

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Mr. Larry)	DOCKET NO. 910059-EI
Timm against Florida Power and)	ORDER NO. 24282
Light Company concerning current)	ISSUED: 3/25/91
diversion backbilling)	
)	
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 GERALD L. GUNTER
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT 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.

Larry Timm filed a complaint against Florida Power & Light Company (FPL) with the Florida Public Service Commission (FPSC) on April 9, 1990, questioning the validity of his disconnection of service by FPL due to a current diversion condition.

In a report submitted by FPL to the FPSC dated July 26, 1990, the company advised that a current diversion investigation was initiated on September 15, 1989 after FPL received an anonymous tip that the customer located at 2943 "B" Road in Loxahatchee had an underground tap located somewhere on the property. On September 21, 1989, an FPL representative went to Mr. Timm's property and observed that the air conditioning was on but noticed that the meter disc was turning slowly. The representative then turned off the main breaker and the air conditioner remained on.

The representative returned to the property on September 22, 1989, with a meterman and underground crew. Mr. Timm, who was sitting outside the trailer when the crew arrived, then ran inside and turned the air conditioner off. He refused to turn it back on after a request, saying it had "burned up". The crew pulled the electric meter, took amp readings, and found the service to still be drawing a load. The underground crew began to dig and found the buried tap later that day. Upon inspection, FPL found that the customer's air conditioner, helicopter hangar, and parts of the

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trailer were going unmetered. The service line was tapped into a direct buried cable that went to a breaker box sitting on the ground.

Upon finding this condition, FPL informed Mr. Timm that they would have to remove the underground tap. They also informed him that he would need to relocate his service to an overhead facility and provide a down payment of \$500 to restore electric service.

On July 23, 1990, FPL presented Larry Timm with a final bill in the amount of \$3,856.28, which included charges for electric consumption which FPL believed Timm used but was not charged for, plus investigative fees.

After the Division of Consumer Affairs conducted an informal investigation, and based upon records and information provided by FPL, staff wrote to Mr. Timm's attorney on August 27, 1990, and advised that according to FPSC rules and the company's tariffs, FPL may backbill for unmeasured electric energy usage caused by the unauthorized condition found. Mr. Timm was advised that the backbill was within commission guidelines and that Timm would be required to change to overhead facilities.

Mr. Timm requested an informal conference. The conference, pursuant to commission rule, was conducted by staff from Consumer Affairs and Legal Services on Wednesday, January 9, 1991, in West Palm Beach. The customer raised several issues at the conference, including that the tap must have been installed by Dennis Gostomski, a tenant living on Timm's property during the time in question. An extension was granted to both Timm and FPL to provide any further evidence to staff by January 31, 1991.

On January 31, FPL advised staff that two accounts were running simultaneously during the time period Timm said he rented his trailer to Gostomski. One account was in Timm's name and the other in Gostomski's. Both accounts were active simultaneously and registering kilowatt hours. Both accounts had mailing addresses to the service location. Both accounts were being paid on a regular basis. Timm's account was the only one affected by the diversion.

FPL also advised that they have existing overhead service to a yard pole at this location. The utility slightly altered its initial position and conceded that they would allow Timm to continue to have underground service, but he would need to install a permanent trailer pole up to 75 feet from the yard pole. FPL would run overhead service from the yard pole to the trailer pole at its expense. Timm would then be responsible for installing the underground service from the trailer pole to the trailer, obtaining the proper inspections.

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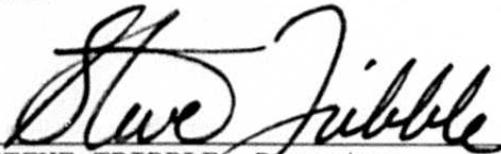
We find that Mr. Timm's electric meter was not registering the full amount of electricity consumed, due to the underground diversion. We find that FPL acted properly in backbilling Mr. Timm, and that the amount of the rebilling is reasonable. We find that FPL's willingness to provide overhead service to a yard pole will enable Mr. Timm to install underground service from a trailer pole (upon securing the required permits and inspections). This is reasonable and in accord with all applicable statutes, rules and tariffs. Accordingly the complaint of Larry Timm against Florida Power and Light Company is hereby denied.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Larry Timm's complaint against Florida Power and Light Company is hereby denied. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission this 25th day of MARCH, 1991.


 STEVE TRIBBLE, Director
 Division of Records and Reporting

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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

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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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 15, 1991.

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 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.