

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Juana L. Del Rosario
against Florida Power & Light Company
regarding backbilling for alleged meter
tampering.

DOCKET NO. 20200030-EI
ORDER NO. PSC-2020-0219-PAA-EI
ISSUED: June 29, 2020

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
JULIE I. BROWN
DONALD J. POLMANN
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING FORMAL COMPLAINT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission (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.).

Background

On June 13, 2019, Ms. Juana Del Rosario filed an informal complaint with this Commission against Florida Power & Light Company (FPL or Utility).¹ In her informal complaint, Ms. Del Rosario alleged that she was improperly backbilled for up to 48 months of usage, for a total of \$2,351.23. Although FPL had found that her meter had been tampered with, Ms. Del Rosario alleged that she did not tamper with the meter.

By letter dated December 17, 2019, Commission staff advised Ms. Del Rosario that her informal complaint had been reviewed by this Commission's Process Review Team, in accordance with Rule 25-22.032, F.A.C., and it appeared that FPL had not violated any applicable statutes, rules, company tariffs, or Commission orders. Commission staff advised Ms. Del Rosario that if she disagreed with Commission staff's complaint conclusion, she could file a petition for initiation of formal proceedings for relief against FPL.

¹ Complaint Number 1310438E.

Ms. Del Rosario filed a formal complaint against FPL on January 17, 2020, pursuant to Rule 25-22.036, F.A.C. In her complaint Ms. Del Rosario stated that she did not tamper with her meter. However, on May 16, 2019, FPL found that Ms. Del Rosario's smart meter was missing the outer and inner seals, which were an indication that someone other than utility staff accessed the meter enclosure and internal meter workings. On June 12, 2019, FPL provided notice to Ms. Del Rosario that her service would be disconnected due to meter tampering. FPL restored Ms. Del Rosario's service pending the resolution of her complaint.

On March 20, 2020, Commission staff sent a letter to Ms. Del Rosario requesting any additional information or documentation that might assist this Commission in addressing her complaint. Commission staff did not receive a response from Ms. Del Rosario.

Ms. Del Rosario requests for us to find that FPL incorrectly backbilled her account and to require FPL to give Ms. Del Rosario a credit adjustment of \$2,351.23. This Order addresses the appropriate disposition of Ms. Del Rosario's complaint against FPL. We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Decision

Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to our jurisdiction that affects the complainant's substantial interests and that is in violation of a statute enforced by this Commission, or of any Commission rule or order. Ms. Del Rosario's petition fails to show that FPL's backbilling of her account violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C. Therefore, as set forth below, we hereby deny Ms. Del Rosario's petition for relief.

On April 18, 2003, Ms. Del Rosario established an account for electric service with FPL at her residence. In 2004, FPL identified a switched meter condition at Ms. Del Rosario's apartment building due to a meter can labeling mistake in part by the builders, the builders' electricians, and FPL when the meter was initially installed. The meters of the apartment building were mislabeled by the builders, the builders' electricians, and FPL at the time the meters were installed causing every residence in the apartment building to be improperly billed. In 2004, FPL corrected the mixed meter condition associated with Ms. Del Rosario's residence.

On September 14, 2010, FPL installed smart meter ACD0735 at Ms. Del Rosario's residence. On February 25, 2019, FPL reviewed the communication from smart meter ACD0735 and found a drop in consumption occurred on May 22, 2014.² On May 5, 2019, FPL visited Ms.

² In a supplemental response provided to Commission staff on May 21, 2020, FPL clarified that smart meters do not have a specific event notification that identifies theft. Instead, FPL's revenue protection department correlates data from the meter and several other FPL systems to target leads that will have an acceptable effectiveness rate. Furthermore, analytic tests are not 100% accurate and sometimes theft goes undetected for an extended period of time. FPL stated that it actively creates new analytic tests and improves existing analytic tests using new techniques and smart meter data to identify previously undetected theft conditions. These new analytic tests are applied to the entire population of FPL meters in circulation to help identify any previously undetected theft conditions. FPL states that the case involving Ms. Del Rosario's service address was identified by a recently developed new analytic test.

Del Rosario's residence and found that the outer enclosure seal of smart meter ACD0735 was missing. FPL removed smart meter ACD0735 and installed new smart meter ACD1338 with a locking device and an outer seal on the meter enclosure. FPL sent smart meter ACD0735 to its meter testing center. An inspection of meter ACD0735, on May 16, 2019, revealed that the meter's inner seal was missing; the meter had been internally tampered with by manipulating the current transformer (CT) wires (one of the two CT wires had been cut); and the meter test results showed Full Load (FL) at 49.91%, Light Load (LL) at 49.97%, and Weighted Average (WA) at 49.95%. FPL reported that the meter's missing outer and inner seals were an indication that someone other than utility staff accessed the meter enclosure and internal meter workings for the purpose of meter tampering.

On June 3, 2019, FPL assessed Ms. Del Rosario's account a total bill of \$209.96. The bill included a \$13 reconnection charge; the unpaid balance of the March billing statement of \$36.13; the unpaid balance of the April billing statement of \$57.59 and a \$5 late payment charge; and the unpaid balance of the May billing statement of \$93.24 and a \$5 late payment charge. On June 4, 2019, FPL received a payment of \$99, yielding a total bill of \$110.96.

On June 7, 2019, FPL reviewed Ms. Del Rosario's account and determined that a drop in consumption occurred on May 22, 2014, and an increase in consumption occurred after the new meter was installed on May 5, 2019. FPL backbilled Ms. Del Rosario for 48 months of under-recorded usage based on the results of the meter test.³ FPL billed Ms. Del Rosario for the 50.05% kilowatt hour (kWh) difference that did not register on the meter due to the unauthorized condition.

Ms. Del Rosario's cumulative bill for the period May 21, 2015 through April 22, 2019 was \$2,066.99. FPL canceled that bill and rebilled the account \$3,658.43, a difference of \$1,591.44. Pursuant to Section 8.3 of its tariff, FPL also billed Ms. Del Rosario a tampering penalty of \$200.00 and investigative charges of \$540.66, bringing the total backbilled amount to \$2,332.10.

On June 12, 2019, FPL went to Ms. Del Rosario's residence to disconnect her service due to meter tampering. FPL provided a notice explaining the disconnection of service and the payment required to obtain restoration of service. That same day FPL spoke with Ms. Del Rosario and explained the meter condition, and the payment required to have her service restored. Ms. Del Rosario argued that her service was disconnected because FPL mixed up her meter with another unrelated customer's meter similar to the switch that occurred in 2004. According to FPL, if a mixed meter condition existed, another unrelated customer's service would have been interrupted that day. FPL asserted that Ms. Del Rosario's electric service would have remained operational if the mixed meter condition had continued to exist. Additionally, FPL reported that because the mixed meter condition was corrected in 2004, the meter backbilling Ms. Del Rosario received in 2019 was in no way related to the previous meter condition.

³ Rule 25-6.104, F.A.C., 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 advised Ms. Del Rosario that as the account holder, she is held responsible for the backbill for unmetered consumption since she benefitted from the unauthorized condition. Additionally, FPL offered to reconnect the service with a payment of 50% of the backbill and a payment arrangement for the remaining balance, which Ms. Del Rosario declined.

On June 26, 2019, due to no payment received, FPL closed Ms. Del Rosario's account, effective June 12, 2019. FPL sent Ms. Del Rosario a final bill for \$2,425.09, including the final bill charges of \$73.86 for service used from May 21, 2019 to June 12, 2019, a \$97.96 past due balance, a \$13.00 reconnection charge, the backbill charges of \$2,332.10, a \$90.00 deposit refund, and a \$1.83 deposit interest credit.

On July 2, 2019, FPL cancelled the bill charges of \$73.86 consumed from May 21, 2019 to June 12, 2019, bringing the remaining balance to \$2,351.23. That same day, FPL contacted Ms. Del Rosario and advised that, as a courtesy, her account would be reopened and the service would be reconnected, pending the resolution of her complaint with this Commission. Ms. Del Rosario accepted the offer to reconnect the service pending our review of her complaint. The account was reopened, and a request to reconnect service at the residence was issued. The service was reconnected and a \$13 reconnection charge was issued, which yielded a new balance of \$2,364.23. FPL told Ms. Del Rosario that the backbill charges of \$2,332.10 would be protected⁴ from collection action pending the resolution and closure of her complaint filed with this Commission; however, she would need to remain current on her bills because the unauthorized condition (tampered meter) was corrected.

On August 6, 2019, Commission staff discussed with FPL whether the Utility would be willing to modify the payment arrangements for the disputed balance. FPL stated that if Ms. Del Rosario could make an initial payment of \$300, then the remaining unpaid balance of \$2,032.10 could be paid in 48 payments, including the applicable late payment charges. Commission staff relayed FPL's offer of payment arrangement to Ms. Del Rosario, which she rejected.

Based on our review of the billing and payment documentation provided by FPL, it appears that Ms. Del Rosario has a poor payment history. She has made several late payments and partial payments. As a result of her late payments, her service has been interrupted previously. Upon review of information provided to us and discussions with both the Utility and Ms. Del Rosario, there is no evidence that FPL backbilled Ms. Del Rosario incorrectly. Meter tests performed by FPL on smart meter ACD0735 revealed a registration below the allowable tolerances due to the tampered CT wires. Ms. Del Rosario was backbilled for 48 months based on the data collected by FPL, which indicated that consumption dropped on May 22, 2014, one of the two CT wires in smart meter ACD0735 had been cut, and consumption increased after the new meter was installed on May 5, 2019. Ms. Del Rosario was backbilled the 50.05% kWh difference that did not register on the meter due to the meter tampering. Thus, we hereby deny Ms. Del Rosario's complaint as it does not demonstrate that FPL's backbilling of her account violates any statutes, rules, or orders, or that FPL's backbilling of 48 months is unreasonable.

⁴ Pursuant to Rule 25-22.032(3), F.A.C., a customer is afforded protection from disconnection during the informal complaint process; therefore, "a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by Commission staff."

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ORDERED that if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket shall be closed upon the issuance of a consummating order.

By ORDER of the Florida Public Service Commission this 29th day of June, 2020.



ADAM J. TEITZMAN
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 July 20, 2020.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.