

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Mr. James	)	DOCKET NO. 900977-EI
Acquaviva against FLORIDA POWER	)	ORDER NO. 24153
AND LIGHT COMPANY regarding back-	)	ISSUED: 2/25/91
billing for current diversion	)	
	)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 J. TERRY DEASON  
 BETTY EASLEY  
 GERALD L. GUNTER  
 MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTIONORDER APPROVING BACKBILLING OF ESTIMATED USAGE OF ELECTRICITY

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.

CASE BACKGROUND

A complaint was filed on August 6, 1990 under the name of Edgar Schmidling against Florida Power and Light Company (FPL) with the Florida Public Service Commission's Division of Consumer Affairs. It stated Mr. Schmidling's landlord, James Acquaviva, was accused of meter tampering at 6018 Southwest 34 Court, Fort Lauderdale and at two other locations he rented to others where service was in his name. The complaint stated that the service was put in Mr. Schmidling's name two months ago, and that Mr. Schmidling paid a deposit of \$100.00 and the first month's bill of \$78.70. It stated that FPL applied those payments to Mr. Acquaviva's backbilling and was threatening to disconnect Mr. Schmidling's service.

The company reported to Consumer Affairs that Mr. Acquaviva was the customer of record at Mr. Schmidling's address (6018 SW 34 Court, Ft. Lauderdale) and had been billed an additional amount of \$892.94 due to meter tampering at that address. The

DOCUMENT NUMBER-DATE

01845 FEB 25 1991

FPSC-RECORDS/REPORTING

ORDER NO. 24153  
DOCKET NO. 900977-EI  
PAGE NO. 2

tampering occurred at the same time as Mr. Acquaviva obtained service at that address. FPL said there was an attempt to put the account at this address into another name, but the account wasn't changed and will not be changed as long as there is evidence that the customer, Mr. Acquaviva, is residing at the address.

On November 30, 1989, Mr. Acquaviva was charged with two counts of larceny based on his theft of electricity at this and another location. On June 22, 1990 he was found guilty on one count (the other location) and not guilty of diverting electricity at 6018 Southwest 34 Court, Fort Lauderdale. Mr. Acquaviva admitted that during the entire time service was in his name at this address. Therefore he is solely responsible for the payment of electric bills.

FPL reported that on July 9, 1990 a current bill for \$78.70 was issued to Mr. Acquaviva with a past due amount of \$892.94. On July 17, a payment of \$178.70 was posted to Mr. Acquaviva's account. No records can be found to indicate that this payment should have been applied to any other account since the payment was submitted with Mr. Acquaviva's billing statement.

Staff communicated these findings to Mr. Schmidling of these findings by letter dated September 4, 1990.

Mr. Acquaviva called the Division of Consumer Affairs on September 11 and 17, 1990 stating that he lives at 413 NE 3rd Street, Pompano Beach, but his mail goes to Mr. Schmidling's address. He stated that he is at the Schmidling residence helping him and one of his three cars is frequently at Schmidling's.

Another complaint was opened for Mr. Acquaviva regarding the backbilled amount since Mr. Acquaviva indicated he now understood that he was responsible for payment, but wanted the PSC to review the billing.

FPL reported that on July 18, 1989, an FPL employee observed a wire inserted through a hole in the meter canopy which appeared to be preventing the disc inside the meter from rotating. The employee observed an air conditioning unit running at the time and when the employee removed the wire the disc turned freely. This meter was removed and a new meter was set July 18, 1989. Further inspection of the meter after it had been removed documented that zero consumption registered with the wire in place, although when the wire was removed the meter registered consumption accurately.

The account was backbilled from the date of connection, July

ORDER NO. 24153  
DOCKET NO. 900977-EI  
PAGE NO. 3

29, 1988, through the date the meter was replaced, July 18, 1989. The determination to rebill from the date of service connection was made because the extremely low usage from the first 40 days of service (31 kilowatt hours) indicates that the tampering device was being used from this date forward. The method used for calculating the backbilled amount was the average percentage of usage based on a reading taken after the new meter was set. This method takes into account weather changes using the seasonal average chart developed for this purpose.

The company reported that the house at 413 NE 3 Court, Pompano Beach appears vacant with a for rent sign in the window. The company said on September 12, neighbors told them Mr. Acquaviva does not live at the Pompano Beach address, but comes to check the mail and mow the grass.

Mr. Acquaviva was informed by letter dated on October 30, 1990 that FPL was in compliance with the rules of this Commission and its tariffs previously approved in backbilling this account in the amount of \$892.94 (\$669.63 for 9362 kilowatt hours plus \$223.31 investigative costs).

The letter also advised Mr. Acquaviva that FPL had not violated any Commission rules by keeping the account in his name based on information provided by him and FPL indicating that he resides at 6018 SW 34 Court.

In a letter to the PSC received on November 13, 1990, Mr. Acquaviva requested further review of his case.

Mr. Acquaviva called on November 14 stating that FPL came to the residence to disconnect the service for the current diversion charge, and he paid with a credit card to avoid service disconnection.

An informal conference was scheduled for December 10, 1990 in Room 302A of the Broward County Governmental Center, 115 South Andrews Avenue, Ft. Lauderdale, Fla.

At the conference, Mr. Acquaviva stated that he is an electrician and lives at 413 NE 3 Court, Pompano Beach. However, he also admitted that he currently lives at 6018 SW 34 Court, Ft. Lauderdale. Mr. Acquaviva changed this information about his residence two or three times during the conference. Mr. Acquaviva also stated that he left the Pompano address during the last three months because Mr. Schmidling was getting unable to take care of himself. He admitted that the property in Pompano Beach is vacant. Mr. Schmidling also attended the conference and stated his residence was 6018 SW 34 Court, Fort Lauderdale. Mr. Schmidling didn't participate in any other discussions at the

ORDER NO. 24153  
DOCKET NO. 900977-EI  
PAGE NO. 4

conference.


We find that Mr. Acquaviva's electric meter was not registering consumption accurately. We find that FPL acted properly in rebilling the customer for estimated usage of electricity. We find that the amount of the rebilling is reasonable. We find that FPL was within the provisions of its tariff and Chapter 25-6, Florida Administrative Code in not providing service to Mr. Schmidling as long as Mr. Acquaviva continued to owe the backbilling and occupy the residence.

Based on the foregoing it is

**ORDERED** that the request of James Acquaviva for a refund of the amount paid to Florida Power and Light Company for the backbilling of estimated electrical consumption be **DENIED**. It is further

**ORDERED** that this docket shall be closed and this Order shall become final 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 25th  
day of FEBRUARY, 1991.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

RVE  
900977.rve

ORDER NO. 24153  
DOCKET NO. 900977-EI  
PAGE NO. 5

**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 18, 1991.

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.