

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Mark Shoff against)	DOCKET NO. 911040-EI
Florida Power and Light Company)	ORDER NO. 25557
regarding current diversion backbilling)	ISSUED: 12/31/91
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER AFFIRMING BACKBILLING

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.

On April 16, 1991, Mr. Mark Donald Shoff filed a complaint against Florida Power & Light Company (FPL) with the Division of Consumer Affairs. The complaint concerned a bill Shoff received from FPL for current diversion. Shoff stated that his meter was damaged during a burglary at his home in December of 1988. He further stated FPL did not change his meter until two months later, and he was billed \$3,170.14 for the condition. The customer paid the bill to have service reconnected, as FPL had disconnected for nonpayment. The customer now sought intervention from the Public Service Commission and a refund of the \$3,170.14.

In a report dated May 3, 1991, FPL advised staff that on September 21, 1987, the company noted meter (5C61037) set in place at the residence when re-checking the meter reading due to a large drop in consumption. FPL records indicated the meter serving the residence should be meter 5C81831. A follow-up check on September 23 indicated that the new meter was still in place. FPL then reported that during its October 19, 1987 reading, the old meter (5C81831) was found to be back in the socket. At that time, Mr. Shoff requested to be placed on the call-ahead program, in which the company notifies the customer before the regular meter reading.

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On December 14, 1987, the company noted the meter seal was rigged. The outer seal had been cut and put back together to appear still intact. FPL made several follow-up attempts to check the meter but was unable to gain access due to a locked gate.

On December 1, 1988, an FPL investigator checked the meter by looking over the top of the fence. A box had been built around the meter covering the face but not the top. The investigator noted that the ring on the meter wasn't secure. A follow-up check on December 14 revealed that the ring was back in its proper position. Two days later, FPL discovered the meter to be upside down in the socket. The meter (5C81831) was removed by FPL on January 26, 1989, and replaced with a new meter. FPL stated the investigation went on for over a year because they were trying to document further evidence of meter switching. FPL does not have custody of meter 5C61037 which is the meter it believes the customer was using when meters were switched.

Staff advised the customer on July 23, 1991 that, according to PSC rules, FPL may rebill for any unmeasured electric energy usage caused by meter tampering and that FPL had complied with these rules.

On July 30, 1991, Donald Shoff wrote to the Commission requesting an informal conference. The conference was held, pursuant to Commission rules, on August 27, 1991 at the Hollywood City Hall. No settlement was reached.

We find that the original billing for electric consumption was not accurate due to the meter switching. We find that FPL was proper in backbilling Mr. Shoff for the estimated electricity consumed. Rule 25-6.104, 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 rebilled Shoff's account from September of 1987 to January of 1989, when the new meter was set. Since Mr. Shoff, the customer of record, was receiving direct benefit from the unmetered electricity, FPL acted properly in rebilling the account.

FPL advised that the backbilling started with the month of September, 1987, due to an obvious drop in kilowatt hour (kwh) consumption from the previous month (3,092 kwh to 341 kwh). The account was rebilled up to January, 1989 when the new meter was set. The customer's usage was consistently low throughout the backbilled time frame, and increased thereafter.

FPL calculated the additional amount of kilowatt hours by using the average percentage of usage method. The company took the customer's two readings prior to the start of the backbill (July

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and August, 1987), applied them to the average percentage of usage charts, and derived an average total yearly usage of 27,223 kwh. The backbilling was based on this average.

In addition to the usage rebilling, an investigative fee of \$357.38 was assessed as Shoff was the only customer of record during the documented tampering. We find that the amount of the backbilling is reasonable. We find that Mr. Shoff is not entitled to any refund of the \$3,170.14 backbilled by FPL.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the backbilling of \$3,170.14 rendered by Florida Power and Light Company to Mark D. Shoff is affirmed. It is further

ORDERED that this Order shall become final and this docket shall be closed 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 31st day of DECEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 1/21/92.

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.