

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Richard Ralph Malcolm
against Florida Power & Light Company.

DOCKET NO. 20170098-EI
ORDER NO. PSC-2017-0389-PAA-EI
ISSUED: October 13, 2017

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
ART GRAHAM
RONALD A. BRISÉ
DONALD J. POLMANN
GARY F. CLARK

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT BY RICHARD MALCOLM AGAINST FLORIDA
POWER & LIGHT COMPANY

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 (F.A.C.).

I. Background

Section 366.03, Florida Statutes (F.S.), states that each public utility shall furnish to each person applying for service, reasonably sufficient, adequate, and efficient service. Rule 25-22.032, F.A.C., implements Chapter 366, F.S., and establishes informal customer complaint procedures that are designed to address disputes, subject to our jurisdiction, that occur between regulated companies and individual customers. Pursuant to this rule, any customer of a Commission-regulated company may file a complaint with the Commission's Office of Consumer Assistance and Outreach whenever the customer has an unresolved dispute with the company regarding electric, gas, telephone, water, or wastewater service. On September 21, 2016, Richard Malcolm filed an informal complaint against Florida Power & Light Company (FPL). In his complaint, Mr. Malcolm stated that FPL had wrongfully accused him of meter tampering and improperly backbilled his account for unrecorded electric usage.

On April 28, 2017, our staff advised Mr. Malcolm that his informal complaint and FPL's backbilling calculations had been reviewed and that our staff had determined that Mr. Malcolm's account was fairly and reasonably backbilled. Our staff also advised Mr. Malcolm that FPL did

not violate any statute, rule, its company tariff, or orders in the investigation of meter tampering or in the backbilling of electricity used by Mr. Malcolm for which he did not pay due to unauthorized conditions. Our staff advised Mr. Malcolm that he had an opportunity to file a petition for formal proceedings.

On May 1, 2017, Mr. Malcolm filed a petition for initiation of formal proceedings. In the formal complaint, Mr. Malcolm claims that FPL has been “unjustly” awarded for allegedly “stolen” electric services. Mr. Malcolm also states that he is not responsible for the services because he has never opened an account with FPL or conducted business with FPL on his own behalf.

This order addresses Mr. Malcolm’s formal complaint against FPL. We have jurisdiction over this matter pursuant to Section 366.04, F.S.

II. Meter Tampering

Meter ACD5293 was located on Mr. Malcolm’s premises. On August 18, 2016, FPL determined that meter ACD5293 should be replaced because it had stopped providing meter readings. On August 19, 2016, an FPL meter electrician was dispatched to the location and meter ACD5293 was found in the meter socket with no display and the outer seal missing. An unauthorized metal jumper was found in the right side meter blocks. Meter ACD5293 was removed and a new smart meter, ACD1656, was installed with a locking device on the metal enclosure.

On September 8, 2016, the meter that was removed from Mr. Malcolm’s premises, meter ACD5293, was tested by FPL in the field with the unauthorized metal jumper present. The test results reflected that the meter was not registering within the acceptable tolerance prescribed in Rule 25-6.052, F.A.C.¹ The meter was found to have a Weighted Average Registration of 73.98 percent.

On September 19, 2016, FPL reviewed the kWh history for ACD5293 and its smart meter communications and found a sustained drop in kWh from the billing period ending July 11, 2014, through the billing period ending August 11, 2016. There was a substantial increase in kWh usage since the new smart meter, ACD1656, was installed.

On December 8, 2016, a refereed meter test was conducted on the meter removed from Mr. Malcolm’s premises, meter ACD5293. The meter test results were below the acceptable tolerance with the jumper and within the acceptable tolerance without the jumper. FPL’s test showed a Weighted Average Registration of 83.33 percent with the jumper and 99.62 percent without the metal jumper present. Our staff also tested the removed meter, with results showing a Weighted Average Registration of 99.54 percent without the metal jumper.

¹ Rule 25-6.052, F.A.C., states that the performance of watt hour meters shall be acceptable when the average registration error does not exceed plus or minus two percent (98 percent and 102 percent).

Mr. Malcolm requested that the removed meter, ACD5293, be tested at his premises. On December 19, 2016, meter ACD5293 was tested by FPL and our staff at Mr. Malcolm's premises. The test found that when the meter was tested without the metal jumper; the meter recorded consumption accurately.

Evidence from the FPL field investigation shows the meter removed from Mr. Malcolm's premises, meter ACD5293, had been tampered with. The meter test without the unauthorized conditions reflected that the meter was operating within acceptable tolerances. Our staff found that the unauthorized conditions found on August 19, 2016, at meter ACD5293 and information obtained as a result of the FPL's meter testing show that meter tampering occurred with meter ACD5293.

III. Backbilling

Section 366.03, F.S., states that all rates and charges made or received by any public utility for service rendered by it and each rule and regulation of such public utility shall be fair and reasonable. Rule 25-6.104, F.A.C., authorizes electric utilities to backbill the customer for a reasonable estimate of the electricity consumed but not metered due to meter tampering. FPL's tariff sets forth its fees, services and policies as approved by the Commission. FPL's Fourth Revised Tariff Sheet No. 6.061, Section 8.3, Tampering with Meters, states:

Unauthorized connections to, or tampering with the Company's meter or meters, or meter seals, or indications or evidence thereof, subjects the Customer to immediate discontinuance of service, prosecution under the laws of Florida, adjustment of prior bills for services rendered, and reimbursement to the Company for all extra expenses incurred on this account.

A review of the kWh usage and communication history for the meter removed from Mr. Malcolm's premises, meter ACD5293, revealed a sustained drop in usage from the billing period ending July 11, 2014, through the billing period ending August 11, 2016. Based on the Weighted Average Registration of 73.98 percent, FPL backbilled Mr. Malcolm for the billing period ending July 11, 2014, through the billing period ending August 11, 2016. Upon notification by our staff that the more appropriate Weighted Average Registration was 83.33 percent, FPL adjusted the amount backbilled.

The adjusted amount backbilled includes \$1,319.15 for electric service and an additional \$547.28 in investigative charges for an adjusted total amount backbilled of \$1,866.43. The total amount Mr. Malcolm owes to FPL as of September 10, 2017, is \$2,927.82. This amount includes the \$1,866.43 in backbilling and investigative charges, an additional \$642.63 for two unpaid previous billing periods in 2016 (which originally was \$710.05 and was partially offset by a payment made by Mr. Malcolm for \$67.42), and current charges of \$418.76 for the September 10, 2017 billing period.

Mr. Malcolm's consumption history shows that he benefited from unauthorized conditions at his meter by paying less for electricity than he would have with a properly working meter without a jumper. Mr. Malcolm is responsible for payment of a reasonable estimate of the electricity used but not originally billed, FPL may also recover the costs of its investigation of the meter tampering.

We have reviewed FPL's back billing calculations and determined that Mr. Malcolm's account was fairly and reasonably back billed. FPL has violated no statute, rule, company tariff, or orders in the investigation of meter tampering or in the backbilling of electricity used by Mr. Malcolm for which he did not pay due to unauthorized conditions.

IV. Conclusion

Mr. Malcolm's formal complaint is denied. Mr. Malcolm's account was properly billed in accordance with our statutes, rules, and orders, and FPL's tariffs. We find that FPL did not violate any applicable statute, rule, company tariff, or order of the Commission in the handling of Mr. Malcolm's account.


Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that Richard Malcolm's formal complaint against Florida Power & Light is denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon issuance of a Consummating Order unless an appropriate petition in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" 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 13th day of October, 2017.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 3, 2017.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.