

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Mrs. Blanca ) DOCKET NO. 960903-EI  
Rodriguez against Florida Power ) ORDER NO. PSC-96-1216-FOF-EI  
& Light Company regarding ) ISSUED: September 24, 1996  
alleged current diversion/meter )  
tampering rebilling for )  
estimated usage of electricity. )

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING BILLING DUE TO METER TAMPERING

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On April 11, 1996, Blanca Rodriguez filed a complaint with our Consumer Affairs Division (CAF) against Florida Power & Light Company (FPL). Mrs. Rodriguez contended that FPL had unfairly billed her account for meter tampering. The account is in the name of Juan Rodriguez, husband of Mrs. Rodriguez. FPL had billed the account for a total of \$7,802.50, which includes \$7,453.12 for customer usage from April, 1990 to February, 1996 and \$349.38 for investigative charges.

After reviewing Mrs. Rodriguez' complaint, on May 29, 1996 CAF's Bureau of Complaint Resolution sent a letter to Mrs. Rodriguez advising her of its initial finding that FPL appeared to be in compliance with our rules. No agreement was reached by the parties at the informal conference held on July 17, 1996. For the reasons set forth below, we find there is sufficient cause to believe that the meter serving the Rodriguez residence had been tampered with and that FPL's billing is appropriate.

DOCUMENT - 10176

10176 SEP 24 1996

ORDER NO. PSC-96-1216-FOF-EI  
DOCKET NO. 960903-EI  
PAGE 2

On February 29, 1996, FPL removed the Rodriguez meter along with meters serving the residences of three other customers. The other customers are related by birth or marriage to Mr. Rodriguez. At the informal conference, Mr. and Mrs. Rodriguez denied tampering with the meter and Mr. Rodriguez stated that FPL was against his family.

FPL determined there was a connection between the Rodriguez account and the three others during its investigation. On February 29, 1996, a FPL investigator received a call from Emelia Rodriguez regarding additional billing resulting from meter tampering at 3610 SW 85th Avenue. The investigator determined that Emelia Rodriguez owns the property at 3610 SW 85th Avenue which is rented to unnamed tenant and she resides at 7863 SW 5th Street. The investigator recognized the 7863 SW 5th Street address as being one of four accounts in which dial tampering had been documented. The remaining three are as follows: 3151 SW 84 Court, 6550 SW 17 St.; and 3250 24 Terr., #A. The 3151 SW 84 Court address is the residence of Blanca and Juan Rodriguez.

According to FPL, in light of Emelia Rodriguez' conversation with the investigator, FPL believed the possibility existed that she may have realized that the additional accounts were under investigation. Therefore, to preclude the destruction of the meters and to secure them as evidence, FPL decided that the meters should be removed immediately. Thus, all four meters were removed on February 29.

When the Rodriguez meter was removed, FPL personnel reported that the outer seal was "rigged" and the integrity seal was "missing." During testing of the meter on March 12, 1996, FPL confirmed that the integrity seal was missing. Removal of the integrity seal allows access to the dials of the meter, and results in regressive readings.

FPL had also documented several instances when Mr. and Mrs. Rodriguez' meter was found in a tampered condition. On August 17, 1995, an FPL investigator documented a rigged yellow outer seal. The outer seal had been taken apart and put back together to appear intact. This condition allowed access to the meter. On September 1, 1995, the investigator documented a regressive reading, and on September 6, 1995, the investigator documented that the yellow seal had been cut and left on top of the meter can. At that time, the investigator installed a new gold seal on the meter. On October 3, 1995, a FPL meter reader documented that the meter seal had been cut and reported "low usage" for a house which the meter reader characterized as "big." On November 1, and December 4, 1995, the meter reader again reported that "rigged seals" were noted at the

meter serving the Rodriguez' residence. According to FPL, these conditions are indicative of the meter dials being turned back resulting in "regressive" readings which does not allow the meter to register all electricity consumed.

On April 15, 1996, FPL interviewed Mr. and Mrs. Rodriguez at their residence. Mr. and Mrs. Rodriguez stated that they have owned and resided at the residence since January, 1987 and they are responsible for payment of the electric bills. During the interview, as well as during the informal conference, FPL noted that on December 5, 1987, a previous current diversion condition was documented at the Rodriguez house which resulted in an additional bill in the amount of \$258.79. According to FPL, at that time, a wire was found inserted through a hole in the meter canopy of meter #5C62916. The meter was removed and replaced with a new meter (#5C21125) on December 7, 1987. Subsequently, it was meter #5C21125 that was removed on February 29 and replaced with a new meter (#5C69684).

FPL displayed the two rigged seals, Serial No.'s 0123111 and 0123138 at the informal conference. FPL confirmed that the seals were from the meter serving the Rodriguez residence by matching the serial numbers to the log issued to the meter reader who reported the meter tampering condition.

Mrs. Rodriguez said FPL changed their meter in 1988 and installed a new one "with metal brackets and a big metal lock, that only FPL could open." FPL characterized it as a "lock ring" which is opened by special keys that have found their way "into many hands." FPL added that lock rings are put on meters subsequent to a current diversion activity, such as that which had occurred at the Rodriguez residence in December 1987. Mrs. Rodriguez stated that FPL changed her meter in 1994 when construction occurred at the residence. FPL, however, presented evidence that confirmed which the company did not change the meter at that time.

FPL took four readings from the Rodriguez meter in August and September 1995. Those readings indicated an average consumption of more than 2900 kWhs per month. Mrs. Rodriguez, stated it was impossible for consumption to be as high as that projected by FPL. Mrs. Rodriguez stated that she lives alone in the house with her two boys, and her husband stays there occasionally. She further stated her mother stays on weekends in the apartment which was added to the house in 1994. The apartment is not separately metered.

According to reports by FPL, all appliances in the house are electric, including: the refrigerator, a dishwasher which is not

used, a clothes washer and dryer, central air-conditioning, and a pool pump. Mr. Rodriguez stated that the water heater was changed from gas to electric two years ago and that the pool pump is only used for two hours in the summer, "once in a while." In addition, Mr. Rodriguez stated that the central air-conditioner was used only at night and the temperature is set at 80 degrees. According to reports by FPL, the electric equipment in the apartment consisted of a refrigerator, stove and a wall unit air-conditioner.

During the informal conference, Mrs. Rodriguez stated her electric bills usually ranged from \$70 to \$90. FPL provided a Kilowatt Hour History Summary of the Rodriguez account which showed that the bills ran higher than the stated amounts. FPL noted that there was lower usage from 1994 to February, 1996, even with the addition of an electric water heater, and the refrigerator and stove which were installed in the apartment. Consumption prior to February 1994 did show a slight bell curve (lower in the winter and higher in the summer), consumption during the remaining periods was very erratic. In some instances, consumption during the winter months [i.e., November, 1994 (1158 kWhs); February 1995 (1006 kWhs); and February 1996 (1106 kWhs)] was higher than the summer months. No explanation was offered by the Rodriguezes.

According to FPL, consumption since 1990 did not reflect the electrical equipment in use. Based on the above, we are inclined to agree. There is evidence that the meter had been tampered with and that the customer has consumed, but not paid for electricity. Thus, pursuant to Rule 25-6.104, Florida Administrative Code, FPL is permitted to bill the customer on a reasonable estimate of the energy used. FPL's calculation of the estimate is discussed below.

FPL uses three different methods for estimating billings for dial tampering diversions: 1) Average Percentage of Usage Chart; 2) The number of days in each billing month that is rebilled; and 3) Previous Years' Kilowatt Hours Consumption for Corresponding Months Within the Corporate Record Retention Period.

In the Rodriguez case and most residential dial tampering cases, FPL utilized Method 1--The Average Percentage Use Method. According to FPL, this method provides the most accurate and fair result. Method 2--Daily Average Consumption x the number of days rebilled Method was not used because it does not consider seasonal usage fluctuations. Method 3--The Previous Year Consumption Method could not be used because of the dial tampering taking place during that time.

In this case, FPL utilized two "check" readings in August, 1995 and two "check" readings in September, 1995 to obtain a daily

average for each of these months. Check readings are meter readings taken between normal monthly meter read dates. These readings are taken to obtain normal kwh usage over a period where dial tampering does not occur. From these "check" readings, monthly usage can be estimated for these months by taking the usage obtained and dividing it by the number of days consumed times the number of days in the month. Once monthly usage is obtained for these months, the remainder of the months in a given year can be estimated based on system average consumption patterns for residential customers. The kwh obtained from this estimate is compared to what was originally billed, with the difference being the additional amount owed by the customer. In this case, the difference over the period April, 1990 to February, 1996 was determined to be \$7,453.12, excluding Current Diversion Investigative Charges of \$349.38. April, 1990 represents the earliest customer billing records which FPL has at this time.

We reviewed the billing history records and other documentation provided by FPL to support its calculation of the backbilled amount. FPL's calculation of the average consumption per month appears reasonable. As noted above, the four readings taken during FPL's investigation indicated an average consumption of more than 2900 kWhs per month. The customer's consumption has never been that high. In addition, the electrical usage was lower from 1994 through February, 1996, even with the addition of an electric water heater and appliances in the apartment. Thus, for these reasons, we find that the total backbilled amount of \$7,802.50, which includes \$7,453.12 for customer usage from April, 1990 to February, 1996 and \$349.38 for investigative charges, was calculated in a reasonable manner as required by Rule 25-6.104, Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's billing of the account described in the body of this Order is found to be reasonable. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDER NO. PSC-96-1216-FOF-EI  
DOCKET NO. 960903-EI  
PAGE 6

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 24th day of September, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

VDJ

DISSENT

Commissioner Kiesling dissents as to the calculation the estimate of electricity used for the period April, 1990 to February, 1996 based on the customer's consumption since March, 1996.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 15, 1996.

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 substantially 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 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 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.