

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: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Osborn, Crawford) *JSC*
Office of Consumer Assistance and Outreach (Hicks) *RLH*
Division of Economics (Coston) *JCH*

RE: Docket No. 20210136-EI – Complaint by Richard L. Davis against Florida Power & Light Company.

AGENDA: 09/08/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED:

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On November 12, 2020, Mr. Richard Davis filed an informal complaint with the Commission's Office of Consumer Assistance & Outreach (CAO) regarding his electric account with Florida Power & Light Company (FPL).¹ In his informal complaint, Mr. Davis attached a final notice of disconnection for nonpayment from FPL. He also included a document titled UCC Financing Statement Addendum that he alleged constitutes payment of his FPL account balance. In accordance with Rule 25-22.032, Florida Administrative Code (F.A.C.), the documentation Mr. Davis provided was forwarded to the Commission's Office of the General Counsel (GCL) for review. Staff confirmed that the documentation provided did not constitute payment of his account balance. Staff also did not identify a violation by FPL of any applicable statutes, rules,

¹ Complaint No. 1354387E

or Commission orders. Accordingly, the informal complaint was closed by letter to Mr. Davis dated December 8, 2020.

On February 17, February 19, and February 26, 2021, Mr. Davis sent additional e-mails reiterating his contention that he should not be responsible for payment on his FPL account. In response, CAO staff e-mailed him on February 19, February 22, and February 26, 2021, stating that GCL had confirmed that the documentation he provided does not constitute payment of his FPL account balance, and that if he did not pay his account balance in a form of currency acceptable to FPL, his service may be disconnected for nonpayment upon notice pursuant to Rule 25-6.105, F.A.C.

On June 30, 2021, staff received new correspondence from Mr. Davis. Since the previous complaint had been closed longer than 30 days, staff opened information request 1373066C. Staff responded via e-mail on June 30, 2021, again stating that GCL confirmed that the documentation Mr. Davis provided on June 30, 2021, does not constitute payment of his account balance. Mr. Davis then telephoned staff requesting an administrative hearing with the Division of Administrative Hearings. Staff responded with a letter dated July 29, 2021, informing Mr. Davis of the process for a formal complaint per Rule 25-22.036, F.A.C.²

On August 11, 2021, Mr. Davis filed a request for hearing.³ This recommendation addresses the appropriate disposition of Mr. Davis's August 11, 2021, filing. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

² DN 09222-2021

³ DN 09083-2021

Discussion of Issues

Issue 1: What is the appropriate disposition of Mr. Davis's request for hearing?

Recommendation: Staff recommends that Mr. Davis's request for hearing be denied without prejudice. Mr. Davis's request for hearing does not follow the requirements of a formal complaint per Rule 25- 22.036, F.A.C. (Osborn, Crawford)

Staff Analysis: Staff sent correspondence dated July 29, 2021, to Mr. Davis informing him of the process for filing a formal complaint pursuant to Rule 25-22.036, F.A.C. The letter included copies of Rules 25-22.032 and 25-22.036, F.A.C., and Section 120.57, F.S.

Pursuant to Rule 25-22.036(3)(b), F.A.C., a complaint shall contain the rule, order, or statute that has been violated; the actions that constitute the violation; the name and address of the person against whom the complaint is lodged; and the specific relief requested, including any penalty sought.

Mr. Davis's request does not meet these requirements. In his request, he does state his FPL account number. He claims to be a non-legal entity and that he has "been unknowingly complicit in a fraud perpetuated by the local providers of utilities." He then alleges that he is not the class of user that is to be billed, he is not using the service in federally regulated activity, and he is not using the service within the territorial jurisdiction of the Constitution's Commerce Clause. He alleges that disconnecting his service for inability to legally pay is cruel and unusual punishment and that it is impossible to pay in Federal Reserve Notes because those are debt obligations and not "money."

Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction that affects the complainant's substantial interests and that is in violation of a statute enforced by the Commission, or of any Commission rule or order. Mr. Davis's request fails to show that FPL's disconnection of his service violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C.

As Mr. Davis has been informed by correspondence dated December 8, 2020; February 19, February 22, and February 26, 2021; and June 30, 2021, a UCC Financing Statement Addendum does not constitute payment of his account balance and nonpayment of his account balance in a form of currency acceptable to FPL may result in disconnection for nonpayment upon notice, pursuant to Rule 25-6.105, F.A.C.

In the letter dated December 8, 2020, CAO staff informed Mr. Davis that Rules 25-6.101 and 25-6.105, F.A.C., indicate that an electric bill is considered past due if the payment has not been received within 20 days from the date the utility mailed or delivered the bill. If the company does not receive a payment by the end of the twentieth day, it has to mail a final notice of at least five working days before it can disconnect the customer's service for nonpayment. Staff stated they had learned from FPL that on October 19, 2020, FPL had sent a regular monthly bill to Mr. Davis that included current charges, a late payment charge, and a past due balance. On

November 10, 2020, FPL mailed Mr. Davis a final notice requesting the past due balance by November 18, 2020, to avoid a service interruption.

Mr. Davis did not identify any statutes, rules, or orders that FPL violated in handling his account. His request for hearing also did not comply with the other requirements of the applicable rule: the actions that would constitute such a violation, or the specific relief requested, including any penalty sought. Mr. Davis framed his filing as a request for hearing. As has been previously explained to him, however, until such time as the Commission makes a decision that affects his substantial interests (such as deciding on a formal complaint), no opportunity to request an administrative hearing is available to him.

Pursuant to Rule 25-22.036(2), F.A.C., a complaint is dismissed with prejudice if no cause of action is stated and an amended pleading will not cure the deficiency. Staff believes Mr. Davis should be afforded the opportunity to amend his filing to comply with the requirements of Rule 25-22.036, F.A.C. Staff therefore recommends that the Commission deny without prejudice Mr. Davis's request for hearing.

Issue 2: 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. (Osborn, Crawford)

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.