BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Jory Bricker Against Florida Power Corporation regarding high electric bills.	) DOCKET NO. 930599-EI) ORDER NO. PSC-94-0306-FOF-EI) ISSUED: 03/17/94

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER ADOPTING HEARING OFFICER'S RECOMMENDED ORDER

BY THE COMMISSION:

On March 1, 1993, Ms. Jory Bricker filed a complaint with our Division of Consumer Affairs against Florida Power Corporation (FPC) for unduly high electric bills. When an informal conference failed to resolve the dispute, the complaint was docketed, and subsequently we approved staff's recommendation that FPC had properly billed Ms. Bricker for electricity consumed at her home. Ms. Bricker requested a formal hearing on the complaint, and the matter was referred to the Division of Administrative Hearings. A hearing was held in Largo, Florida on December 8, 1993.

On January 18, 1994, the Hearing Officer submitted a Recommended Order on Ms. Bricker's complaint to the Commission. The Recommended Order includes specific findings of fact and conclusions of law that support the Hearing Officer's decision. No party filed exceptions to the Recommended Order. The Recommended Order is attached to this Order as "Attachment A".

The Hearing Officer recommended that the evidence supported the conclusion that Florida Power Corporation had complied with all relevant statutes, rules, orders, and utility tariffs and procedures in the provision of electric service to Ms. Bricker's home. The Hearing Officer also concluded that FPC's outstanding bill for $1,157.24 for unpaid electric services was valid and FPC acted properly in disconnecting the service until the outstanding balance was paid. The Hearing Officer recommended that we enter a final order dismissing Ms. Bricker's complaint.

We accept the recommendation of the Hearing Officer. There is ample evidence in the record on which the recommendation is based. We therefore adopt it as our Final Order.

Based on the foregoing, it is

ORDERED by he Florida Public Service Commission that the Recommended Order issued by the Hearing Officer of the Florida Division of Administrative Hearings on January 18, 1994, is hereby adopted as the Final Order of the Florida Public Service Commission in this docket. It is further

ORDERED that the Hearing Officer's Findings of Fact are accepted in full and adopted as this agency's Finding's of Fact. It is further

ORDERED that the Hearing Officer's Conclusions of Law are accepted and adopted as this agency's Conclusions of Law. It is further

ORDERED that the Complaint of the Petitioner Jory Bricker, against the Respondent, Florida Power Corporation, is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 17TH day of MARCH, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
MAP:bmi

by: Kay Flynn
Chief, Bureau of Records

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JORY BRICKER, Petitioner, vs. FLORIDA POWER CORPORATION, Respondent.	)	CASE NO. 93-5713

RECOMMENDED ORDER

On December 8, 1993, a formal administrative hearing was held in this case in Largo, Florida, before J. Lawrence Johnston, Hearing Officer, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ted E. Karatinos, Esquire
James D. Jackman, P.A.
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Bradenton, Florida 34207

For Respondent: Rodney E. Gaddy, Esquire
Corporate Counsel
Florida Power Corporation
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STATEMENT OF THE ISSUE

The issue in this case is validity of the complaint of the Petitioner, Jory Bricker, that the Florida Power Corporation charges for the provision of electric service to the Petitioner, Jory Bricker, were not consistent with the utility's tariffs and procedures, with applicable state laws, and with Florida Public Service Commission rules, regulations, and orders.

PRELIMINARY STATEMENT

On or about March 1, 1993, the Petitioner, Jory Bricker, filed with the Florida Public Service Commission (PSC) Division

of Consumer Affairs a complaint against the Respondent, Florida Power Corporation (FPC), alleging that FPC has been charging her unduly high electric bills. As done on previous complaints, FPC investigated. On or about March 22, 1993, FPC responded to the complaint by stating essentially that the electric bills were correct and that they were high because of high electric use by various appliances in the home and various inefficiencies inside the home. FPC alleged essentially that the Petitioner did not want to, or could not, pay the bills and that the complaint was part of the Petitioner's strategy for negotiating a reduction in the amount owed and more time to pay. On or about March 26, 1993, the PSC staff advised the Petitioner in writing that her electric bills appeared to be correct. After further investigation, the PSC staff against advised the Petitioner in writing on or about April 23, 1993, that her electric bills appeared to be correct and that electric service could be terminated if the bills were not paid.

On or about April 30, 1993, the Petitioner faxed a letter to the PSC disputing the staff findings and determinations. The PSC treated the letter as a request for informal conference on the dispute. The PSC also assigned a staff member to determine what portion of the outstanding electric bills was actually in dispute. On or about May 12, 1993, the PSC sent the Petitioner a letter advising her that an interim determination had been made under F.A.C. Rule 25-22.032(10) that $619.12 of the outstanding bills was undisputed and should be paid by May 27, 1993, to avoid discontinuation of electric service. The Petitioner did not make any payment, and electric service was terminated.

On or about June 2, 1993, FPC learned that an unauthorized connection of electric service had been made and that power had been restored to the Petitioner's home without FPC's authority or permission. FPC again terminated electric service.

An informal conference was held in Largo, Florida, on or about June 16, 1993, but no agreement was reached, and the PSC docketed the Petitioner's complaint.

On or about August 11, 1993, the PSC entered a Notice of Proposed Agency Action Order Denying Complaint. It gave the Petitioner until September 1, 1993, in which to request formal administrative proceedings. On or about September 3, 1993, the Petitioner filed a Notice of Appeal requesting formal administrative proceedings. On or about September 28, 1993, the PSC decided to not to dismiss the request for formal administrative proceedings as being untimely but rather to refer the matter to the Division of Administrative Hearings (DOAH). DOAH received the referral on October 7, 1993. By Notice of Hearing issued on November 8, 1993, final hearing was scheduled for December 8, 1993, in Largo, Florida.

At the final hearing, the Petitioner testified and called one other witness. The Petitioner also had Petitioner's Exhibits 1, 2, 4 through 6, 9 and 10 admitted in evidence. FPC called three witnesses and had Respondent's Exhibit 1 admitted in evidence.

Ruling was reserved on FPC's objections to Petitioner's Exhibits 3, 7 and 8. FPC's objections are now sustained. All of these exhibits contain uncorroborated hearsay; none are properly

authenticated, and the expert qualifications of those giving the opinions contained in them were not demonstrated.

FPC ordered the preparation of a transcript of the final hearing. The transcript was filed on December 20, 1993. Explicit rulings on the proposed findings of fact contained in the parties' proposed recommended orders may be found in the attached Appendix to Recommended Order, Case No. 93-5713.

FINDINGS OF FACT

1. The Petitioner, Jory Bricker, began using the electric utility services of the Respondent, Florida Power Corporation (FPC), at her home at 2952 Webley Drive, Largo, Florida, in approximately March, 1988.

2. In approximately June, 1989, she had a hot tub installed. Some wiring was required to be done when the hot tub was installed, and the hot tub wiring was not done properly. It could not be determined from the evidence who did the wiring.

3. From the time of its installation, the hot tub has been used daily. Initially, it was not on a timer, and it did not have a thermal cover. It immediately began using a great deal of additional electricity, and the Petitioner's electric bills went up accordingly.

4. In approximately August, 1989, the Petitioner's appliances began to burn out. It was determined that a frayed FPC service drop line was the cause of the damage to the appliances. FPC repaired the drop line and reached a settlement with the Petitioner for the damages to the appliances. The Petitioner also made and was paid an insurance claim for the damages to the appliances.

5. The Petitioner bought used appliances to replace those that had burned out. When they were installed, they were not grounded properly, causing the Petitioner and her housemate, John Wall, to receive electric shocks when they used the appliances. The Petitioner hired an electrician, who advised her of the cause of the shocks and properly grounded the appliances within the home. It is found that, once the appliances were properly grounded, the Petitioner and her housemate ceased to receive electric shocks when they used the appliances, contrary to their testimony at the hearing.

6. In November, 1989, the Petitioner complained to the Florida Public Service Commission (PSC) regarding the amount of her electric bills. In response to the complaint, FPC conducted an inspection and recommended several energy conservation measures. The PSC notified the Petitioner that it considered the complaint to have been resolved.

7. In September, 1990, the Petitioner made another high bill complaint to the PSC. When FPC investigated, it found that none of the energy conservation measures recommended ten months ago were being followed. Energy conservation measures were recommended again, and FPC extended the time for payment of the outstanding bills. The PSC notified the Petitioner that it also considered this complaint to have been resolved.

8. In December, 1990, the Petitioner made another high bill complaint to the PSC. FPC verified that all FPC facilities were correct and met specifications. FPC again made energy conservation recommendations. FPC also placed a meter on the hot

tub and refrigerator to ascertain how much electricity they were using. It was determined that the hot tub was using 26 kilowatt hours a day and that the refrigerator was using 5 kilowatt hours a day. The hot tub in particular was using more electricity than it should have. The two appliances contributed substantially to the Petitioner's high use of electricity. FPC recommended that the Petitioner hire an electrician to inspect for electrical problems.

9. The Petitioner made no further complaints until April, 1992, although the electricity bills remained high (in some months exceeding the levels about which the Petitioner previously complained.) In April, 1992, the Petitioner asked FPC to conduct another energy audit. FPC complied with the request and again made energy conservation recommendations.

10. In September, 1992, the Petitioner filed another high bill complaint with the PSC. FPC responded to the complaint and ultimately conducted an on-site test of the Petitioner's meter, which proved to be accurate.

11. In November, 1992, the Petitioner mentioned to FPC for the first time that she was receiving electric shocks when she used her appliances. Once again, FPC advised her to hire an electrician. It is not clear whether the Petitioner was referring to past occurrences, whether she was intentionally trying to mislead FPC into thinking she was still receiving electric shocks, or whether the electric shocks were starting again.

12. In March, 1993, the Petitioner hired an electrician, who inspected the residence for electrical problems and replaced

a ground clamp on the Petitioner's side of the meter. There was no evidence that can support a finding as to when the ground clamp came loose.

13. A loose ground clamp could increase electric bills, but only slightly. The Petitioner's bills for March through June, 1993, show a reduction, but not substantially compared with the bills for those months in prior years, and not enough to demonstrate substantial reduction from the repair of the ground clamp.

14. As of March 12, 1993, there were still several electrical problems in the residence that could result in voltage drops, including: "flying splices," double lugging on circuit breakers, loose wiring, reversed polarity in some outlets and improper wiring of the hot tub.

15. FPC's approved tariffs and procedures include its Requirements for Electric Service and Meter Installations, 1991 Edition (the FPC Requirements.) Section I of the FPC Requirements provides in pertinent part:

> Except for the installation and maintenance of its own property, Florida Power Corporation does not install or repair wiring on the customer's premises and, therefore, is not responsible for the voltage beyond the point of delivery and does not assume any responsibility for, or liability arising because of the condition of wires or apparatus on the premises of any customer beyond this point.

16. Section III A. of the FPC Requirements, setting out the general requirements for the provision of services, provides in pertinent part:

11. GROUNDING

a. All services shall have a grounded neutral.

b. Grounds shall be established as required by the "National Electrical Code" and local authority. All grounds should have a maximum resistance of 25 ohms when measured at the point of delivery and at the meter location.

(Emphasis added.)

17. Section IV A.of the FPC Requirements, setting out the general requirements for meter installations, provides in pertinent part:

> 8. The Company will perform routine maintenance on meter sockets and related facilities which the Company supplied to the Customer. If, however, it can reasonably be determined that the Customer has caused or is responsible for damage to the facilities, then the Customer will be solely responsible for all repairs.

(Emphasis added.)

18. Taken together, the FPC Requirements are clear that FPC's responsibity for facilities stops at the meter. FPC is not responsible for proper wiring, grounds and other related matters on the customer's side of the meter and inside the home.

19. FPC repaired the frayed service drop wire in August, 1989, and the matter was resolved. There was no evidence from which a finding could be made that any subsequent problems were caused by or, except for the Petitioner's incorrect installation of some of the replacement appliances, even related to the frayed service drop line. There was no evidence from which a finding could be made that FPC did not meet its responsibilities under

its Requirements for Electric Service and Meter Installations. Any subsequent electrical problems arose from faulty wiring or other problems on the customer's side of the meter.

20. The Petitioner owes FPC $1,157.24 for past due electric bills. On or about May 12, 1993, the PSC sent the Petitioner a letter advising her that an interim determination had been made under F.A.C. Rule 25-22.032(10) that $619.12 of the outstanding bills was undisputed and should be paid by May 27, 1993, to avoid discontinuation of electric service. The Petitioner did not make any payment, and electric service was terminated.

21. After FPC discontinued service, the Petitioner's housemate reconnected the electricity without FPC's authority or permission. When FPC learned that an unauthorized connection of electric service had been made and that power had been restored to the Petitioner's home without FPC's authority or permission, FPC again terminated electric service.

CONCLUSIONS OF LAW

22. Under Section 366.04(1), Fla. Stat. (1993), the Florida Public Service Commission (PSC) has jurisdiction to regulate the service provided by public utilities in the state.

23. F.A.C. Rule 25-22.032(1) authorizes a consumer to file a complaint with the PSC's Division of Consumer Affairs when the consumer has an unresolved dispute with a regulated utility regarding the service provided to the consumer. In response to such a complaint, the utility is required to "explain the utility's actions in the disputed matter and the extent to which those actions were consistent with the utility's tariffs and

procedures, applicable state laws, and Commission rules, regulations, and orders."

24. Under F.A.C. Rule 25-22.032(2) and (3), a PSC staff member is required to investigate the matter and "propose a resolution of the complaint based on his findings, applicable state laws, the utility's tariffs, and Commission rules, regulations, and orders."

25. F.A.C. Rule 25-22.032(8) provides that, if the dispute resolution mechanisms of the preceding sections of the rule are not successful, the PSC acts on the staff recommendation and either issues a notice of proposed agency action or sets the matter for hearing pursuant to Section 120.57, Fla. Stat. (1993).

26. F.A.C. Rule 25-6.034 provides:

> (1) The facilities of the utility shall be constructed, installed, maintained and operated in accordance with generally accepted engineering practices to assure, as far as is reasonably possible, continuity of service and uniformity in the quality of service furnished.
> (2) The Commission has reviewed the American National Standard Code for Electricity Metering, 6th edition, ANSI C-12, 1975, and the American National Standard Requirements, Terminology and Test Code for Instrument Transformers, ANSI 57.13, and has found them to contain reasonable standards of good practice. A utility that is in compliance with the applicable provisions of these publications, and any variations approved by the Commission, shall be deemed by the Commission to have facilities constructed and installed in accordance with generally accepted engineering practices.

(Emphasis added.) There was no evidence from which a finding could be made that FPC violated F.A.C. Rule 25-6.034.

27. F.A.C. Rule 25-6.040 provides:

> (1) Unless otherwise specified by the Commission, each utility shall effectively ground the neutrals of all its multigrounded distribution circuits so as to render them reasonably safe to person and property. Conformance with the applicable provisions in the publications listed in Rule 25-6.034(2) shall be deemed by the Commission that the system is grounded so as to be reasonably safe to person and property.
> (2) Each utility shall establish a program of inspection to insure that its artificial grounds are in good mechanical condition.

(Emphasis added.) There was no evidence from which a finding could be made that FPC violated F.A.C. Rule 25-6.040.

28. F.A.C. Rule 25-22.032(10) provides:

> During the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill. However, the utility may require the customer to pay that part of a bill which is not in dispute. If the parties cannot agree as to the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the utility may discontinue the customer's service pursuant to Commission rules.

29. The Petitioner contends that the interim determination of the undisputed amount was incorrect for two reasons: first, it incorrectly assumed that the Petitioner was not disputing bills incurred before July, 1992; and, second, it was based on an incorrect assumption for the September, 1989, bill. On those grounds, the Petitioner contends that she has been wronged by the discontinuation of electrical service by FPC for failure to pay the undisputed amount.

30. F.A.C. Rule 25-22.032(10) is reasonably clear that, absent the utility's intentional misrepresentations or fraud, a utility should be entitled to rely on the staff member's interim determination of the undisputed amount and should not be subject to liability for acting in accordance with the interim determination, as FPC did in this case. There was no evidence of intentional representations or fraud on the part of FPC.

31. At worst, the evidence proved that the September, 1989, bill may have been in error. (The proof was that there were two versions of the September, 1989, bill. It was not clear which one was correct.) But the Petitioner did not prove that subsequent bills did not correct any error that may have occurred. Besides, since all bills before July, 1992, were presumed undisputed for purposes of the interim determination, any error in the September, 1989, bill had no impact on the interim determination. Finally, the July, 1992, cut-off was reasonable. All high bill complaints prior to April, 1992, appeared to have been resolved, and a review of the bills for March, April, May and June, 1992, reflect that they were not particularly high.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Florida Public Service Commission enter a final order dismissing the complaint of the Petitioner, Jory Bricker, against the Respondent, Florida Power Corporation, and upholding the validity of FPC's outstanding bill in the amount of $1,157.24 for unpaid electric services.

RECOMMENDED this 13th day of January, 1994, in Tallahassee, Florida.

J. LAWRENCE JOHNSTON
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative
Hearings this 13th day of
January, 1994.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 93-5713

To comply with the requirements of Section 120.59(2), Fla. Stat. (1991), the following rulings are made on the parties' proposed findings of fact:

Petitioner's Proposed Findings of Fact.

1. Accepted and incorporated.

2. Rejected as not proven that the settlement with FPC was only for a portion of the damages. It also does not account for the insurance claim that the Petitioner made and was paid. Otherwise, accepted and incorporated.

3. First sentence, rejected as not proven. The rest, accepted and implicitly incorporated.

4. Rejected in part as not proven and as contrary to facts found (in that some wiring was necessary to install the hot tub.) Otherwise, accepted and incorporated.

5. First sentence, accepted and incorporated. Second sentence, rejected as as not proven and as contrary to facts found. Third sentence, accepted and incorporated, but there was no evidence from which it can be determined when the ground clamp came loose.

6. "Full use of the hot tub" rejected as not proven. Otherwise, accepted but not necessary. Comparison of the April and May, 1993, bills with the bills for those months in prior years does not indicated a substantial reduction in the bills for those months in 1993.

7. Rejected as not proven, and as contrary to facts found: (1) that the shocks were continuous through March, 1993; (2) that the Petitioner "perpetually complained" to FPC and the PSC about electric shocks; or (3) that the Petitioner was relying on FPC to discover and correct electrical problems on the Petitioner's side of the meter (instead, FPC repeatedly advised the Petitioner to hire an electrician for that purpose.) Otherwise, accepted to the extent not subordinate or unnecessary.

8. Rejected as not proven and as contrary to the facts found that the Petitioner implemented all of the FPC's energy saving recommendations. To the contrary, the evidence indicated that most were not followed consistently or for long.

9. First two sentences, accepted and incorporated. The rest, rejected as not proven and as contrary to the facts found.

10. First sentence, not proven. (It would seem to depend on where the open neutral was located.) Second sentence, rejected as not proven and contrary to facts found (assuming it refers to the frayed service drop line.)

11. Rejected as not proven and contrary to facts found.

12. Accepted and incorporated.

13. Accepted but unnecessary.

14. Rejected as not proven and contrary to facts found.

15. "Valid convictions" rejected as not proven and contrary to facts found. Otherwise, accepted and incorporated.

16. Rejected as not proven and as contrary to facts found. (It is not clear from the evidence that the Petitioner was receiving electric shocks up to March, 1993, and the evidence was that any increase in electricity usage from a loose ground clamp would not be significant.)

Respondent's Proposed Findings of Fact.

1. Accepted and incorporated.

2. Rejected as contrary to the greater weight of the evidence, and to facts found, that Wall wired the hot tub. Otherwise, accepted and incorporated.

3.-33. Accepted and incorporated to the extent not subordinate or unnecessary.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit to the Public Service Commission written exceptions to this Recommended Order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the Public Service Commission concerning its rules on the deadline for filing exceptions to this Recommended Order.

Recommended Order, Case No. 93-5713