

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Francisco ) DOCKET NO. 961179-EI  
Mesa against Florida Power & ) ORDER NO. PSC-96-1333-FOF-EI  
Light Company regarding alleged ) ISSUED: November 5, 1996  
unjustified charges for current )  
diversion. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING UTILITY'S BACKBILLING OF CUSTOMER  
FOR ELECTRIC USAGE

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

On April 16, 1996, Mr. Francisco Mesa filed a complaint with the Florida Public Service Commission's Division of Consumer Affairs against Florida Power & Light Company (FPL). He claimed FPL had alleged meter tampering occurred at his service address, 7863 SW 5th Street, Miami, Florida 33144, and had backbilled him for the period June, 1992 through March 19, 1996. In accordance with Rule 25-6.042, Florida Administrative Code, on April 22, 1996, FPL submitted its investigative report in response to the consumer complaint. FPL reported the following sequence of events.

A new factory-direct meter No. 5C20065 was installed at 7863 SW 5th Street, Miami, Florida 33144 on May 1, 1992. Service at this same location was established in the name of Francisco Mesa on May 6, 1992. On July 31, 1995, a FPL revenue protection

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investigator reported dial tampering on Meter 5C20065. FPL initiated meter check readings.

The regular monthly meter reading for the period June 19th through July 19, 1995, showed 37591 kilowatt hours (kWh). On July 31, 1995, a check reading showed 38687 kWh registered on the meter. A total of 1,096 kWh were used in the 12 day period between July 19th and July 31, 1995. Projecting this amount over a 30 day period indicates a potential use of 2,740 kWh during the billing cycle.

On August 10, 1995, a second check reading was taken and the meter registered 39536 kWh. A total of 849 kWh were used in a ten day period between July 31st and August 10, 1995. Projecting this amount over a 30 day period indicates a potential use of 2,547 kWh during the billing cycle.

On August 17, 1995, the regular monthly meter reading for the July 19th through August 17, 1995, billing period showed **38627** kWh registered. This is the first documented **regression** reading; the meter recorded 909 kWh hours less than the August 10th check reading of 39536 kWh and 60 kWh less than the July 31, 1995 check reading of 38687 kWh. FPL billed on the basis of the actual meter readings.

On August 18, 1995, another check reading was taken. The meter registered 38716 kWh, which is a one day consumption of 89 kilowatt hours. This one day usage projected over a month would be 2670 kWh.

On September 18, 1995, the regular monthly reading for the August 17th through September 18, 1995, billing period was performed. The meter registered 39575 kWh. Again, FPL billed only for the actual meter reading. The 948 kWh billed is 1722 kWh less than the projected estimate of 2670 kWh usage based on the August 18th check reading.

On October 17, 1995, for the September 18th through October 17, 1995, billing period the meter registered 40451 kWh; 876 kWh were billed. On November 16, 1995, the regular monthly reading for the October 17th through November 16, 1995, billing period was 41150 kWh; 699 kWh were billed.

On December 11, 1995, another check reading of the meter was taken. It registered 42842 kWh. The customer used 1692 kWh in 25 days. This 25 day usage projected over one month would total 2030 KWH.

On December 18, 1995, the regular monthly reading for the November 16th through December 18, 1995, billing period. The meter showed 41866 kWh. This was another **regression** reading, the meter read 976 kWh less than **42842 kWh** registered at the time of the December 11, 1995, check reading. FPL billed only for the kilowatt hours shown on the meter.

On February 19, 1996, the regular monthly reading for January 19th through February 19, 1996, billing period was 43528 kWh. On February 29, 1996, FPL removed meter number 5C20065 and replaced it with meter number 5C69682. Meter No. 5C20065 when removed registered 44329 kWh which indicates a 801 kWh usage over a ten day period. FPL projected this out to a 2403 kWh usage for the month.

At the time the meter number 5C20065 was removed, FPL's revenue protection meterman documented a broken inner seal and dial tampering. On March 12, 1996, meter number 5C20065 was tested. Confirming documentation from the testing entity also reflects that the inner seal was missing and there were smudges on the meter register.

Examination of the meter indicated that the calibration of the meter was not affected. The meter tested within PSC tolerance. Test results indicated that the meter registered 100.16% under a full load and 99.70% under a light load. The weighted average is 100.07%. The calibration of a meter is not affected when the meter dials are manually turned back before the meter read date. As a result, the utility is unable to measure the actual percentage lost in order to rebill the account. Thus, on April 5, 1996, the account was rebilled using the seasonal average percentage of usage calculation.

Based upon the pattern of low monthly usage from the inception of the account, which sharply contrasted with check readings of kWh usage, FPL established that the meter serving this residence had been tampered with from inception of service. See Attachment A, Mesa KWH History Summary, attached hereto and made a part hereof. FPL recalculated the usage consumption from the first full month after inception of service. The total amount rebilled was \$6,601.98 including \$323.46 for investigative costs.

In accordance with Commission rules, and at the request of the complainant, an informal video teleconference was held on September 13, 1996, with the parties and a member of our staff in attendance. Mr. Mesa was accompanied by his representative, a paralegal, who translated and advised him. The parties failed to reach a settlement.

**DECISION**

At the October 29, 1996, Agenda Conference, Mr. Mesa was given an opportunity to speak via teleconferencing. Although a telephone hookup was initiated by our staff, he chose not to speak stating, among other things, that he could not wait until his docketed item was called. After the disconnect and the Commission's subsequent vote on the staff recommendation, Mr. Mesa called back requesting to be allowed to speak. The Chairman agreed to entertain a Motion for Reconsideration from the Commissioners, however, no such motion was forthcoming. The decision remains as voted earlier on in the Agenda Conference.

There is sufficient cause to believe that electricity was diverted to the residence of Francisco Mesa at 7863 SW 5th Street, Miami, Florida to allow FPL to backbill him for unmetered kilowatt hour consumption.

As noted previously in the background, FPL's Revenue Protection investigator reported dial tampering on meter number 5C20065, which served the residence of Francisco Mesa at 7863 SW 5th Street, Miami, Florida 33144, and documented this finding with check readings. During the course of the investigation, FPL was able to document more usage on given days than was later substantiated by the cumulative monthly readings. In addition, FPL actually documented two regressive meter readings:

- 1) A check reading taken on August 10, 1995, showed **39536** kWh. The regular monthly reading taken on August 17th showed **38627** kWh; and
- 2) A check reading taken on December 11, 1995, showed **42842** kWh; the regular monthly reading taken on December 18th showed **41866** kWh.

Since meter readings are additive in nature they should not regress. A regression in the meter reading indicates a physical tampering with the meter dial for the purpose of evading the responsibility of paying the full amount for service received. In the subject instance there is physical evidence as well to support a finding of meter tampering. Because the meter register is covered with a solid plastic canopy seal, there should be no marks of any kind on the face of the register. The subject meter had a missing inner seal and smudges on the meter register.

We find there is prima facie evidence that meter tampering occurred and electricity was manually diverted at 7863 SW 5th Street, Miami, Florida 33144. As the customer of record, Mr. Mesa is responsible for all electric consumption at this address.

Next we must determine if FPL's calculation of a backbilled amount of \$6,278.52 for unmetered electric usage, plus a \$323.46 investigative charge is reasonable. FPL arrived at the amount to be rebilled pursuant to Rule 25-6.104, Florida Administrative Code,

On March 12, meter number 5C20065 was tested. As noted earlier, the test results indicated that the meter registered 100.16% under full load and 99.70% under a light load, with a weighted average of 100.07%. Under normal circumstances this would be considered an accurately registering meter. The meter remained within proper calibration limits, but the dials were turned back manually. This manual manipulation of the meter dials occurred prior to the monthly read date to make it appear as though less electricity was used.

FPL provided projections based upon the check readings performed which show the more likely kWh usage by this customer during the period of the investigation. Further, FPL documented instances of regressed meter readings. Even though a certain amount of kWh usage was billed every month, the setting back of the meter dial register prevented FPL from receiving full payment for services given. During the entire period of the investigation, FPL billed the customer based on the actual meter readings not the projected greater kWh usage.

Due to the nature of this diversion, the rebilling of this account was based on a seasonal average percentage of usage chart. This chart is a useful tool for rebilling cases where the meter is registering within acceptable tolerance, but the dials have been manually manipulated. The chart takes into consideration seasonal variations in heating and cooling demands in the customer's area. We have previously determined that this methodology provides a reasonable estimation of electricity used but not paid for.

Attachment A indicates a very low level of kWh usage at 7863 SW 5th Street since the inception of service. It reflects the high probability that the meter had been manipulated over an extended period of time, particularly when you consider this house has central air, is not of recent vintage and is located in Miami.

FPL calculated its estimate based on the three projection figures that were documented during the course of the investigation: The projections for August 1995 - 2644 kWh (two

check readings projected and averaged); September 1995 - 2670 kWh; and March 1996 - 2,403 kWh, see case background. Each of the foregoing kWh amounts were increased by the seasonal percentage for that period. August was increased by 10.18% to a yearly usage total of 25,972 kWh; September by 10.25% to a yearly usage total of 26,049 kWh; and March 1996 by 5.99% to a yearly usage total of 40,117 kWh. The yearly usage figures were then averaged to obtain the billed per year amount of 30,713 kWh. This amount was projected over the 46 month period and the kWhs previously billed and paid were then deducted. The total rebilled kWh were 73,992 kWh. The rebilled dollar amount is \$6,278.52, plus the investigative costs of \$323.46, totalling \$6,601.98.

Based upon the foregoing, we find the amount rebilled by FPL to be reasonable and appropriate.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that there is sufficient cause to find that electricity was diverted to 7863 SW 5th Street, Miami, Florida and that Mr. Francisco Mesa is the customer of record responsible for the unmetered kilowatt hour consumption. It is further

ORDERED that it is appropriate for Florida Power & Light Company to backbill him for said unmetered electric usage. It is further

ORDERED that Florida Power & Light Company's calculation of the backbilled amount of \$6,278.52 for unmetered electric usage is reasonable. It is further

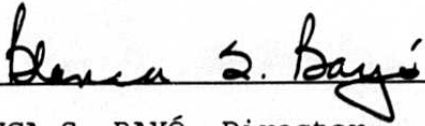
ORDERED that Florida Power & Light Company's itemized investigative costs of \$323.46 are reasonable. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 5th  
day of November, 1996.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 26, 1996.

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 substantially 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 wastewater 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.



Name : FRANCISCO MESA  
 Address : 7863 SW 5TH ST MIAMI  
 Bill Account : 85244-79519  
 OLBA : OLDBA:83-16-296-30984-1

Meter Set Date : 05/01/92  
 Meter Number : 5C20085  
 Customer Connect Date : 5/6/92  
 Case Number : 96C130800951

*5/6/92  
 b/e R/T  
 b/e/SUN  
 = 91-800000  
 hwy/le*

MONTH	1996	1995	1994	1993	1992	1991	1990
JAN	805 1/19/96	964 1/20/95	911 1/20/94	1021 1/19			
FEB	857 2/19/96	885 2/20/95	976 2/19/94	715 2/19			
MAR	1209 3/19	765 3/21/95	1281 3/22/94	655 3/19			
APR		842 4/19/95	1136 4/20/94	740 4/20/93			
MAY		880 5/18/95	1270 5/19/94	716 5/19/93	5/19 425		
JUN		1025 6/19/95	1371 6/20/94	1268 6/18/93	6/18 980		
JUL		1063 7/19/95	1439 7/20/94	1228 7/20/93	7/20 1200		
AUG		1036 8/17/95	646 8/18/94	1599 8/19/93	8/19 772		
SEP		948 9/18/95	1070 9/19/94	928 9/20/93	9/18 595		
OCT		876 10/17/95	1023 10/19/94	1082 10/19/93	10/19 490		
NOV		699 11/16/95	862 11/19/94	1055 11/19/93	11/18 410		
DEC		716 12/18/95	987 12/20/94	1086 12/20/93	12/17 671		
TOTAL	1662	10699	12972	9702			

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\* Current Description Documented and New Meter Installation

Prepared By \_\_\_\_\_