

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint No. 1194174E by William Banks)
Against Florida Power & Light Company for)
Alleged meter tampering and other violations of)
Commission Rules)
_____)

Docket No. 160122-EI
Filed: August 5, 2016

**WILLIAM BANKS' RESPONSE TO
FLORIDA POWER AND LIGHT'S MOTION TO DISMISS**

William Banks hereby files this response to Florida Power & Light Company, Inc.'s (hereinafter "FPL") pursuant to Rule 28-106.204, Florida Administrative Code (hereinafter "F.A.C."). As discussed in more detail below, the Complaint provides more than adequate basis for a claim.

ARGUMENT

1. The Complaint Meets the Well Established Pleading Requirements for a Complaint Because it Identifies the Rule, Order, or Statute that has Been Violated and the Actions that Constitute a Violation

Mr. Banks' complaint does establish an argument for an unreasonable estimate of energy used. The complaint includes the rule number violated (Rule 25-6.104 F.A.C.) and the actions taken by FPL in this instance. The actions amount to back billing Mr. Banks for charges that are not attributed to him and that he was not a direct beneficiary of. There are numerous cases that point to benefit from the unauthorized use as a requirement for back billing for unauthorized use. *See* DOCKET NO. 960903-EI; ORDER NO. PSC-97-0988-FOF-EI at 11 (*In re: Complaint of Mrs. Blanca Rodriguez against Florida Power & Light Company regarding alleged current diversion/meter tampering rebilling for estimated usage of electricity*) ("FPL established by a preponderance of the evidence that someone tampered with the meter for the subject account and that as a result of that tampering, both Petitioner and her husband obtained the benefit of unmetered electricity") and DOCKET NO. 910670-EI; ORDER NO. 24767 at 3-4 (*In re: Complaint of Jesus Fernandez against Florida Power and Light Company regarding current diversion/meter tampering rebilling for estimated usage of electricity*) (" Since Mr. Fernandez, the customer of record, was receiving direct benefit from the unmetered electricity, FPL acted

properly in rebilling the account”) . As Mr. Banks was not the party benefitting from the unauthorized use of energy, it is unreasonable to bill him as FPL did.

FPL has also failed to show that the property in question was the property benefitting from the alleged current diversion or meter tampering. The reports from FPL fail to show or allege meter tampering. When the service crew went to the residence to remove the meter box they noted lights and air conditioning on. Upon removal of the meter box, no note appears to have been made regarding the continued running of the lights or air conditioning. *See* DOCKET NO. 910059-EI; ORDER NO. PSC-92-0157-FOF-EI at 6 (*In re: Complaint of Mr. Larry Timm against Florida Power and Light Company concerning current diversion backbilling*). The record also fails to show that after complete disconnection of the service line that the lights or air conditioning were on. The record does not show an attempt to prove an unauthorized tap to the premises. No tap was shown to exist until after these actions had been taken; and as stated in the Complaint a third party created and benefitted from that tap and was prosecuted accordingly.

In addition, as stated in the Motion to Dismiss FPL replaced the meter on July 16, 2012 and did not note any problems at that time. Inclusion of this period would be unreasonable as FPL had the opportunity and similar information available to them at the time to make a determination if unauthorized use of energy was occurring.

Further, as stated in the *Rodriguez* order the burden is on FPL to prove the reasonableness of the back billing. (*Rodriguez* at 10-11).

In regards to the violation of Tariff 6.061, Rule 8.3, FPL violated this tariff when it transferred the balance from one account to another. The words in 6.061 Rule 8.3 states

“8.3 Tampering with Meters. Title to meters and metering equipment shall be and remain in the Company. 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.”

As stated, the charges are “on this account”. That statement does not allow transfer of the balance to another account. As FPL’s motion to dismiss states on page 2, “On July 20, 2015,

FPL closed Mr. Banks Account for the Residence”, there is a separate account for Mr. Banks residence and the address of the residence in question. As there are two separate accounts, and there is a tariff regarding what can be done for prior indebtedness under 6.010, Rule 1.5, which transferring the balance is not an option, it was inappropriate for FPL to transfer the balance from the account associated with the alleged current diversion to Mr. Banks residence.

For the reasons stated above, the Complaint sufficiently alleges the Rule violated and the actions that violated it.

2. Mr. Banks Alleged Injury Suffered as a Result of the Actions of FPL

Mr. Banks alleged injury by stating that FPL unreasonable back billed him. FPL is attempting to collect \$26,323.30 from Mr. Banks. FPL has transferred the billing of that amount to Mr. Banks’ account for his residence. As Mr. Banks did not accrue those charges, he is injured by the claim against him and by the subsequent threat of having his power turned off.

3. Mr. Banks has Stated a Cause of Action Upon Which Relief can be Granted

Mr. Banks has requested that the Commission order that the balance is unreasonable and the amount be removed from his bill. This is well within the ability of the commission. When the Commission finds that there are unreasonable fees for unauthorized use of energy the Commission can take action to remedy it.

CONCLUSION

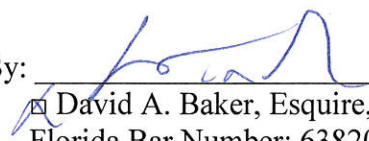
As Mr. Banks complaint must be taken as true, Mr. Banks has properly pleaded a claim in regards to unreasonable back billing under Rule 25-6.104 F.A.C. by showing the Rule violated, the actions that violated the rule, the person against whom the claim was made, and the relief requested.

WHEREFORE, Mr. Banks requests that the Commission enter an order denying FPL’s Motion to Dismiss with Prejudice.

Respectfully submitted this 5 day of August, 2016

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CERTIFICATE OF SERVICE

Docket No. 160122-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 5 day of August, 2016 to the following:

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