

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of formal proceedings on
Complaint No. 1109752E of Brenda Rodriguez
against Duke Energy Florida, Inc. for alleged
improper billing.

DOCKET NO. 140024-EI
ORDER NO. PSC-14-0674-PCO-EI
ISSUED: December 5, 2014

ORDER ESTABLISHING PROCEDURE

I. Case Background

On May 7, 2013, Brenda Rodriguez filed Complaint No. 1109752E against Duke Energy Florida, Inc. (Duke or Company). In that complaint, Ms. Rodriguez contested Duke's assertion that she had tampered with her meter causing it to register zero kilowatt hours (kWh) and further contested the amount of the investigation and back-billing charges Duke imposed upon her. The Florida Public Service Commission (Commission) by Order PSC-14-0303-PAA-EI, issued on June 12, 2014, denied Ms. Rodriguez's complaint and approved a backbilled amount of \$7,974.44. On July 1, 2014, Ms. Rodriguez filed a timely protest of this proposed agency action order issued by the Commission and thereby requested an evidentiary hearing. This docket has been scheduled for hearing on February 3, 2015. Jurisdiction is vested in this Commission pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

II. General Filing Procedures

All filings pertaining to this docket shall identify the assigned docket number and may be accomplished electronically as provided in the Commission's Electronic Filing Requirements, posted on the Commission's website at www.floridapsc.com under the Commission Clerk's Office tab, or by submitting the original document and the appropriate number of copies, as provided by Rule 25-22.028, F.A.C., to the Office of Commission Clerk via mail, hand delivery, or courier service addressed to:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The Commission strongly encourages web-based electronic filing, which is available from the Commission's Home Page by selecting the Clerk's Office link and FPSC Electronic Filing. This application accepts documents in Adobe PDF format only. The e-mail attachment method of e-filing remains available until further notice and is subject to certain filing requirements and/or

restrictions listed on the Commission Clerk's Electronic Filing link. The filing party is responsible for ensuring that no information protected by privacy or confidentiality laws is contained in any document that would be posted to the Commission's website in the regular course of business. To the extent possible, an electronic copy of all filings shall be provided to parties and Commission staff in Microsoft Word format and all schedules shall be provided in Microsoft Excel format with formulas intact and unlocked.

III. Tentative List of Issues

A list of the issues identified thus far in this proceeding is attached hereto as Attachment A. The scope of this proceeding will be based upon these issues as well as other issues raised by the parties up to and during the Prehearing Conference, unless modified by the Commission.

IV. Discovery Procedures

A. General Requirements

Discovery shall be conducted in accordance with the provisions of Chapter 120, Florida Statutes (F.S.), and the relevant provisions of Chapter 366, F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Discovery shall be completed by close of business on January 22, 2015.
- (2) Discovery requests and responses shall be served by e-mail, hand delivery, or overnight mail; and electronic service is encouraged. Discovery served via e-mail shall be limited to 5 MB per attachment, shall indicate how many e-mails are being sent related to the discovery (such as 1 of 6 e-mails), and shall be numbered sequentially. Documents provided in response to a document request may be provided via a CD, DVD, or flash drive, if not served electronically.
- (3) Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery shall be numbered sequentially in order to facilitate identification.
- (4) Within each set, discovery requests shall be numbered sequentially, and any discovery requests in subsequent sets shall continue the sequential numbering system.
- (5) Discovery responses shall be served within 20 calendar days (inclusive of mailing) of receipt of the discovery request.
- (6) Copies, whether hard copies or electronic, of discovery requests and responses shall be served on all parties and staff. In addition, copies of all responses to requests for production of documents shall be provided to the Commission staff at its Tallahassee office unless otherwise agreed upon.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Interrogatories, including all subparts, shall be limited to 75.
- (2) Requests for production of documents, including all subparts, shall be limited to 75.
- (3) Requests for admissions, including all subparts, shall be limited to 50.

When a discovery request is served and the respondent intends to seek clarification of any portion of the discovery request, the respondent shall request such clarification within 5 days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

V. Prehearing Procedures

A. Prehearing Statements

All parties and Commission staff in this docket shall file a prehearing statement pursuant to the schedule set forth in Section VIII of this Order. Each prehearing statement shall be filed with the Office of Commission Clerk by 5:00 p.m. on the date due. A copy, whether paper or electronic, of the prehearing statement shall be served on all other parties and Commission staff no later than the date it is filed with the Commission.

Each party's prehearing statement shall set forth the following information in the sequence listed below:

- (1) The name of all known witnesses who may be called by the party, along with subject matter of each such witness' testimony;
- (2) A description of all exhibits that may be used by the party in presenting its direct case (including individual components of a composite exhibit) and the witness sponsoring each;
- (3) A statement of the party's basic position in the proceeding;
- (4) A statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party's position on each issue, and, where applicable, the names of the party's witness(es) who will address each issue. Parties who wish to maintain "no position at this time" on any particular issue or issues should refer to the requirements of subsection C, below;
- (5) A statement of issues to which the parties have stipulated;
- (6) A statement of all pending motions or other matters the party seeks action upon;
- (7) A statement identifying the party's pending requests or claims for confidentiality;
- (8) Any objections to a witness' qualifications as an expert. Failure to identify such objection will result in restriction of a party's ability to

conduct voir dire absent a showing of good cause at the time the witness is offered for cross-examination at hearing; and

- (9) A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission.

Each exhibit identified in a parties' prehearing statement shall be attached to the prehearing statement and conform to the filing requirements stated in Section VI below.

B. Attendance at Prehearing Conference

Pursuant to Rule 28-106.209, F.A.C., a Prehearing Conference will be held on January 22, 2015, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Unless excused by the Prehearing Officer for good cause shown, each party (or designated representative) shall personally appear at the Prehearing Conference. Failure of a party (or that party's representative) to appear shall constitute waiver of that party's issues and positions, and that party may be dismissed from the proceeding.

C. Waiver of Issues

Any issue not raised by a party either before or during the Prehearing Conference shall be deemed waived by that party, except for good cause shown. A party seeking to raise a new issue after the Prehearing Conference shall demonstrate each of the following:

- (1) The party was unable to identify the issue because of the complexity of the matter.
- (2) Discovery or other prehearing procedures were not adequate to fully develop the issue.
- (3) Due diligence was exercised to obtain facts touching on the issue.
- (4) Information obtained subsequent to the Prehearing Conference was not previously available to enable the party to identify the issue.
- (5) Introduction of the issue would not be to the prejudice or surprise of any party.

Specific reference shall be made to the information received and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall take a position on each issue by the time of the Prehearing Conference or by such later time as may be permitted by the Prehearing Officer. If a party is unable through diligence and good faith efforts to take a position on a matter at issue for that party, it shall explicitly state in its prehearing statement why it cannot take a position. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this

time” prior to the hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue, and the party’s position shall be shown as “no position” in the Prehearing Order. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement. Commission staff may take “no position at this time” or a similar position on any issue without having to make the showing described above.

D. Official Recognition

Parties seeking official recognition of materials pursuant to Section 120.569(2)(i), F.S., shall notify all other parties and Commission staff in writing no later than two business days prior to the first scheduled hearing date. Such notification shall identify all materials for which the party seeks official recognition, and to the extent such materials may not be readily available to all parties, such materials shall be provided along with the notification.

VI. Hearing Procedures

A. Attendance at Hearing

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party’s representative, to appear shall constitute a waiver of that party’s issues.

B. Witnesses

Each party is required to produce its witnesses at the hearing who will be sworn and present oral testimony. No written testimony will be prefiled in this case.

C. Cross-Examination

Each witness shall be subject to cross examination by all parties and Commission staff at hearing.

D. Exhibits

Each exhibit sponsored by a witness in support of his or her testimony shall be:

- (1) Sequentially numbered beginning with 1;
- (2) Identified in the upper right-hand corner of each page by the docket number, a brief title, and the witness’ initials followed by the exhibit’s number; and
- (3) Paginated by showing in the upper right-hand corner of each page the page number followed by the total number of pages in the exhibit.

An example of the information to appear in the upper right-hand corner of the exhibit is as follows:

Docket No. 012345-EI
Foreign Coal Shipments to Port of Tampa
Exhibit BLW-1, Page 1 of 2

After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing.

VII. Post-Hearing Procedures

If the Commission (or assigned panel) does not render a bench decision at the hearing, it may allow each party to file a post-hearing statement of issues and positions pursuant to the schedule set forth in Section VIII of this Order. In such event, a summary of each position, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate that party's prehearing position. If a post-hearing statement is required and a party fails to file in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 20 pages and shall be filed at the same time, unless modified by the Presiding Officer.

VIII. Controlling Dates

The following dates have been established to govern the key activities of this case:

- | | |
|---------------------------|-------------------|
| (1) Prehearing Statements | January 8, 2015 |
| (2) Prehearing Conference | January 22, 2015 |
| (3) Discovery deadline | January 22, 2015 |
| (4) Hearing | February 3, 2015 |
| (5) Briefs, if necessary | February 26, 2015 |

In addition, all parties should be on notice that the Prehearing Officer may exercise the discretion to schedule additional prehearing conferences or meetings of the parties as deemed appropriate. Such meetings will be properly noticed to afford the parties an opportunity to attend.

Based upon the foregoing, it is hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 5th day of
December, 2014.



JULIE I. BROWN
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.

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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 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.

ATTACHMENT A
DOCKET NO. 140024-EI
TENTATIVE ISSUES LIST

- ISSUE 1. Is there sufficient evidence that meter tampering occurred at the Rodriguez residence at 185 Anzio Drive, Kissimmee, Florida 34758 to permit Duke Energy Florida to back-bill the Rodriguez account for unmetered kilowatt hours?
- ISSUE 2. If the answer to Issue 1 is yes, what is the appropriate back-billing period to be used in this case?
- ISSUE 3. If the answer to Issue 1 is yes, what is the appropriate amount of back-billed charges?
- ISSUE 4. If the answer to Issue 1 is yes, should investigative costs be charged, and if so, what is the appropriate amount?
- ISSUE 5. If the answer to Issue 1 is yes, what are the total costs to be billed?
- ISSUE 6. Are there any mitigating factors that should be taken into account in this case?
- ISSUE 7. Should this docket be closed?