a decision on the substance of Ms. Rosa's complaint, as discussed in Issue 2.

⁴See PSC-2020-0469-FOF-EI, issued November 23, 2020, in Docket Nos. 20200030-EI, *In re: Complaint by Juana L. Del Rosario against Florida Power & Light Company regarding backbilling for alleged meter tampering.*

Issue 2: What is the appropriate disposition of Ms. Rosa's complaint?

Recommendation: Ms. Rosa's formal complaint should be denied and she should pay any outstanding account balance. It appears that Ms. Rosa's account was properly billed in accordance with Duke's tariffs along with Commission rules and statutes. Furthermore, it does not appear that Duke has violated any jurisdictionally applicable provision of the Florida Statutes, the Florida Administrative Code, or its tariff in the handling of Ms. Rosa's account. (Sandy)

Staff Analysis:

Formal Complaint

In her formal complaint, Ms. Rosa asserts that she "does not owe any 'past due' amounts. Every single month Duke has been paid for the actual kwh and taxes used by the undersigned."

Analysis

The following list is a summary of all of the investigative activity that has been performed on behalf of Ms. Rosa in an effort to address the substance of her complaint.

1. On or about September 29, 2020, Ms. Rosa filed a complaint with the Commission, stating her account had been removed from the Budget Billing Program ("Budget Billing"), and Duke continued to bill her account for past-due amounts. Ms. Rosa believed the unpaid balance is a result of Duke keeping her account in Budget Billing after her renewable generation equipment was installed. Ms. Rosa further claimed Duke provided incorrect information while her account was on Budget Billing and requested a bill clarification. Ms. Rosa disputed the bill dated September 25, 2020 for the amount of \$507.01 and sought a credit adjustment for that amount. Ms. Rosa's complaint was assigned No. 1349979E.
2. On June 17, 2019, Duke installed a bi-directional meter at Ms. Rosa's address. At the time, Ms. Rosa was participating in Budget Billing. The billing statements from June 2019 – December 2019 were estimated due to a locked gate but were updated once actual readings were received. During this time period, Duke only received three (3) payments to Ms. Rosa's account, and her account had not had a zero balance since August 7, 2019. Ms. Rosa remained on Budget Billing until December 31, 2019, when she contacted Duke regarding the estimated bills and requested to be removed from Budget Billing.
3. On January 9, 2020, Duke issued a re-billed final Budget Billing/net metering statement, which included \$61.71 in current charges, \$8.36 in late fees, \$701.29 past due balance, and a Budget Billing deferred credit balance of \$212.59. The Budget Billing credit balance was applied to Ms. Rosa's account and resulted in a new account balance of \$558.77. Duke received payments from Ms. Rosa during the first six (6) months of 2020; however, those payments only included the current charges on the account which resulted in a balance forward on each statement. An additional four (4) late fees in the amount \$28.03 were waived.

4. On June 18, 2020, Duke and Ms. Rosa entered into an agreement for the \$365.04 balance due that allowed Ms. Rosa to pay 12 monthly installments of \$30.42. No payment for the monthly installment was received for July and August 2020, so the agreement was canceled and the entire past due balance of \$365.04 was charged back to Ms. Rosa's account along with an unpaid balance of \$12.53 for a total balance of \$377.57.
5. On December 28, 2020, three (3) more late fees were waived, and on April 7, 2021 Duke waived two (2) additional late fees incurred for February and March 2021. Duke advised the Commission it was willing to create an agreement for payment of the remaining unpaid balance, which at the time was \$370.04.
6. On April 8, 2021, CAO staff mailed a letter to Ms. Rosa that included five (5) tables with data reflected on the billing statements from January 2019 through March 2021 to clarify the information regarding the unpaid balance of \$370.04. Ms. Rosa responded to CAO staff's letter and indicated she never asked for nor agreed to an installment plan and she was never advised to request Duke to terminate Budget Billing after the bi-directional meter was installed. Additionally, Ms. Rosa claimed she was advised by Duke to stay on Budget Billing because she would eventually receive a credit because her consumption was lower due to net metering. Ms. Rosa claims on December 31, 2019, a Duke representative suggested she be removed from Budget Billing, and another representative told her to only pay current charges on her account.
7. CAO staff reviewed the 23 months from June 2019 (when net metering billing commenced), to April 2021, and found Ms. Rosa's account had been billed for the difference between energy used and energy received. Ms. Rosa made 16 payments, and Duke waived 11 late fees for a total of \$69.73. Duke has no record of advising Ms. Rosa to remain on Budget Billing. Based on the information available for review, CAO staff determined that Duke did not violate any Commission rules or its tariff in the handling of Ms. Rosa's issue.

Although Ms. Rosa's formal complaint was filed after CAO staff closed Complaint No. 1349979E, she provided no new evidence for the Commission's consideration in this matter. Therefore, the only evidence currently available to support Ms. Rosa's complaint has already been reviewed by CAO staff who determined that Duke did not violate any Commission rules or its tariff in the handling of Ms. Rosa's issue.

Conclusion

Staff believes it conducted a thorough and complete investigation of this matter and that Duke has complied with its tariff and all applicable statutes and Commission rules. Based on the information obtained by staff, it appears that Ms. Rosa was properly billed in accordance with Duke's tariffs along with Commission rules and statutes. Ms. Rosa has presented no documentation or evidence that supports her contention that she was improperly billed by Duke. Furthermore, it does not appear that Duke has violated any jurisdictionally applicable provision of the Florida Statutes, the Florida Administrative Code, or its tariff in the handling of Ms. Rosa's account. Therefore, staff recommends that the Commission deny Ms. Rosa's formal

complaint, and find that she should pay any outstanding account balances currently owed to Duke.

Issue 3: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Sandy)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.