

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Pat Kintz/James)
Kiselak against FLORIDA POWER AND LIGHT) DOCKET NO. 910625-EI
regarding diversion meter tampering) ORDER NO. 25571
rebilling for estimated usage of) ISSUED: 01/07/92
electricity)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY

ORDER AFFIRMING BACKBILLING

BY THE COMMISSION:

After Florida Power and Light Company (FPL) rendered a backbilling in the amount of \$8,087.67, Pat Kintz filed a complaint with the Commission's Division of Consumer Affairs. FPL refused to establish service in her name at 3987 N.W. 163rd Street, Opa Locka claiming that she had resided at that address during the period when James Kiselak (the customer of record) diverted electricity. FPL billed Mr. Kiselak for the estimated unmetered electricity consumed, applicable taxes, fees and investigative charges. An informal conference failed to resolve the dispute and the Commission approved Staff's Recommendation that the backbilling was proper. Mr. Kiselak and Ms. Kintz requested a Formal Proceeding and the matter was referred to the Division of Administrative Hearings. The hearing was held in Tallahassee, Florida on November 4, 1991. Neither Ms. Kintz nor Mr. Kiselak appeared at the Hearing.

On November 14, 1991 the Hearing Officer submitted the Recommended Order to the Commission. This Recommended Order is attached to this Order as "Exhibit A". The Recommended Order includes 14 specific findings of fact concerning the condition of the meter (tampered); the propriety of FPL's backbilling (a reasonable estimate of the electricity used but not billed during the relevant period); and the residence of Ms. Kintz and Mr. Kiselak during and subsequent to the backbilling period. The Hearing Officer concluded that FPL had complied with all applicable statutes, rules and tariff provisions in rendering the backbilling

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

ORDER NO. 25571
DOCKET NO. 910625-EI
PAGE 2

and in refusing to establish service for Ms. Kintz at the 3987 N.W. 163rd St. address.

A full recitation of the facts in the Recommended Order would be unduly repetitive. In summary, the Hearing Officer found that a meter reader noticed evidence that the meter had been tampered with (a wire in the canopy, air conditioner on and meter not turning, drag marks on disk). The meter was removed, tested and found to be registering consumption accurately when the wire was not in place. FPL based its rebilling on the consumption for the month of April, 1989 (2079 kwh) and applying the seasonal average percentage of use chart for Dade County. Investigative charges were billed, as this customer had previously paid a current diversion bill at this address and was the first customer to use this particular meter. The Hearing Officer found that Mr. Kiselak had been the customer of record since at least 1986 and continued to reside at 3987 N.W. 163rd St. The Hearing Officer found that Ms. Kintz had been residing at 3987 N.W. 163rd Street since at least October of 1988.

We find that the Hearing Officer's Findings of Fact are supported by competent substantial evidence of record.

We find that the Hearing Officer correctly applied the law concerning the prohibition against a utility from giving any undue preference and requiring a utility to render a backbilling in the event it discovers it has underbilled a customer. The Hearing Officer correctly interpreted the Commission's rules concerning a "reasonable estimate" of the energy used and the proper backbilling time frame in the event of a tampered meter. The Hearing Officer correctly interpreted and applied FPL's tariff sheet regarding its refusal to establish service at the same address in the name of Ms. Kintz.

On November 19, 1991 Mr. Kintz and Ms. Kiselak filed another unsigned copy of the document protesting the Notice of Proposed Agency Action. This document was prefaced with a copy of the "Notice of right to submit exceptions" included in the Hearing Officer's Recommended Order. A copy of this document is attached to this Order as "Exhibit B". This filing speaks to the Notice of Proposed Agency Action and not to the Recommended Order. Rule 25-22.057 (3)(a) Florida Administrative Code provides in part "... exceptions shall fully set forth the error claimed and the basis in law therefore." We reject this document as not addressing "errors

ORDER NO. 25571
DOCKET NO. 910625-EI
PAGE 3

claimed" in the Recommended Order and not identifying the "basis in law" requiring an alternative result.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Hearing Officer's Findings of Fact are adopted in full as this agency's Findings of Fact. It is further

ORDERED that the Hearing Officer's Conclusions of Law are adopted in full as this agency's Conclusion's of Law. It is further

ORDERED that the complaint of Pat Kintz/James Kiselak against Florida Power and Light Company regarding the backbilling of estimated usage of electricity is DENIED. It is further

ORDERED that the backbilling in the amount of \$8087.67 by Florida Power and Light Company for estimated usage of electricity is AFFIRMED. It is further

ORDERED that Florida Power and Light Company acted properly in refusing to establish in the name of Pat Kintz at 3987 N.W. 163rd Street, Opa Locka, Florida. It is further

ORDERED that the document filed by the Petitioners on November 19, 1991 is rejected as not addressing "errors claimed" in the Recommended Order and not identifying the "basis in law" requiring an alternative result.

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 7th
day of JANUARY, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by: Kay Deane
Chief, Bureau of Records

ORDER NO. 25571
DOCKET NO. 910625-EI
PAGE 4

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.