

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of DELPHIN DIAZ against) DOCKET NO. 891360-EI  
 FLORIDA POWER & LIGHT COMPANY regarding ) ORDER NO. 22526  
 backbilling. ) ISSUED: 2-12-90  
 )

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTIONORDER REGARDING BACKBILLING

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

On July 25, 1989, Mr. Delphin Diaz, a customer, filed a complaint against Florida Power and Light Company (FPL) with the Commission. Mr. Diaz's complaint was in response to a bill he received from FPL in the amount of \$4,577.31. Because FPL had found him to be benefiting from a tampered meter which did not allow correct registration of electricity on the meter serving Mr. Diaz's address, FPL billed him for the amount of energy FPL estimated was used but not paid for since December, 1985, the date Mr. Diaz assumed residence. The amount, however, did not include meter tampering investigation charges because no substantial information existed to indicate customer knowledge of the condition.

On July 25, 1989, the Commission initiated an informal investigation of Mr. Diaz's complaint. On August 3, 1989, FPL reported to the Commission that the meter disk on the meter which served the Diaz residence had been found in a raised position on March 27, 1989. On April 7, 1989, FPL replaced the tampered meter with an accurately registering meter.

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FPSC-RECORDS/REPORTING

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On May 2, 1989, testing by FPL on the old meter indicated that it registered 60.2% full load, 16.2% light load, resulting in a weighted average registration of 51.4%. Further inspection of the meter revealed that the inner-canopy integrity seal tip was missing, the bearings had been tampered with, the disk had been raised, and that there were drag marks on the top of the disk. A veri-board test was also made which indicated 10/6 or 60% registration, this is in line with the full load test results of 60.2%.

The account was rebilled based on the 60.2%, full load results, which Commission staff found best complied with Rule 25-6.104. Rule 25-6.104, Florida Administrative Code, provides that the utility, upon discovery an unauthorized use of energy, may bill a customer on a reasonable estimate of the energy used.

Lacking evidence to the contrary, FPL has rebilled this account as an inherited condition, and has rebilled over the entire company record retention period, from December, 1985 to April, 1989, resulting in a rebilling of 51,809 kilowatt hours.

On August 30, 1989 Mr. Diaz spoke to Ms. Melinda Guess who verbally disclosed her findings justifying the backbilling. Mr. Diaz was unsatisfied and his case was reviewed further by Manning M. Stair of the Consumer Affairs Division. Mr. Diaz also gave information verbally to be reviewed by Mr. Stair. The following is the information that the customer gave:

|      | <u>Average of 86,87,88 kwh billed</u> | <u>1989 kwh</u> |
|------|---------------------------------------|-----------------|
| Jan. | 1,192                                 | 2,425           |
| Feb. | 1,342                                 | 2,122           |
| Mar. | 766                                   | 2,051           |

Mr. Diaz stated that 1989 was 49% higher than 1986-1988.

|      | <u>Average of 86,87,88 kwh billed</u> | <u>1989 kwh</u> |
|------|---------------------------------------|-----------------|
| Apr. | 1,485                                 | 3,038           |
| May  | 1,895                                 | 3,955           |
| June | 2,292                                 | 4,010           |
| July | 2,657                                 | 3,288           |

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Mr. Diaz stated that 1989 was 42% higher than 1986-1988.

While Mr. Diaz did understand that the backbilling was according to the meter test and not according to current consumption, he remained unsatisfied. FPL was notified that the bill was still in dispute, and agreed to not take any action until further word from the Commission.

On September 8, 1989, Mr. Stair responded to Mr. Diaz's request for additional review in writing. Mr. Stair's informal investigation findings were in favor of FPL. Mr. Stair noted that when comparing consumption over the first four months after the meter's replacement with an accurately registering watt-hour meter, to the same four months averaged over the prior three years, there is a 72% increase in usage. In other words, when the electric energy usage measured by the old meter is divided by the usage measured by the new meter (partial registering versus accurately registering meters) the old meter registered 58% of the new meter. This relates to the veri-board test that showed a 60% registration of actual demands at high loads. It was also explained in the informal investigation that the company had presented sufficient and credible evidence to suggest that the tampered-meter condition existed as described by the utility and that the customer was responsible for payment of all backbilled charges calculated by FPL.

On September 24, 1989, Mr. Diaz wrote a letter to Mr. Stair requesting additional consideration. Mr. Diaz felt that the investigation was handled poorly and that he should have been given the opportunity to present his concerns. Mr. Diaz stated in his letter that the old meter had been running fast instead of slow as reported by FPL. Mr. Diaz also questioned why it took 40 months for FPL to discover the meter condition and felt that the meter readers should have recognized the raised disk much sooner. He stated that when he was shown the old meter by the FPL representative, the condition was readily apparent to him. Mr. Diaz wrote; "It is inconceivable that competent and well-paid meter readers, trained and encouraged by the utility to look for and report 'tampered' or 'defective' meters could miss 42 times a meter that is so visibly defective to an untrained person. I submit that the disc could not have been in a raised position for that long without detection and that the alteration could have occurred if the meter was accidentally hit by a painter while the house was painted

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shortly before March or could have been accidentally altered by some other mean."

Mr. Diaz also wrote: "On May 7, 1989, our household lifestyle changed when my in-laws moved to our house because of the seriousness of my mother-in-law's illness which requires her staying at home and keeping the central A/C unit at a very low setting the entire day. We expected a significant increase in our electrical consumption and I submit that any increase after April 1989 is due to this change and not because a 'new' meter was installed."

Mr. Diaz has compiled several tables of figures and percentages which he feels substantiates why he has been improperly rebilled. He has used figures taken from usage which occurred during the backbilling period and usage which had been registered after the installation of the new meter.

On October 4, 1989, Mr. George B. Hanna, Director, Division of Consumer Affairs received a letter from Mr. Delphin Diaz requesting an informal conference, which was conducted in Miami on December 1, 1989.

Mr. Diaz maintained that he had been billed improperly, and that the company should not penalize him because of the condition that was found on his meter. He felt that the billing should not be based on the 60.2% full load registration, but instead on figures that he had developed. FPL informed the customer that the new accurately registering meter was installed on April 7, 1989, and that a reading taken 18 days after the installation of this meter showed that he was consuming an average of 126 kilowatt-hours per day, which is a 33% increase over what the tampered meter was registering. Mr. Diaz had no comment on this statement but instead referred to usage that had been registered on the new meter for June, July, August, and September 1989. The customer stated that he is using less in these months than the amount for which FPL is backbilling him for January, February, and March. Mr. Diaz commented that there was no way that he could use more kwh in January, February, and March, than in the summer months with more people in the house. Mr. Diaz felt that FPL should have rebilled him based on 82.3% meter registration rather than 60.2% as billed.

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The conference ended without a resolution of the complaint. Mr. Diaz's account was rebilled because FPL has documented that the meter which served this customer's house was found on March 27, 1989, with the meter disk turning, but with the disk placement at a higher than normal position.

We find that on April 7, 1989, a meterman found that the outer-ring seal had been rigged to appear to be intact, the disk was turning, and the inner canopy integrity seal tip was missing. The tampered meter was removed and replaced with an accurately registering meter, and transported to the FPL shop for testing. The tampered meter when tested registered at 60.2%, full load, 16.2% light load, giving a weighted average registration of 51.4%. This registration is not in line with the required registration of no less than 98%, and no more than 102%, as required by Rules 25-6.052, Florida Administrative Code.

Though there does not appear to be any evidence that the customer had any knowledge of the current diversion condition, the fact remains that he benefited from the use of service without paying for it. FPL, therefore, has rebilled this account in accordance with Rules 25-6.104 and 25-6.103 (b), Florida Administrative Code; an amount equal to the unbilled error. The company determined the undercharged amount by adjusting the recorded consumption for the amount of error found in the tampered meter. Because there was no apparent unusual sustained drop in consumption during the company record retention period for this customer, the account was rebilled for the entire period.

At the January 30, 1990 Agenda Conference, Staff indicated that Mr. Diaz, who did not appear, and FPL representatives had agreed prior to that date that Mr. Diaz will pay to FPL over a 40 month period \$3,577.31, or \$1,000 less than the rebilled amount.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Mr. Delphin Diaz is responsible to Florida Power & Light Company for the total amount due for electricity consumed but not paid for, until the Commission receives a copy of the agreement between Mr. Diaz and Florida Power & Light Company indicating Florida Power & Light Company will accept \$3,577.31 over a

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40-month period as payment in full, at which time Mr. Diaz will be responsible for the latter amount. It is further

ORDERED that Florida Power & Light Company has billed Mr. Diaz based on the full registration load registration of the tampered meter and such billing is approved as modified. It is further

ORDERED that this docket shall close only after staff receives a copy of the above-mentioned agreement between Mr. Diaz and Florida Power & Light Company, and no substantially affected person timely files a protest to the proposed action.

By ORDER of the Florida Public Service commission, this 12th day of FEBRUARY, 1990.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

BAB

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

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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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 5, 1990.

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, and as reflected in a subsequent 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.

If this order becomes final and effective on the date described above, any party adversely 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 sewer 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.