

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Mr. Arturo Taboada)	DOCKET NO. 900643-EI
against FLORIDA POWER & LIGHT COMPANY)	ORDER NO. 25681
regarding backbilling of estimated)	ISSUED: 2/3/92
usage of electricity)	
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

After Florida Power and Light Company (FPL) rendered a backbilling in the amount of \$5,070.51, Arturo Taboada filed a complaint with the Commission's Division of Consumer Affairs. An informal conference failed to resolve the dispute and the Commission approved Staff's Recommendation that the backbilling was proper. Mr. Taboada requested a Formal Proceeding and the matter was referred to the Division of Administrative Hearings. The hearing was held in Miami, Florida on April 16, 1991.

On July 22, 1991 the Hearing Officer submitted the Recommended Order to the Commission. The Recommended Order includes 14 specific findings of fact concerning the condition of the meter (tampered) and the propriety of FPL's backbilling (a reasonable estimate of the electricity used but not billed during the relevant period). The Hearing Officer concluded that FPL had complied with all applicable statutes, rules and tariff provisions in rendering the backbilling.

The Commission approved the Staff Recommendation that the Recommended Order be adopted as the Public Service Commission's Final Order. One of the Issues raised repeatedly by Mr. Taboada was FPL's failure to maintain custody of the meter. Mr. Taboada contended that FPL's failure to produce the actual meter precluded the company from backbilling him. We believe the Hearing Officer correctly ruled that FPL had presented competent substantial evidence (testimonial and documentary) supporting the finding that the meter in question had been tampered with and was only recording 33.1% of the electricity consumed. Based on the lack of record evidence presented by FPL in this case concerning its meter handling procedure, staff recommended and the Commission ordered FPL to "develop procedures to assure that tampered meters are

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are preserved as evidence until the disposition of any consumer complaint or criminal prosecution."

Both parties have requested reconsideration of the Commission's Final Order (No. 25330). Mr. Taboada has made the same previously rejected arguments concerning the evidence presented by FPL to prove the condition of the meter. FPL's Motion for Reconsideration was withdrawn on January 9, 1992.

We find that Petitioner's motion fails to demonstrate a proper basis for reconsideration in that it fails to point out any matter of fact or law which the Commission failed to consider or overlooked and failed to demonstrate a mistake or misapprehension that if viewed correctly would have led the Commission to reach a different result. Therefore, the motion must be denied.

In the area of consumer complaints regarding the rates and charges of an investor owned utility, the legislature has given this Commission the authority to resolve them. The proper exercise of this authority requires that due regard be given the physical evidence central to those complaints. Therefore, a docket should be opened to evaluate FPL's meter retention/disposal policies.

Based on the foregoing, it is

ORDERED that the Motion for Reconsideration filed by Arturo Taboada is DENIED. It is further

ORDERED that a docket shall be opened to evaluate FPL's meter retention/disposal policies.

By ORDER of the Florida Public Service Commission, this 3rd day of FEBRUARY, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.