

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Karen Chalk ) DOCKET NO. 921213-EI  
against Florida Power and Light ) ORDER NO. PSC-93-0212-FOF-EI  
Company regarding current ) ISSUED: 02/10/93  
diversion backbilling )  
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The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
THOMAS M. BEARD  
SUSAN F. CLARK  
JULIA J. JOHNSON  
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION  
ORDER MODIFYING BACKBILLING

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On April 4, 1992, Robert Shapiro, as attorney for Karen Chalk, filed a complaint against Florida Power & Light Company (FPL) with the Commission's Division of Consumer Affairs. The complaint concerned a backbill Ms. Chalk received from FPL for current diversion. Shapiro stated his client had not tampered with the meter and FPL's negligence caused the backbilling.

In a report dated April 13, 1992, FPL advised staff that on January 7, 1992, a meter reader at the Chalk residence observed that the meter's disk was not turning and appeared to have been lowered. On January 14, 1992, a meterman inspected the meter and removed it for testing. A new meter was set on that date. The old meter was found to have a glued inner seal, a lowered disk with drag marks on the bottom, tampered bearings, and scratches on the register.

Based on its investigation, staff advised Mr. Shapiro on May 11, 1992 that the backbilling appeared to be appropriate.

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FPC-RECORDS/REPORTING

On May 13, 1992, Mr. Shapiro wrote to the Commission requesting an informal conference. The conference was scheduled for July 31, 1992. Mr. Shapiro wrote on July 15, 1992 to advise the Commission that Ms. Chalk was seeking other counsel and asking for postponement of the conference. The conference was rescheduled for August 24, 1992, the day hurricane Andrew hit South Florida. The conference was eventually held, pursuant to Commission rules, on November 2, 1992 in the Commission's Miami office. At the conference, Ms. Chalk did not present any evidence, other than previously reviewed, that she did not benefit from the tampered meter condition. No settlement was reached.

On November 25, 1992, the customer submitted a post conference filing of her water consumption history. She indicated that a leak occurred causing her hot water heater to consume more electricity than normal during the time period in which the rebilling was calculated. We do not believe the water bills provided support the customer's contention.

We find that the electric meter was not registering consumption accurately. Rule 25-6.052, Florida Administrative Code, requires that meters register at an average accuracy between 98% and 102%. On January 22, 1992, Ms. Chalk's meter was tested and found to be registering at 0% on a light load and 29.20% on a full load.

FPL meter tests are conducted with 30 amperes applied to the full load and 3 amperes applied to the light load. The customer's load apparently exceeded these amperages, causing the meter to register a higher percentage of usage than when tested, but still only recording a portion of the usage each month.

Rule 25-6.104, Florida Administrative Code, provides that "In the event of unauthorized or fraudulent use, or meter tampering, the utility may bill the customer on a reasonable estimate of the energy used." FPL treated this diversion as an inherited condition and rebilled Ms. Chalk's account from January of 1987 (the earliest month for which detailed records are available) to January of 1992, when the new meter was set.

Karen Chalk has been the customer of record at this address since July of 1986. Ms. Chalk indicates that the residence in question is approximately twenty five years old with two bedrooms and a garage converted to a master bedroom. It does not have a pool. The kWh consumption pattern recorded prior to November of 1990 is consistent with that expected for an older three bedroom house in South Florida without a swimming pool. During the 46 months from January of 1987 through October of 1990, kWh consumption averaged 1455 per month, with a high of 2269 and a low of 718. Consumption dropped sharply with the November, 1990 bill,

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to 342 kWh. From November of 1990 through the January 3, 1992 bill monthly consumption averaged 911 kWh, with a high of 1343 kWh and a low of 305 kWh. This is lower than typical for this size residence.

It appears that the meter was tampered with shortly after the October 1990 bill was rendered. Accordingly, we find that Ms. Chalk should be rebilled from that point. Since the tampering occurred while she was the customer of record, she should also be responsible for the current diversion investigation charges of \$210.81.

FPL calculated the amount of kilowatt hours Ms. Chalk "should have" consumed, with an accurate meter, by using the average percentage of usage method. After a new meter was installed, the electricity the customer used in the next 20 days was measured. Based on the amount of electricity consumed in those 20 days, an average daily consumption of 63 kWh per day was calculated. The 63 kWh's per day was then multiplied by the number of days in the month to yield a monthly consumption of 1,890 kWhs. A weighting factor is applied to the monthly consumption to yield the average annual consumption for Ms. Chalk. The weighting factor is different for each month because the percent of annual consumption varies from month to month.

Subtracted from this amount is the amount Ms. Chalk actually paid to FPL in the corresponding months. Both of the bills contain all applicable charges, i.e. gross receipts tax, franchise tax, base rates and fuel. The difference is the net amount owed to the utility for unmetered electricity. A subtraction of \$2.19 is made for interest on the tax savings that occurred over the relevant time period. Finally, consistent with rule 25-6.105(j), Florida Administrative Code, \$210.81 is added to recover the investigative charges associated with the case. The total amount due is \$2,237.83.

Rule 25-6.059 (4), Florida Administrative Code grants the customer the right to have her meter tested by an independent test facility at her expense. In response to a letter from Ms. Chalk's attorney, D. F. Thomas of FPL's revenue protection department advised that the closest independent facility is in Charlotte, North Carolina and the cost to Ms. Chalk for testing would be \$1,399.45. FPL included the \$699.20 labor for an FPL employee to personally deliver the meter to the test facility in North Carolina; \$580.00 airfare for the employee; and \$98.40 for overnight lodging, meals and transportation to and from the airport. The cost for the test itself is only \$21.85.

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We believe that shipment by common carrier to and from a meter test facility is an adequate "chain of custody" for evidentiary purposes in this quasi-judicial consumer complaint proceeding.

Therefore, we find that only the meter test charge and round trip common carrier freight charges are appropriate expenses for a customer who wishes to have his meter tested by an independent facility.

Based on the foregoing, it is

ORDERED that the backbilling rendered to Karen Chalk by Florida Power and Light Company is reduced to a total of \$2,237.83, including investigative charges. It is further

ORDERED that the meter test charge and round trip common carrier freight charges are the only appropriate expenses to be charged a customer who wishes to have his meter tested by an independent facility. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission this 10th day of February, 1993.



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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 3, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.