BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2001-249-E - ORDER NO. 2002-27

JANUARY 16, 2002

IN RE: Gary Weaver,	)	ORDER DENYING
	)	RELIEF AND RULING
Complainant,	)	ON MEMORANDUM
	)	AND PETITION
vs.	)	
	)	
Carolina Power & Light Company,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) for consideration of two documents filed and served by Mr. Gary Weaver, the complainant in this case. The first document is a Memorandum Objecting to Procedures and Objecting to Carolina Power & Light Company's (CP&L's) Motion to Dismiss. Second, Weaver has filed a Petition for Rehearing or Reconsideration of Commission Order No. 2001-1090. Pursuant to the following reasoning, we hereby clarify certain of our prior rulings, but deny the relief sought by Weaver in the two documents.

First, with regard to the Memorandum Objecting to Procedures and Objecting to CP&L's Motion to Dismiss, we would note that Weaver claims that he has been denied both procedural and substantive due process regarding the disposition of the Summary

Judgment and In Limine Motions. See Order No. 2001-1090. Weaver claims that he did not have an opportunity to participate in a full, fair, and impartial hearing before the Commission on these two motions. Weaver also claims that CP&L did have the opportunity to participate, and therefore CP&L received favored treatment to Weaver's disadvantage.

It must be stated that CP&L was not given any greater opportunity to participate in any proceeding regarding the above-mentioned Motions. No oral arguments were held regarding the Motion in Limine or the Motion for Partial Summary Judgment. CP&L was not given an opportunity to be heard on these subjects. The Motions were decided by this Commission solely on the written record before it. Therefore no advantage accrued to that Company.

Further, Commission Regulation 103-840(B) governs prefiled motions. The Commission has two options under this Regulation: (1) In its discretion, and after prior notice to all parties of record, the Commission may entertain oral argument and response on prefiled motions in advance of the hearing; or (2) Otherwise, such argument and response shall be made at the commencement of the hearing. In the present case, no party requested oral arguments on their motions. Next, pursuant to Regulation 103-803, "in any case where compliance with any of these rules and regulations produces unusual hardship or difficulty, the application of such rule or regulation may be waived by the Commission upon a finding of the Commission that such waiver is in the public interest." This Commission waived the provisions of Regulation 103-840(B), and decided the Motions on the record at the Commission meeting prior to the hearing on the merits of this case.

First, the Motions in question were very thorough and detailed in their written form, and provided a substantial amount of information for the Commission to review and rule upon during its Commission meeting. Thus, we found that with the wealth of information in the pleadings, an unusual hardship would be placed on the parties to require oral arguments when the pleadings were sufficient by themselves in outlining the positions of the two parties. Accordingly, we believed that it was in the public interest to rule on the written record, and we did so, waiving Regulation 103-840(B).

In addition, on page 18, paragraph 3, Weaver discusses his testimony at the merits hearing. We would hold that our other Commission Orders in this Docket discuss the merits of the case, and dispose of the case. Thus, we crave reference to those orders.

On page 18 of his Memorandum, Weaver asks for additional relief. In the first paragraph, Weaver asks that the verbal Motion to Dismiss be denied. This request is too late. Any objections must be stated during the hearing, and not after the evidence is closed. We would also note that Weaver has filed his Memorandum without permission of the Chairman. Commission Regulation 103-875 states that the presiding officer shall fix the time for filing and service of briefs. This rule allows all parties the opportunity to participate in filing any briefs after the conclusion of a case. No one requested permission to file briefs with the Commission after the hearing in this case, so Weaver's Memorandum is actually improper, although we are ruling on the various questions propounded by him.

We believe the same answer as stated above applies to the second paragraph under Section 1 in the Relief section of the Memorandum. In paragraphs 3 and 4 under

this Section, Weaver asks for reconsideration and an amendment to Order No. 2001-1090 to correct an alleged error in granting partial summary judgment. Weaver wants credit for area lighting to commence from March 4, 1999, not August 2000. On page 5, paragraph 9 of Weaver's Motion for Partial Summary Judgment, Weaver states that "on or about March 4, 1999, he called CP&L by telephone and inquired about the terms and conditions of the ALS agreement and informed CP&L through its telephone operator that the ALS security lights were malfunctioning and need repairs. Weaver also attaches a letter dated March 4, 1999 from CP&L allegedly in support of his allegation, however, the letter does not support the fact that Weaver complained about malfunctioning security lights on March 4, 1999. Accordingly, since there is no support in the record for modification of our August 2000 date, we must deny this request for reconsideration and amendment to Order No. 2001-1090. We believe that the evidence cited in Order No. 2001-1090 points to August 2000 as the proper date.

We now turn to Weaver's Petition for Rehearing or Reconsideration, dated December 14, 2001. In this document, Weaver seeks a definition of the Commission's legal authority for the position that we have no authority to determine negligence or whether the Unfair Trade Practices Act was violated. Additionally, Weaver wants to know what legal authority states that the Commission has no authority to award damages.

First, S.C. Code Ann. Section 58-3-140 (Supp. 2000) clearly outlines the powers of the Public Service Commission as to public utilities. Section (A) of this Code section states as follows: "The Public Service Commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to

fix just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, or observed and followed by every public utility in this State." Nowhere in Section 58-3-140 does it state that this Commission has the authority to award damages, find negligence, or issue a decision regarding a violation of the Unfair Trade Practices Act. Further, the South Carolina Supreme Court has held that this Commission possesses only the authority given by the Legislature. See South Carolina Cable Television v. Public Service Commission, et.al., 437 S.E. 2d 38, 40 (1993).

Second, we would note that Section 39-5-140 of the Unfair Trade Practices Act states that, "any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act, or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages." This Commission, however, is not empowered by the Unfair Trade Practices Act or any other law to award the damages contemplated by that Act.

Accordingly, because of the reasoning stated above, although we have clarified some of our previous rulings in this matter, we deny all relief sought by Weaver in both

his Memorandum and his Petition for Rehearing. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)