

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Thomas W.) DOCKET NO. 970047-EI
Hart against Florida Power &) ORDER NO. PSC-97-0215-FOF-EI
Light company regarding) ISSUED: February 24, 1997
backbilling.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT

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 August 14, 1996, Mr. Thomas W. Hart contacted the Division of Consumer Affairs (Consumer Affairs) and complained that he was unjustifiably charged with current diversion by Florida Power & Light Company (FPL). Mr. Hart also disputed a bill in the amount of \$9,327.01 from FPL for usage not recorded or previously billed due to the alleged meter tampering and for investigative charges. An inquiry was taken and sent to FPL for a full report. On August 26, 1996, a report was received by Consumer Affairs from the company.

In response to the complaint, FPL reported the following sequence of events:

- 1) Electric service for the residence at 301 N.E. 5th Court, Dania, Florida 33004, was established in the name of Thomas Hart on October 3, 1983, and service has continued in his name to date.

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FPSC-RECORDS/REPORTING

- 2) On July 20, 1995, an FPL meter reader reported "erratic kilowatt usage" at this residence.
- 3) On August 15, 1995, an FPL meterman inspected the meter at this residence, noted that the meter can face plate was rigged and the canopy seal was missing, and documented these observations. Mr. Hart's account was referred to an investigator for further review.
- 4) FPL began meter check readings. Four regressive readings were documented by an FPL investigator between August 15, 1995, and December 19, 1995. Based on readings taken on August 15, 1995 (by meterman) and on August 18, 1995 (by meter reader), the projected usage for the August 18, 1995 billing period was 3030 kilowatts. The actual usage billed to Mr. Hart for the August 18, 1995 billing period was 879 kilowatts.
- 5) On May 13, 1996, FPL removed and replaced meter number 5C47661. At the time meter number 5C47661 was removed, FPL's revenue protection meterman documented that the face plate and outer seal were rigged and the inner seal was missing.
- 6) On May 21, 1996, meter number 5C47661 was tested. Test results indicated that the meter registered 90.78% under a full load and 0% under a light load. The weighted average is 72.62%. Documentation at the time of the test indicated that the meter had no inner seal and showed signs of dial and bearing tampering.
- 7) On July 8, 1996, Mr. Hart's account was rebilled using the seasonal average percentage of usage calculation. FPL stated that it did not have any record of the customer's electric consumption prior to June, 1990. Therefore, the customer's account was backbilled from June 21, 1990 to May 13, 1996. The company's records did not indicate that the customer's consumption declined during the backbilling period. Because no noticeable and sustained drop in consumption could be documented, FPL used the actual consumption from readings taken. The total amount rebilled was \$9,327.01, including \$387.99 for investigative costs.

- 8) On July 16, 1996, Mr. Hart called FPL. FPL representatives explained the meter condition and the rebilling method. Mr. Hart stated that he had no knowledge of the diversion.
- 9) On August 5, 1996, Mr. Hart met with FPL representatives at the FPL office. The meter reading check list, billing worksheet, and the electric meter condition were explained. Payment arrangements were offered but were not accepted by Mr. Hart.

On September 30, 1996, Mr. Hart was notified by letter that, based on the information received by staff, the amount of FPL's rebilling appeared to be reasonable. On October 10, 1996, by letter, the customer requested an informal conference. The informal conference was held on Friday, December 6, 1996. In attendance were Mr. Hart, FPL representatives, and Consumer Affairs staff. No settlement was reached by the parties at or since the conference.

As discussed below, we find that current diversion occurred at the residence at 301 N.E. 5th Court, Dania, Florida, and that the amounts backbilled by FPL are reasonable. Accordingly, we hold that Mr. Hart's complaint is denied, and that Mr. Hart, as the customer of record for the time period in question, is responsible for the backbilled amounts.

Current Diversion

FPL's Revenue Protection investigator reported dial tampering on meter number 5C47661, which served the residence at 301 N.E. 5th Court, Dania, Florida 33004, and supported this finding with documented check readings. During the course of the investigation, FPL documented four regressive meter readings.

- 1) A check reading taken on September 8, 1995, showed 90,214 kwh. The regular monthly reading taken on September 19th showed 89,292 kwh, a regression of 922 kwh.
- 2) A check reading taken on October 13, 1995, showed 91,209 kwh. The regular monthly reading taken on October 18th showed 90,065 kwh, a regression of 1,144 kwh.

- 3) A check reading taken on November 15, 1995, showed 91,958 kwh. The regular monthly reading taken on November 17th showed 90,648 kwh, a regression of 1,310 kwh.
- 4) A check reading taken on December 13, 1995, showed 91,705 kwh. The regular monthly reading taken on December 19th showed 91,245 kwh, a regression of 465 kwh.

These readings indicate physical tampering with the meter dial for the purpose of evading the responsibility of paying the full amount for service received. This conclusion is further supported by physical evidence of tampering, including a broken inner seal and a rigged face plate and outer seal.

FPL provided projections based upon the check readings that showed potential usage at this residence during the period of the investigation. These projections indicate that actual usage was greater than recorded usage. Based upon these projections and the other evidence of tampering, we find that current diversion occurred at the residence at 301 N.E. 5th Court, Dania, Florida, resulting in unbilled consumption. As the customer of record during the entire period, Mr. Hart is responsible for a reasonable amount of backbilling.

Amount of Backbilling

Mr. Hart's account was backbilled from the June 21, 1990, billing period through the May 13, 1996, billing period. Seasonal percentage of usage factors were applied to projected yearly usage amounts, to derive a projection of actual usage during the backbilling period. The difference between projected usage and previously billed usage, along with investigative costs, were backbilled to Mr. Hart's account.

A seasonal percentage of usage chart was developed by determining the total kwh sold to all residential customers in Mr. Hart's service area by month throughout an entire year, then dividing each monthly usage amount by the yearly total usage to calculate a percentage figure (factor) for each individual month.

Meter readings taken on August 15, 1995, and August 18, 1995, indicated that 302 kilowatt hours (kwh) were used during that period. FPL projected monthly usage of 3,020 kwh based on these

readings. This amount was divided by the August 1995 factor of 9.94 percent, resulting in a projected yearly usage of 30,382 kwh.

Meter readings taken on October 20, 1995, and October 27, 1995 indicated that 574 kwh was used during that period. FPL projected monthly usage of 2,460 kwh based on these readings. This amount was divided by the November 1995 factor of 8.56 percent, resulting in a projected yearly usage of 28,738 kwh.

FPL averaged these two projected yearly usage numbers to derive an average projected yearly usage of 29,560 kwh. To this amount FPL applied factors from the seasonal percentage of usage chart for Mr. Hart's area to calculate the usage, by month, that should have been billed to Mr. Hart's account. The difference between the recalculated kwh usage and the recorded (and previously billed) kwh usage was backbilled to Mr. Hart's account, along with applicable investigative costs. Mr. Hart was backbilled a total of \$9,327.01. This amount included \$8,939.02 for usage and \$387.99 for investigative costs.

In calculating the backbilled amounts for unrecorded usage, FPL stated that it did not account for the fact that readings taken on August 15 and August 18, 1995, and October 20 and October 27, 1995, were obtained from a meter that was not registering 100% of kwh used. Due to tampering of the meter bearings, the meter was only registering 90.78% on a full load, 0% on a light load, and 72.62% on a weighted average. If the same readings had been taken from a meter registering 100%, the backbilled amount would have increased by \$3,701.46.

FPL also produced a chart showing the kilowatt hours originally billed for the residence at 301 N.E. 5th Court, Dania, Florida. The chart indicates a very low level of kwh usage since 1990, especially considering that the subject residence is approximately 4279 square feet and has 5 bedrooms, 4 bathrooms, and a pool.

Based on the foregoing, we find that the amount backbilled by FPL reflects a reasonable estimate of the unrecorded usage for Mr. Hart's account, and, therefore, that FPL's backbilling is in accordance with Rule 25-6.104, Florida Administrative Code. Mr. Hart, as the customer of record, shall be responsible for the total backbilled amount of \$9,327.01, which includes \$8,939.02 for usage and \$387.99 for investigative costs.

ORDER NO. PSC-97-0215-FOF-EI
DOCKET NO. 970047-EI
PAGE 6

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the complaint of Thomas W. Hart against Florida Power & Light Company, regarding backbilling of his account, is denied, and that Thomas W. Hart is liable for the amounts backbilled to his account for unrecorded usage as a result of current diversion. 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

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 February, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 March 17, 1997.

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.