

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Mr. Thomas) DOCKET NO. 950541-EI
L. Fuller against Florida Power) ORDER NO. PSC-96-0483-FOF-EI
Corporation regarding high) ISSUED: April 5, 1996
electric bills in Orange County.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DISMISSING COMPLAINT

BY THE COMMISSION:

On December 27, 1994, Mr. Thomas Fuller (Mr. Fuller) contacted the Public Service Commission's Division of Consumer Affairs to complain that Florida Power Corporation (FPC) had overbilled him. Mr. Fuller verbally requested that FPC make arrangements with him immediately to test the meter in his presence on December 28, 1994. Mr. Fuller also said he had made a request to FPC that his service be disconnected on December 24, 1994.

On September 12, 1994, Mr. Fuller initiated his FPC account in the name of Thomas L. Fuller, 2950 N. Pinehill Road #31, Orlando, Florida. FPC's initial reading of Mr. Fuller's meter (Number 0885688) was 93854, and the final reading on December 27, 1994, was 97975. Mr. Fuller had electricity for a 106-day period with a total kilowatt hour usage of 4,121 for an average daily use of 39 kilowatt hours. The total amount FPC billed Mr. Fuller during this period was \$323.48.

FPC records indicate that Mr. Fuller contacted its Customer Service Center on Friday, December 23, 1994 before contacting the PSC about his alleged usage and related billing. FPC agreed to send a field agent to re-read the meter for verification. The field order was scheduled for December 27, 1994, however, the customer called FPC on Monday, December 26, 1994, (Observed Christmas Holiday) to place a disconnect service order for Tuesday, December 27, 1994. FPC reported that because of the volume of work over the holiday period, the disconnect was not completed until early Wednesday morning on December 28, 1994. On the same day

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FPC-FOF-REPORTING

verification of the meter reading was to occur, the disconnect order was also due. FPC combined the service disconnect order and the investigation of the meter. The out reading occurred when the meter was pulled to be tested, and again at the test facility.

On December 28, 1994, FPC informed staff that Mr. Fuller had moved and that the meter had been pulled from his residence and delivered to FPC's St. Petersburg office for testing.

The meter was tested and was found to be registering at an accuracy level of 99.96% within the accuracy limits of 98% to 102% established in the Rule 25-6.052, Florida Administrative Code (FAC). A visual inspection of the meter indicated the 1970 manufacturing seal was still intact and no evidence of meter tampering. The laboratory testing equipment complied with the standards for accuracy of the laboratory testing equipment established by Rule 25-6.054, Florida Administrative Code.

On January 27, 1995, Consumer Affairs sent a letter of explanation to the customer about the results of the meter test and the PSC interpretation of his complaint. Staff determined that FPC had not violated its tariff or the rules and regulations of the Commission. On February 3, 1995, the customer sent correspondence to Consumer Affairs disputing the final disposition of his complaint and indicating that he desired to continue his complaint with a hearing. On February 8, 1995 as requested by Mr. Fuller, copies of the meter test results were mailed to his known address. The copies were returned with no forwarding address.

On March 28, 1995, Mr. Fuller sent correspondence to formally request an informal conference and on April 12, 1995, staff acknowledged this request and scheduled the informal conference for April 27, 1995 at the PSC Orlando District Office.

On April 27, 1995, the informal conference was held in the PSC Orlando office. No settlement was reached, the complaint was docketed in accordance with Rule 25-22.032(8).

On June 28, 1995, Order No. PSC-95-0782-FOF-EI was issued denying Mr. Fuller's complaint. A timely protest was filed and the matter was referred to the Division of Administrative Hearings to conduct the formal hearing. The hearing was held on November 6, 1995. On January 2, 1996, the Hearing Officer issued his Recommended Order. The Recommended Order is attached to this order as Attachment A. The Hearing Officer found that FPC had properly billed Mr. Fuller and recommended that the Commission enter a Final Order finding that FPC acted in compliance with applicable law in

ORDER NO. PSC-96-0483-FOF-EI
DOCKET NO. 950541-EI
PAGE 3

providing service to Mr. Fuller. No party filed exceptions to the Recommended Order.

At the formal hearing, the Hearing Officer heard testimony from four witnesses and received seven exhibits into evidence. After considering the weight of the evidence, the Hearing Officer concluded that Florida Power Corporation acted in compliance with applicable law and did not overbill Mr. Fuller. The Findings of Fact are based on competent, substantial evidence. The Conclusions of Law appropriately apply the provisions of Florida Statutes and Florida Administrative Code. The Hearing Officer's Recommendation is consistent with previous determinations regarding customer billing. Therefore, we find that the Hearing Officer's Recommended Order shall be adopted as the Commission's Final Order.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Hearing Officer's Recommended Order is adopted as the Commission's Final Order. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 5th day of April, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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ORDER NO. PSC-96-0483-FOF-EI
DOCKET NO. 950541-EI
PAGE 4

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater 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 after the issuance 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.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MR. THOMAS L. FULLER,)
)
 Petitioner,)
)
 vs.) CASE NO. 95-4253
)
 FLORIDA POWER CORPORATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Daniel S. Manry, held a formal hearing in this case on November 6, 1995 in Tallahassee, Florida.

APPEARANCES

For Petitioner: Mr. Thomas L. Fuller, pro se
Post Office Box 617217
Orlando, Florida 32861

For Respondent: Rodney Gaddy, Esquire
Florida Power Corporation
3201 34th Street, South
St. Petersburg, Florida 33711-3828

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner was overcharged on his utility bill.

PRELIMINARY STATEMENT

On December 27, 1994, Petitioner complained to the Florida Public Service Commission's Division of Consumer Affairs (the "Commission") that Respondent had overbilled him. Petitioner verbally requested Respondent to test the meter in his presence on December 28, 1994.

The Commission investigated the complaint and found that Respondent acted in compliance with applicable law. Petitioner timely requested a formal hearing. The matter was referred to the Division of Administrative Hearings for assignment of a Hearing Officer to conduct a formal hearing.

At the formal hearing, the parties called several witnesses and submitted several exhibits. The identity of the witnesses and exhibits and the rulings concerning each are reported in the transcript of the formal hearing filed on November 28, 1995.

The Respondent timely filed its proposed recommended order ("PRO") on December 7, 1995. Petitioner did not file a PRO. Proposed findings of fact in Respondent's PRO are accepted in this Recommended Order.

FINDINGS OF FACT

1. On September 12, 1995, Petitioner became a Florida Power customer. He received electricity service in his name at an apartment located at 2950 N. Pinehill Road #31, Orlando, Florida.

2. From September 1994, through December, 1994, Petitioner occupied the apartment at 2950 N. Pinehill Road #31, Orlando, Florida. Petitioner's meter indicated he used 827 Kwh from September 12, 1994, through October 4, 1994.

3. Petitioner's meter indicated he used 1525 Kwh from October 4, 1994, through November 2, 1994. Petitioner's meter indicated he used 1548 Kwh from November 2, 1994, through December 5, 1994.

4. Petitioner's final bill was for December 5, 1994, through December 28, 1994. The meter indicated he used 221 Kwh for this final period.

5. Respondent's tariff sheet 8.05 filed with the Commission sets forth the length of time within which Respondent must disconnect a customer's service after receiving a disconnect order. Respondent must disconnect service within 3 days of receiving the disconnect order.

6. On December 26, 1994, Petitioner requested that his service be disconnected on December 27, 1994. Respondent disconnected Petitioner's service on December 28, 1994.

7. On January 12, 1995, Petitioner's meter was tested in St. Petersburg, Florida. Petitioner's meter registered 99.96% accuracy.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter and parties. Section 120.57(1), Florida Statutes. The parties received adequate notice of the formal hearing.

9. Petitioner has the burden of proof in this proceeding. Petitioner must show by a preponderance of the evidence that he was overcharged.

10. Petitioner failed to satisfy his burden of proof. The weight of evidence shows that Petitioner was properly billed for electricity consumed at 2950 N. Pinehill Road, #31, Orlando, Florida.


11. Petitioner occupied the premises and was FPC's customer between September 1994 and December 1994. Petitioner's meter had an accuracy level of 99.96% during that period. That percentage is within the accuracy limits of 98% to 102% established in Florida Administrative Code Rule 24-6.052.

12. Respondent acted properly in Petitioner's request to disconnect his service. FPC terminated Petitioner's service within the time prescribed by applicable law. Petitioner was FPC's customer between September 1994 and December 1994, and is liable for electric service at 2950 N. Pinehill Road #31, Orlando, Florida.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is, **RECOMMENDED** that the Commission enter a Final Order finding that Respondent acted in compliance with applicable law and did not overbill Petitioner.

RECOMMENDED in Tallahassee, Leon County, Florida, this 2nd day of January, 1995.



DANIEL MANRY
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of January, 1995.

ORDER NO. PSC-96-0483-FOF-EI
DOCKET NO. 950541-EI
PAGE 9 .

ATTACHMENT A

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to the Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency that will issue the Final Order in this case concerning their rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.