

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: January 21, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Tan, Lherisson)
Division of Economics (Thompson) *UTSH*
Division of Engineering (P. Buys, Graves) *PEG*

RE: Docket No. 140153-WS – Complaint No. 1139452W by Ahman Atshan against Pluris Wedgefield, Inc. for alleged overbilling.

AGENDA: 02/02/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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COMMISSION CLERK

Case Background

After initially pursuing an informal complaint,¹ on August 14, 2014, Ahman Atshan, filed a formal complaint against Pluris Wedgefield, Inc. (Utility), a Class B utility providing service to approximately 1,598 water and 1,567 wastewater customers in Orange County. While Mr. Atshan filed the complaint, the account for the residence at 2813 Village Terrace, Orlando, Florida, was actually in the name of Rabeha Beatneh, his wife.² In the complaint, the Customer asserts that he was overcharged for services for the months of August and September, 2013, as the result of a defective water meter. On August 26, 2014, the Utility emailed Commission staff its work orders documenting various meter readings for the Customer's meter. On September 15, 2014, the Utility filed the same information with the Commission's Clerk. On December 29,

¹ Request No. 1139452 W.

² For purposes of this recommendation "Customer" refers to Mr. Atshan and /or the service account at his residence.

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2015, the Utility advised the Commission that the Customer has sold his property in the Utility's service area, is no longer a customer of the Utility and that after applying the \$40 deposit, the Customer left owing the Utility \$1,218.64. The Commission has jurisdiction pursuant to Chapter 367, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant the relief requested by the Customer in his complaint?

Recommendation: No. The Customer was not overbilled, staff has identified no rule violation, and to the extent that the Customer may be requesting the award of damages, the Commission has no jurisdiction to make such an award. (Tan, Lherisson, P. Buys)

Staff Analysis: The Customer asserts that the Utility:

- Violated Rule 25-30.263, Florida Administrative Code (F.A.C.), which requires water meters be tested on at least three different rates of flow.
- Violated Rule 25-30.264, F.A.C., by failing to perform testing and calibration of his meter as called for in the Rule.
- Did not test his meter until he requested a meter test on October 17, 2013.

As a remedy, the Customer asks that the Commission: (1) remove the overcharges for the months of August and September 2013, totaling one thousand dollars; and (2) impose a financial penalty upon the Utility based on the magnitude of the violations and the Customer's loss of a \$4,000 lawn investment related to his turning off sprinklers "trying to gauge the water consumption at my residence to a minimum."

The informal complaint reflects that the Customer's meter was field tested and the Utility has determined that the Customer had been billed correctly. The Customer was present during this test. However, because the Customer was not satisfied with this test result, the meter was subsequently removed and sent to a third party³ for additional testing. Third party testing indicated that the meter was registering slowly; therefore, failed the test.⁴ This means that the Customer was being billed for less water than he was receiving. As it relates to Rule 25-30.263, F.A.C.,⁵ the Utility has provided documentation⁶ that it followed appropriate testing and calibration protocols for such testing including testing the meter at three different rates of flow.

The Customer also complained that the Utility violated Rule 25-30.264, F.A.C.,⁷ by not testing the meter every 60 days and not calibrating the meter. The Customer asserts that the Utility did not test the meter until he requested the testing. This Rule sets forth the method of how a utility is to maintain a meter that is used for testing. The Customer's meter is not a testing meter but a regular residential meter. Therefore, Rule 25-30.264, F.A.C., is not applicable to the Customer's meter and is not dispositive of this matter. Rule 25-30.265, F.A.C.,⁸ describes the maximum interval between tests on different meters and only requires a sample of the meters to be tested.

³ MARS Company, Inc.

⁴ See Document No. 05154-14: The documentation indicated that the meter was tested on an American Water Works Association approved test bench.

⁵ Meter Test Methods.

⁶ See Document No. 05154-14

⁷ Meter Testing Equipment.

⁸ Periodic Meter Tests.

For a typical residential 5/8 inch meter, such as the Customer's meter, the testing interval is ten years.

Based on the above, staff recommends that there is no indication the Customer was overbilled for the water he received; therefore, removal of \$1,000 in "overcharges" is not warranted. Similarly, because no violation of rule, statute, or order has been identified, staff recommends that there is no basis for the imposition of the requested "financial penalty." Finally, because the basis for the Customer's request for a financial penalty is partially based upon an alleged \$4,000 loss of "lawn investment" when he turned off his sprinklers, it is possible that the financial penalty is intended as a request for damages. The Commission lacks jurisdiction to award damages.⁹ If the Customer believes that he is entitled to monetary compensation related to damage to his lawn, the venue for pursuing such a remedy is in the appropriate court. Thus, staff recommends that the Commission deny the relief requested by the Customer.

⁹ See Order No. PSC-99-1054-FOF-EI, issued May 24, 1999, in Docket No. 981923-EI, *In re: Complaint and petition of John Charles Heekin against Florida Power & Light Company*, p.6 (finding that the Commission lacked subject matter jurisdiction to award monetary damages for alleged property damage to a customer's gate, and dismissing the complaint because the requested relief could not be granted).

Issue 2: Should this docket be closed?

Recommendation: Yes, with the resolution of Issue 1, staff recommends that this docket be closed. If there is no timely protest by a substantially affected party, the docket should be closed. (Tan)

Staff Analysis: With the resolution of Issue 1, staff recommends that this docket be closed. If there is no timely protest by a substantially affected party, the docket should be closed.