

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in
Pasco County by A Utility Inc.

DOCKET NO. 20210098-WU
ORDER NO. PSC-2023-0176-PCO-WU
ISSUED: June 1, 2023

ORDER DISMISSING PROTEST PETITION WITHOUT PREJUDICE

Background

On May 14, 2021, A Utility Inc. filed its application for a staff-assisted rate case (SARC) with the Florida Public Service Commission (Commission). On November 16, 2022, Mr. Hashemi contacted Commission staff following the issuance of the customer meeting notice, and stated his intention to provide comments in Docket 20210098-WU regarding A Utility Inc.'s requested rate increase. Mr. Hashemi did not attend the customer meeting, which was held December 1, 2022, but instead filed written comments by letter dated November 30, 2022.¹ On December 14, 2022, Commission staff provided email responses to Mr. Hashemi's written comments explaining Commission staff's recommended calculations and the proposed rate base. The response also directed Mr. Hashemi to the Staff Report for more specific details related to A Utility Inc.'s expenses.

On January 20, 2023, Mr. Hashemi contacted Commission staff with additional questions regarding expenses and the accumulated amortization of contributions-in-aid-of-construction for A Utility Inc. Upon Commission staff's response to these questions, on January 23, 2023, Mr. Hashemi provided five additional documents containing supplementary comments.² It appeared these comments were about Mr. Hashemi's calculations and proposed rates in the case.

On January 27, 2023, Commission staff filed its recommendation on A Utility Inc.'s requested rate increase, which the Commission approved on February 8, 2023, at the Commission's regularly scheduled public meeting referred to as the "Commission Agenda Conference." Mr. Hashemi did not attend the Commission conference, nor did he ask to speak on the matter at the meeting.

After the Commission conference, Mr. Hashemi contacted Commission staff to ask how to challenge the Commission's decision on A Utility Inc.'s requested rate increase. On February 10, 2023, Commission staff again spoke with Mr. Hashemi in an attempt to answer his questions

¹ Document No. 11829-2022

² Document Nos. 00361-2023, 00437-2023, 00593-2023, 00618-2023, 00881-2023 (Document Nos. 00882-2023, 00895-2023, and 01128-2023 are duplicative of Document No. 00881-2023)

but also advised him that it could not provide legal counsel and suggested that Mr. Hashemi contact the Office of Public Counsel to assist him.

On February 16, 2023, by its Proposed Agency Action Order, Order No. PSC-2023-0091-PAA-WU, the Commission set a new monthly flat rate for residential customers at \$21.33. On March 9, 2023, Mr. Hashemi timely filed a document titled “Protest” referencing the “unwarranted and arbitrary rate increase by the [Commission],”³ which shall be considered a petition for hearing pursuant to Rule 28-106.201(2), Florida Administrative Code (F.A.C.). For the reasons discussed below, Mr. Hashemi’s petition for hearing is dismissed without prejudice.

Review and Decision

1. Petition

Rule 28-106.201(2)(c)-(g), F.A.C., governs hearings involving disputed issues of material fact, and requires the petition to provide certain information:

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

(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 modification of the agency’s proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes;

(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 Petition Document No. 02117-2023

The petition does not specifically state how or when Mr. Hashemi received notice of the proposed agency action, does not articulate or specify any disputed issues of material fact, does not provide a concise statement of the ultimate facts, does not cite any rules or statutes, and fails to state the specific relief requested. Although the petition references three documents referred to as “comments” and alleges the rate increase is frivolous, the petition does not meet requirements of Rule 28-201, F.A.C., because it fails to include specific factual allegations and legal citations.

2. Analysis and Conclusion

Section 120.569(2)(c), F.S., sets out what actions the Commission must take if a petition for hearing is deficient:

Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner’s filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

Because the petition is not in substantial compliance with Rule 28-106.201, F.A.C., it must be dismissed.

Specifically, I find that the allegations in the complainant’s Petition do not satisfy the requirements of Rule 28-106.201(2)(c), (d), (e), (f), and (g), F.A.C., because there is no statement of when and how the petitioner received notice of the agency decision; no statement of all disputed issues of material fact; no concise statement of the ultimate facts alleged; no statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency’s proposed action; and no precise statement of the relief sought by the petitioner. The Petitioner makes general references to the written comments he filed in the docket prior to the issuance of order, but neither the comments themselves, nor the reference to the comments in the petition, sets forth the disputed material facts regarding the Proposed Agency Action or reference a particular rule or statute. Petitioner’s general references do not constitute a statement of all disputed issues of fact or provide a legal basis for reversal or modification of the Proposed Agency Action as required by Rule 28-106.201(2). *See Brookwood Extended Care Center of Homestead, LLP v. Agency for Health Care Administration*, 870 So. 2d 834 (Fla. 3d DCA 2003).

Because it appears that these defects can be cured, this dismissal shall be without prejudice. Mr. Hashemi shall be given 14 days from the date this Order is entered to file an amended petition that cures the above-cited defects and complies with Rule 28-106.201, F.A.C. Failure to timely file an amended petition as directed by this Order may result in entry of a final order of dismissal with prejudice.

Along with his Petition, Mr. Hashemi filed a Motion requesting “remote appearance by Zoom, or telephone call and all documents filed electronically and no cost of any sort to him.” Because the Petition is being dismissed without prejudice, it is unnecessary to take up this request at this time.

Based on the foregoing, it is

ORDERED that the Protest filed by Al Hashemi on March 9, 2023, construed as a petition for hearing involving disputed issues of material fact, is dismissed without prejudice as not in substantial compliance with Rule 28-106.201(2)(c), (d), (e), (f), and (g), F.A.C. It is further

ORDERED that Mr. Hashemi may file an amended petition that complies with Rule 28-106.201, F.A.C., not later than 14 days from the date this Order is entered. It is further

ORDERED that failure to timely file an amended petition that complies with Rule 28-106.201, F.A.C., will result in a consummating order being issued making PAA Order No. PSC-2023-0091-PAA-WU final and effective.

ORDERED that following the issuance of a consummating order, the docket shall remain open for the limited purpose of verification that the revised tariff sheets and customer notice have been filed by the Utility and are approved by our staff. Once these actions are complete, this docket shall be closed administratively.

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 1st day of June, 2023.



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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.

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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 and/or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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

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remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.