

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Ms. Gloria)	DOCKET NO. 900689-EI
Blair Against Florida Power &)	ORDER NO. 23669
Light Company Regarding)	ISSUED: 10-25-90
Backbilling.)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

PROPOSED AGENCY ACTION
ORDER DISMISSING COMPLAINT AGAINST
FLORIDA POWER AND LIGHT COMPANY

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.

Ms. Gloria Blair filed a complaint against Florida Power and Light (FPL) with the Florida Public Service Commission's District Office on October 12, 1988, questioning the validity of a backbill she received for \$6,402.14 and claiming that she had no knowledge of any current diversion.

In a report received by the Miami District Office on October 31, 1988, FPL advised that a meter reader had observed evidence of possible meter tampering on July 25, 1988. An inspection was conducted on August 13, 1988, which revealed that the meter inner canopy seal was missing. The meter was removed for testing and a new meter was installed.

The removed meter was inspected and tested on August 16, 1988. The test results showed that the meter was registering 54.6% full load, 0% light load, and had a weighted average accuracy of 43.8%. The inspection revealed a broken inner seal, tampered bearings, and a lowered disk. FPL records showed that the meter was originally installed at this location in August of 1957 and that Ms. Blair had been a customer there since November, 1980. FPL noted in its report that the meter had been tampered with prior to the customer establishing an account at the address.

DOCUMENT NUMBER-DATE

09560 OCT 25 1990

FPC-RECORDS/REPORTING

ORDER NO. 23669
DOCKET NO. 900689-EI
PAGE 2

FPL backbilled the account using a percentage of usage method. The rebilling totaled \$6,402.14 and went back to January of 1985 (the period for which FPL had retained a billing history on the account) through August 23, 1988. The new meter was set August 13, 1988 and read August 23, 1988.

The Division of Consumer Affairs conducted an informal investigation of the matter and, based upon information and records provided by FPL, concluded that FPL had the authority to backbill for unmeasured electric energy usage caused by meter tampering. Nevertheless, Ms. Blair continued to deny liability for the backbilled amount.

On April 14, 1989, Mr. Curt Batman of FPL met with Ms. Blair and offered to reduced the backbilled amount to \$4500.00 with a payback period of 60 months and payments of \$75 per month. Ms. Blair rejected the offer and continued to assert she was not responsible for any of the backbilled amount.

Consumer Affairs wrote Ms. Blair on October 18, 1989 and advised her that FPL's offer was reasonable and that she should accept the offer. Ms. Blair rejected the recommendation, however, and made a new allegation that she had called FPL in the past when she received unusually low bills. She stated that FPL advised her to just pay the bill and they never followed up on her report. She also asserted that she was financially unable to meet the payment arrangements offered by FPL.

Ms. Blair eventually requested an informal conference and it was held on August 7, 1990 in Ft. Lauderdale. During the conference Ms. Blair reiterated her claims that she felt she was not responsible for paying the backbilled amount because she had always paid her monthly bills and had no way of knowing that the meter was not registering accurately. She further stated that she felt it was FPL's responsibility to bill her properly and to have discovered the tampered meter condition earlier. FPL responded that although its meter readers are trained to recognize current diversion, this type of diversion is difficult to recognize because it was the inside of the meter that had been tampered. Therefore, it is not readily visible.

Ms. Blair also restated that she had called on several occasions to question bills she thought were unusually low. She claimed she was told the bills were correct and advised to pay it.

ORDER NO. 23669
DOCKET NO. 900689-EI
PAGE 3

The customer was not sure what date she called, and FPL had no record of the calls. When asked how FPL would normally handle such a call, FPL responded that the service representative would probably review the account and look at the previous usage (24 months is available on the computer). If the current bill was in line with previous bills (as it was in this case), the customer would be advised that the bill appeared to be correct. A reread of the meter probably would not be ordered unless the bill was unusually low compared to previous usage. Although Ms. Blair raised many issues at the conference, she failed to present any evidence (other than that previously reviewed) indicating that she failed to benefit from the tampered meter.

It is undisputed, however, that Ms. Blair's electric meter was not registering energy consumption accurately. Rule 25-6.052 of the Florida Administrative Code requires that meters register an average percentage between 98% and 102%. Ms. Blair's meter was tested by FPL on August 16, 1988, and registered a weighted average accuracy of 43.8% which is far below the allowable limits. Therefore, the meter was not registering 56.2% of the electricity the customer was using.

We, furthermore, find that FPL acted properly in backbilling the customer an estimated usage of electric consumption. Rule 25-6.104 of the 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 backbilled Ms. Blair from January 23, 1985 (as far back as FPL had billing history on this account) to August 23, 1988. The new meter was set August 13, 1988 and read August 23. This reading was prorated into the backbilling. Since an examination and test of the meter serving this account revealed that the meter had been tampered with and was not properly measuring usage, the utility acted properly in backbilling the customer of record, Leon Blair, who had received direct benefit from the unmetered electricity.

The backbilled amount was calculated based upon the seasonal percentage of usage method. FPL recorded a meter reading of 895 on August 23, ten days after the new meter was set. This reading showed that 89.5 kwh a day were being used; 89.5×30 days = 2685 kwh usage for the month; 2685 divided by the August average percentage of 11.34 = 23,677 average yearly usage. This average yearly usage is then applied to the percentages for each month on

ORDER NO. 23669
DOCKET NO. 900689-EI
PAGE 4

the seasonal average chart. This chart was developed by taking the number of kilowatt-hours sold to all residential customers in Ms. Blair's service area and dividing it by the number of residential customers to calculate a percentage figure used during each month of a year. FPL then recalculated the bill for each month that the faulty meter had been in place. The total kilowatt-hours originally billed were then subtracted from the total kilowatt-hours recalculated and the resulting number of kilowatt-hours were rebilled to the customer. We believe the customer was backbilled based upon a reasonable estimate of the energy used in accordance with Rule 25-6.104, of the Florida Administrative Code.

We also find that the amount billed to Ms. Blair was reasonable.

Throughout the entire ordeal, Ms. Blair has steadfastly asserted that she feels she should not be held responsible for any of the backbilled amount because she had put FPL on notice that her bills were unusually low well before they discovered the tampered meter. Nevertheless, we find that FPL acted properly in backbilling Ms. Blair because she benefitted from unmetered electricity.

In Corporation De Gestion Ste-Foy, Inc. v. Florida Power and Light, 385 So. 2d 124 (Fla. 3d DCA 1980), the Third District Court of Appeal addressed this very issue in a case factually similar to this matter. In De Gestion an employee of FPL had misread the master electric meter at the appellant's place of business between 1976 and 1979 and as a result the appellant was underbilled for a total of \$99,000.00. Upon FPL's demand for payment, the appellant asserted that the utility was estopped from collecting the amount it underbilled. The Third District Court of Appeal held that the public policy embodied in Section 366.03, Florida Statutes, precludes any business whose rates are regulated from granting rebates or preferential treatment to any customer. The court further stated:

[I]t is universally held that a public utility or common carrier is not only permitted but is required to collect recharges from established rates, whether they result from its own negligence or even from a specific contractual undertaking to charge a lower amount.

ORDER NO. 23669
DOCKET NO. 900689-EI
PAGE 5

Corporation De Gestion Ste-Foy, Inc., 385 So.2d at 126. The court simply held that a customer of a public utility has no defense to charges for services received but underbilled. Id.

In a similar case, In re: Complaint of Charles E. Lesh against Florida Power and Light Company, Order No. 9074, Docket No. 790053-EU(CP), this Commission held a public utility customer liable for underbilling that resulted from meter tampering even though FPL failed to discover the tampering when they negligently read the meter.

We find that FPL acted properly in backbilling Ms. Blair who benefitted from unmetered electricity whether it was due to FPL's negligence or not. Therefore, Ms. Blair should not be granted the relief she seeks. The Commission, however, will accept \$3200.00 as a reasonable settlement for the amount backbilled by FPL.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Ms. Gloria Blair's complaint regarding the backbilling by Florida Power and Light Company is hereby denied. It is further

ORDERED that the Florida Public Service Commission will accept \$3200.00 as a reasonable settlement for the backbilled amount owed to Florida Power and Light Company for underbilled electric power. It is further

ORDERED that this Order, issued as proposed agency action, shall become final, unless an appropriate petition in the form provided by Rule 25-22, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 E. Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceeding below. It is further

ORDERED that in the event no protest is timely filed, this docket shall be closed.

ORDER NO. 23669
DOCKET NO. 900689-EI
PAGE 6

By ORDER of the Florida Public Service Commission, this 25th
day of OCTOBER, 1990.



STEVE TRIBBLE
Division of Records and Reporting

(S E A L)
EAT:bmi
900689.EAT

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 November 15, 1990.

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.

ORDER NO. 23669
DOCKET NO. 900689-EI
PAGE 7

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.