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-M-E-M-O-R-A-N-D-U-M-

DATE: March 23, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Jaeger)
Division of Economic Regulation (Kummer)
Division of Regulatory Compliance & Consumer Assistance (Plescow)

RE: Docket No. 060027-EI – Complaint No. 614984E of Mary Ann Valdes against Florida Power & Light Company regarding alleged current diversion/meter tampering rebilling for estimated usage of electricity.

AGENDA: 04/04/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060027.RCM.DOC

Case Background

On August 27, 2004, Mary Ann Valdes filed Complaint No. 614984E against Florida Power and Light Company (FPL or company). In that complaint, Ms. Valdes stated that FPL had disconnected her electric service in 2004 for current diversion. In order to have her service restored, FPL had required her to pay a large backbilling assessment plus investigation costs.

In its response to the complaint, FPL stated that as a result of an investigation that had been going on for two years, the company, the State Attorney's Office, and the Miami-Dade

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Police Department began taking action on approximately 120 customers, including Ms. Valdes, who had been under investigation for organized electricity theft.[1] Based on this investigation, and in accordance with Rule 25-6.105(5)(i), Florida Administrative Code (F.A.C.), FPL disconnected service to Ms. Valdes without notice on June 3, 2004, due to apparent meter tampering. The customer and FPL agreed that service would be restored upon the customer making an immediate payment of $7,282.00, with an additional payment of $2,426.70 to be made with her regular June 10, 2004 utility bill, for a total amount of $9,708.70. The initial $7,282.00 payment was made on June 4, 2004, and service was restored that same day. The customer also timely made the second payment of $2,426.70, and paid a reconnect charge of $17.66.

Ms. Valdes paid the above amounts under protest to have her service restored. In her complaint she objects to the length of the backbilling period and the estimate of usage. FPL offered to adjust the estimate of usage, but asserted that there was sufficient evidence to support backbilling to the billing period ended January 9, 1999. Ms. Valdes declined FPL's offer to adjust the estimate of usage, stating that the estimate was still too high.

Staff conducted an informal conference on August 24, 2005, but no settlement was reached. Also, no settlement was reached in subsequent negotiations.

This recommendation addresses whether there is sufficient evidence of meter tampering, whether the backbilling period is appropriate, whether the estimated amount of usage is reasonable, and whether the investigative costs are reasonable and appropriate. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes.

[1] FPL states that the State Attorney's Office determined the timing associated with various activities including billing and account disconnection for accounts that were part of the investigation. The accounts were kept separate from individual investigations handled by the company on a routine basis, and for this reason they were not entered into the company's automated system until several months of activity had taken place.

Discussion of Issues

Issue 1: Is there sufficient evidence that meter tampering occurred at the Valdes residence at 6101 SW 72d Avenue, Miami, Fl. 33143, to permit Florida Power and Light to backbill the Valdes account for unmetered kilowatt hours?

Recommendation: Yes. Prima facie evidence of meter tampering noted in Florida Power Light's reports, as well as during the informal conference, makes it reasonable to believe that meter tampering occurred. Because Ms. Valdes is the customer of record, she should be held responsible for a reasonable amount of backbilling. (Jaeger, Plescow, Kummer)

Staff Analysis: FPL's records reflect that on August 11, 2003, an inspection of the electric meter serving the residence at 6101 SW 72d Avenue, Miami, Florida, revealed a current diversion condition of dial tampering. This condition allowed the full use of electric service within the residence without the complete and accurate recording of kilowatt-hour (kWh) consumption. FPL's records show that there were several instances where check meter readings demonstrated that actual usage exceeded the amount registered on the meter for billing purposes. In particular, check meter readings of Ms. Valdes' kWh usage showed signs of meter tampering as follows:

- On the regular meter reading date of June 10, 2003, the reading was 82825, registering a billing usage of 1,588 kWhs for the billing cycle. On June 17, 2003, an FPL Revenue Protection investigator read the meter again, noting that 723 kWhs were used in that seven-day period, which FPL projected to amount to 3,090 kWhs of use in 30 days. A rigged gold seal #42499 was also reported.

- FPL performed a second check meter reading on June 26, 2003, which showed that there were 813 kWhs used in that nine-day period, which FPL projected to amount to 2,700 kWhs of use in 30 days. From June 26, 2003, through July 10, 2003, a fourteen-day period, only 89 kWhs were used, which FPL projected to amount to only 191 kWhs consumed in 30 days.

- On August 4, 2003, the investigator obtained a check meter reading of 87169, indicating 2,719 kWhs had been used in 25 days, which FPL projected to amount to 3,263 kWhs of use in 30 days. From August 4, 2003 through August 11, 2003, the meter actually reversed, from a reading of 87169 to a reading of 86430, and meter tampering in the form of dial tampering was observed.

Service was disconnected and meter 5C32805 was removed on June 3, 2004, without notice as permitted by Rule 25-6.105(5)(i), F.A.C. On June 4, 2004, FPL installed a new meter and reconnected Ms. Valdes' service. To eliminate the possibility of a malfunctioning meter, FPL tested meter 5C32805 on September 15, 2004, and it measured a Weighted Average Registration of 100.37%, which is within Commission-approved tolerances. The tester also noted a broken inner seal, off scale, dial tampering, broken base, smudges on register, and bent canopy ring, all of which supported the earlier finding of dial tampering.

Based upon the evidence provided, and although Ms. Valdes denies that there has been meter tampering, staff believes it is reasonable to find that meter tampering occurred at the Valdes residence. Ms. Valdes benefited from the tampering, whether she was aware of it or not, and should therefore be required to pay a reasonable estimate of the energy used but not originally billed, as provided for by Rule 25-6.104, F.A.C.

Issue 2: Is Florida Power and Light's backbilling period and estimate of usage for a total amount due of $9,243.01 for unmetered electric usage, and a $465.69 investigation charge reasonable and appropriate?

Recommendation: Based on historical usage data and the substantial drop in usage from 1998 to 1999, Florida Power and Light's backbilling period for bills from January 9, 1999 through May 11, 2004 should be considered reasonable and appropriate. However, Florida Power and Light's estimate of additional unmetered usage should be reduced from 103,379 kWhs to 74,203 kWhs. Based on this revision, the total additional charges should be $6,623.67 for estimated unmetered electric usage, plus the $465.69 for the investigative charge, for a total amount of $7,089.36. Because Ms. Valdes has paid $9,708.70 to have service restored, Florida Power and Light should be required to refund $2,619.34 to Ms. Valdes. (Jaeger, Plescow, Kummer)

Staff Analysis: Rule 25-6.104, Florida Administrative Code, provides that in the event of meter tampering, the utility may bill the customer on a reasonable estimate of the energy used. The estimate of the energy used is dependent on the backbilling period and the estimated average use during that period.

I. BACKBILLING PERIOD AND ESTIMATED ANNUAL AVERAGE USAGE

A. FPL's Position

1. Backbilling Period

Noting wide fluctuations in use and minimal usage in certain months, FPL argues that there is evidence that the tampering began as far back as 1997. However, FPL states that its policy is to only go back five years. FPL states that based on its investigation, and noting an annual drop in usage of approximately 12% (1,975 kWhs) from 1998 to 1999, it calculated that the meter tampering began at least as early as 1999. FPL's records show that for the first four months of 1999, the kWh usage was 985 for January, 759 for February, 632 for March, and 884 for April, for an average of only 815 kWhs per month for those four months. Based on check meter readings, discussed later in this recommendation, FPL calculates an annual average usage of 32,625 kWhs. Using seasonal average adjustments, FPL calculated that the uses in these months were less than half of what could be expected. Therefore, FPL recalculated all bills beginning with the billing period ending January 9, 1999, through the billing period ending May 11, 2004. FPL had originally billed $8,939.87 during this period.

2. Estimated Annual Average Usage

Based on the usage recorded in the month of November 2000, check meter readings obtained in August 2003, and adjustments of those readings for Seasonal Averages, FPL originally calculated an additional kWh usage of 103,379 for an additional amount due of $9,243.01. To this, FPL added investigative costs (addressed below) of $465.69, for a total additional amount due of $9,708.70. To have service restored, Ms. Valdes paid this amount in two installments. Thereafter, Ms. Valdes' attorney claimed that the November 1999[2] bill used in estimating actual usage may have been a true-up bill and not representative of the actual usage for that month. He also claimed that the September and October 1999 bills were very low estimates, and when the meter was actually read in November, the resulting bill for that month was much higher than it would normally have been.

FPL subsequently determined that the meter reading for November 2000 did consist of a true-up over three months, and, therefore, did overstate actual usage. Accordingly, FPL chose a different month, June 2003, a month in which it had actual check meter readings, to revise its estimate of annual average use. Taking the readings for the month of June 2003, and adjusting for seasonality, FPL calculated an annual average use of 32,655 kWhs. It then took the readings for the month of August 2003, and, again adjusting for seasonality, estimated an annual average usage of 32,595 kWhs. Averaging these two months, FPL calculated an annual average usage of 32,625 kWhs. FPL states that instead of an additional 103,379 of kWhs used, it now estimates only an additional amount of kWhs usage of 74,203. FPL originally estimated that this equated to an additional amount due of approximately \$7,243.01, a \$2,000 reduction from the amount in its original estimate and paid by Ms. Valdes. Based on this change, FPL originally estimated that a \$2,000 reduction was warranted, but states that it was reluctant to make such a refund until a total disposition of the complaint could be accomplished. Upon running the new kWhs of 74,203 through its computer, FPL states that the actual calculated number due without investigative costs is \$6,623.67. Adding in investigative costs of \$465.69, FPL calculates that Ms Valdes should have paid \$7,089.36 to have service restored. Because Ms. Valdes paid \$9,243.01, plus 465.69 for investigative costs, for a total of \$9,708.70, FPL calculates that Ms. Valdes is due a refund of \$2,619.34 (\$9,708.70 less \$7,089.36 = \$2,619.34).

Although Ms. Valdes' attorney initially agreed that FPL could conduct an energy audit of Ms. Valdes' home in order to demonstrate that FPL's usage estimates were too large, FPL states that Ms. Valdes did not permit FPL inside her home to conduct the audit. FPL states that its meter man observed that the central air conditioning system was operating, that there were multiple outside lights on, and that this was a large house with a pool. Based on all the above, FPL asserts that its new estimates of usage are reasonable and should be allowed.

FPL also requests that it be allowed to recover its reasonable and prudent investigative costs of \$465.69 from the customer.

B. Customer's Position

1. Backbilling Period

Without agreeing that meter tampering occurred, Ms. Valdes argues that both the calculation of average usage and the time period over which it was applied are incorrect. With respect to the backbilling period, Ms. Valdes states that the backbilling goes back much too far. She contends that from 1999 to 2000 there was a "120% increase," and that, therefore, if there

[2] Mr. Behar, Ms. Valdes' attorney, stated that the estimated month was November 1999. FPL actually used November 2000 to calculate the backbilling amount.

was any tampering, it must have begun after the year 2000. Further, because usage increased up through the year 2001, the customer argues that if there was meter tampering, it did not begin until 2002. The customer states that, "when the account was opened, the home was uninhabited and . . . would go through periods (on and off) of remodeling which explains the erratic consumption from when the account was opened." The customer also states that the owners were remodeling, to include the addition of central air conditioning, and that the central air conditioning and power would only be used when they were there remodeling, and that there were periods of dormancy with little or no visits from the owners.

2. Estimated Annual Average Usage

As noted above, the customer disputed the utility's use of the month of November 2000 to estimate annual average usage. However, even with the utility's adjustment, the customer argues that FPL's estimated usage is still too high, On her behalf, Ms. Valdes' attorney insisted that her usage had been consistent throughout the backbilled period, and that the actual usage subsequent to having power restored in June 2004 is significantly less than that projected or estimated by FPL.

C. Staff's Position

1. Backbilling Period

Records provided by FPL show historical usage to be as follows:

Year	Usage
1998	16,214 kWh
1999	14,239 kWh
2000	18,110 kWh
2001	22,331 kWh
2002	18,600 kWh
2003	18,091 kWh
2004	6,169 kWh (for first five months where FPL claims meter tampering) –
	13,721 kWh (for next seven months where no claim of meter tampering)
2005	21,193 kWh (first full year where no claim of meter tampering)

Staff notes that the customer argues that there was intermittent residency, and that this was the cause of fluctuating and minimal usage at times. Also, the customer argues that the larger reduction in usage occurred from 2001 to 2002, and that this indicates that, if there is meter tampering, it began in 2002 and not 1999.

While the intermittent residency argument sounds plausible, the account shows usage above 2500 kWh in some months for both 2000 and 2001 which is more in line with the rebilled amounts calculated by FPL and indicates a more continuous occupancy. Therefore, staff is not persuaded by this argument to recommend a shorter backbilling period.

Moreover, staff has reviewed the first four months of 1999, where usage was 985 kWhs, 759 kWhs, 632 kWhs, and 884 kWhs, respectively. Using the utility's revised estimate of annual usage, and adjusting for seasonality, the expected usage for those four months would be approximately 2,450 kWhs, 2062 kWhs, 1866 kWhs, and 2,297 kWhs. Based on all the above, staff believes that it is reasonable for FPL to backbill from the end of the January 9, 1999 billing period through the billing period ending May 11, 2004.

2. Estimated Annual Average Usage.

As stated above the customer believes that FPL's estimate of annual usage, even as modified, is still too high. The customer states that meter readings subsequent to the reconnection of service and actual consumption since May 11, 2004, have been less than that. estimated by the utility.

Staff notes that the bill on May 11, 2004, the last bill before FPL disconnected service for meter tampering, was for $144.24 (1,495 kWhs of usage), and the very next bill after service was restored was for $292.44 (3,010 kWhs of usage). However, this was an estimated bill, and when the meter was read in the next month, the "true-up" usage for that month was only 2,083 kWhs, for a bill of $201.77. Therefore, for the very next two months after service was discontinued for meter tampering, the customer's average use for each month was 2,546.5 kWhs (3,010 kWhs + 2,083 kWhs/2 = 2,546.5 kWhs), which is slightly less than that estimated by FPL for the same time frame one year earlier.[3]

Staff believes that, as is common in the water industry, when there is a large increase in the cost of the product, it is common for customers to practice more stringent conservation measures, and reduce consumption.[4] Therefore, staff does not believe that actual usage after the fact of meter tampering would necessarily be representative of the usage while the meter tampering was taking place. Staff further believes that the check meter readings are the best measure of consumption for the time frame in which meter tampering occurred.

With respect to the estimate of usage, staff believes that the check meter reading months used to estimate usage appear to be reasonable, and have been properly adjusted for seasonality. The check meter readings on June 17, 2003, June 26, 2003, and August 4, 2003, when projected out for 30 days, estimate a monthly usage of 3,090 kWhs, 2,700 kWhs, and 3,263 kWhs for each of those respective periods, for an annual average usage of 32,625 kWhs. Based on all the above, staff believes that FPL's revised estimate of usage of 32,625 kWhs per year is reasonable, and in accordance with Rule 25-6.104, Florida Administrative Code.[5]

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[3] FPL projected a use of 2,895 kWhs for June 2003.

[4] See calculation of repression adjustments in Order No. PSC-04-0820-PAA-WS, issued August 23, 2005, in Docket No. 030444-WS, In re: Application for rate increase in Bay County by Bayside Utility Services, Inc.

[5] Staff does note that the August 2004 meter reading reflected only 1,770 kWhs of use, while the utility had estimated a use of 3,263 kWhs. However, both the month before and the month after Ms. Valdes had metered usage of 2,083 and 2,118 kWhs.

II. INVESTIGATIVE COSTS

FPL also requests that it be allowed to recover its reasonable and prudent investigative costs of $465.69 from the customer. The Commission has allowed utilities to collect reasonable investigative costs in prior meter tampering cases, and staff believes that the investigative costs requested by FPL in this case are reasonable and prudent costs of investigating meter tampering.[6] Staff also believes that the general body of ratepayers should not pay for those costs. The cost causer should pay for those costs directly. FPL's Third Revised Sheet No. 6.061, Paragraph 8.3 provides in pertinent part:

> Unauthorized connections to, or tampering with the Company's meter or meters, or meter seals, or indications or evidence thereof, subjects the customer to immediate discontinuance of service, prosecution under the laws of Florida, adjustment of prior bills for services rendered, and reimbursement to the Company for all extra expenses incurred on this account.[7]

While Rule 25-6.104, Florida Administrative Code, does not specifically allow reimbursement for investigative costs, staff recommends that, in accordance with its tariff, FPL should be allowed to recover the reasonable and prudent costs from the customer who caused that cost. FPL expended additional time and resources in determining the extent of the problem, which costs would not have been incurred had tampering not taken place.

III. CONCLUSION

Based on FPL's revised estimates, staff calculates that the total additional charge should have only been $6,623.67 for unmetered electric usage, plus the $465.69 for the investigative charge, for a total of $7,089.36. Because Ms. Valdes has paid FPL $9,708.70, staff recommends that FPL should be required to refund $2,619.34 to Ms. Valdes.

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[6] See, DOAH Case No. 96-4935,Order No. PSC-97-0988-FOF-EI, issued August 20, 1997, in Docket No. 960903-EI, In Re: Complaint of Mrs. Blanca Rodriguez against Florida Power & Light Company regarding alleged current diversion/meter tampering rebilling for estimated usage of electricity, where reasonable investigative costs were allowed.

[7] But see, DOAH Case No. 04-2758, Order No. PSC-05-0806-FOF-EI, issued August 5, 2005, in Docket No. 040208-EI, In re: Consumer complaint against Florida Power & Light Company by Leticia Callard, where the Administrative Law Judge disallowed investigative costs. In the Callard case, the tariff was never made a part of the record at DOAH.

Issue 3: Should this docket be closed?

Recommendation: Yes. If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued and the docket closed. (Jaeger)

Staff Analysis: If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued and the docket closed.

Docket No. 060027-EI
Date: March 9,2006

Chart showing monthly kWh used 1999-2004