

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Mr. Michael) DOCKET NO. 950673-EI
Gizewski against Florida Power &) ORDER NO. PSC-95-1309-FOF-EI
Light Company regarding alleged) ISSUED: October 25, 1995
current diversion/meter)
tampering rebilling for)
estimated usage of electricity.)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING UTILITY'S BACKBILLING
CUSTOMER FOR ELECTRIC USAGE

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.

CASE BACKGROUND

On February 17, 1995, Michael Gizewski filed a complaint with the Florida Public Service Commission's Division of Consumer Affairs (CAF) against Florida Power & Light Company (FPL). Mr. Gizewski complained that he had been backbilled by FPL for the period of March, 1992, through November 15, 1994, for electric usage at the account address. He claimed that FPL had alleged that meter tampering had occurred. In accordance with Rule 25-6.042, Florida Administrative Code, FPL submitted its investigative report in response to the consumer complaint. The report indicated that FPL backbilled Mr. Gizewski for the account at his residence, 410 Avocado Avenue in West Palm Beach, based upon the following information:

DOCUMENT NUMBER-DATE

10475 OCT 25 95

FPSC-RECORDS/REPORTING

On November 15, 1994, an FPL meter reader noticed a hole drilled in the canopy of the electric meter at the subject address. A wire that prevented the disc from turning and registering the electricity being consumed was inserted in the hole. The meter, Number 5C 13425, was replaced later that day and taken to FPL's lab for testing and inspection. The inspection report of meter Number 5C 13425, issued December 5, 1994, revealed that the meter's inner seal was intact, the register was damaged, there were scratches on the disc, scratches on the register, scratches on the face plate, burned blades, and scratches on the meter frame.

Back on December 1, 1991, FPL had set a new meter at 410 Avocado Avenue; that new meter is meter Number 5C 13425, the subject of the alleged tampering. FPL's records indicate that Mr. Gizewski has been the customer of record at 410 Avocado Avenue since August 23, 1991, and the only customer of record of meter Number 5C 13425. FPL backbilled Mr. Gizewski for the period from March, 1992 until November 15, 1994, when the alleged meter tampering was discovered, based on his account records. FPL chose the March, 1992 beginning point because a marked and sustained drop in Mr. Gizewski's kilowatt hour (kwh) consumption pattern appeared to begin during that month. See Attachment A, Gizewski KWH History Summary, attached hereto and made a part hereof.

In accordance with Commission rules, and at the request of the complainant, an informal conference was held on June 1, 1995, with the parties and a member of our staff in attendance. The parties failed to reach a settlement.

DECISION

There is sufficient cause to believe that meter tampering occurred at Mr. Gizewski's residence at 410 Avocado Avenue to allow FPL to backbill him for unmetered kilowatt hour consumption.

As noted earlier, on November 15, 1994, an FPL meter reader discovered a hole in the canopy of the meter at 410 Avocado Avenue in West Palm Beach and took the necessary steps to have the damaged meter removed and tested. FPL's Revenue Protection Division met with Mr. Gizewski at his residence at 410 Avocado Avenue on February 24, 1995, to discuss the damaged meter.

At the meeting, Mr. Gizewski claimed that he resided at 410 Avocado Avenue, for approximately six years, except for when a Mr. Sciortino rented the home. Mr. Gizewski asserted that he had leased his property to Mr. Sciortino from January, 1994 until the end of December, 1994. He produced a lease as evidence. This lease was dated January 1, 1994, and was prepared and notarized by

his business partner, Mr. John Keefe; however, the lease was not hand-dated by Mr. Keefe, nor was the lease notarized as prescribed by statute. The lease showed the lessee as Mr. Joseph Sciortino.

FPL continued to maintain that Mr. Gizewski was solely responsible for the electric usage and the parties went to the informal conference on June 1, 1995. At the conference, the parties presented sundry facts and explanations regarding the tampered meter and electric usage at 410 Avocado Avenue, which are discussed below:

1. As noted above, Mr. Gizewski named Mr. Joseph Sciortino as the tenant who allegedly rented 410 Avocado Avenue from January, 1994 until January, 1995. Mr. Gizewski produced the purported lease described above, but did not provide the Commission a copy for the record. According to Mr. Gizewski, the account with FPL at the 410 Avocado Avenue address was in Mr. Sciortino's name during this period. Mr. Gizewski claims he resided at 103 N. E Street in Lake Worth, Florida at that time.

FPL's investigative report reveals that the Customer Service Supervisor at the City of Lake Worth Utilities, verified that the City's utility records for 103 N. E Street, Lake Worth, have been in the name of Michael Gizewski since October, 1992. The monthly billing statements, however, were being mailed to 410 Avocado Avenue, West Palm Beach, Florida, Mr. Gizewski's residence. Moreover, the meter foreman for the City of Lake Worth Utilities, visited the house at 103 N. E Street and talked to a Mr. Joel Salizar. Mr. Salizar told the meter foreman that he resided at the 103 N. E Street location and that he was renting from Mr. Gizewski.

2. An FPL investigator exhibited electric meter No. 5C 13425, pulled from Mr. Gizewski's residence, pointing out the hole in the canopy. He postulated that the canopy had cracked due to the weakening of the glass from the drilling of the hole and pointed out the scratches inside the meter, behind the face plate, and on the meter frame adjacent to the hole. The investigator also explained that the meter reader discovered a wire inserted into the hole and pushed up through the meter disc, stopping the disc from rotating. It was noted that Mr. Gizewski had not been receiving "0" electric bills. Instead, he was receiving "lower" electric bills denoting that the kilowatt hour registration probably was being controlled manually.

3. Mr. Gizewski's driver license, which was issued on December 12, 1993, showed the 410 Avocado Avenue as his primary residence. When a licensee changes address, state law requires the licensee to obtain a replacement license showing the new address

within 10 days. Section 322.18, Florida Statutes. Mr. Gizewski stated that he had not planned to change the address on his driver's license because Mr. Sciortino was renting the house at 410 Avocado Avenue for only a short period of time.

4. Previously, at the February 24 meeting of the parties, Mr. Gizewski had shown FPL's agents a "photocopied" letter addressed to FPL, dated January 1, 1994. This "photocopied" letter authorized FPL to take the electric bill out of his name and put it in the name of Joseph Sciortino for the period of January 1, 1994 to January 1, 1995. Mr. Gizewski was asked to provide the Commission with a copy of the "photocopied" letter. Mr. Gizewski declared he no longer had the "photocopied" letter in his possession because the FPL agents had taken it from him during the February 24, 1995, meeting. FPL denied this accusation, denied having ever received the original letter, and denied having ever received a phone call requesting that FPL remove Mr. Gizewski's name from the electric service account.

5. The "photocopied" letter, dated January 1, 1994, was purported to have been addressed to FPL at P.O. Box 078768, Miami, Florida. FPL's representatives maintain that P.O. Box 078768 address could not have been known to Mr. Gizewski at the time the January 1, 1994, "photocopied" letter was supposedly written. The first correspondence from FPL showing the P.O. Box 078768 address, which is the address of the Payment Processing Center handling exceptional billings, was first mailed to Mr. Gizewski on February 14, 1995.

6. Usually, FPL does not retain copies of checks made in payment of account billings. In this instance, they did have in their possession two checks dated September 21, 1994, and November 20, 1994, respectively, made payable to FPL for service rendered to 410 Avocado Avenue. These checks were written on Michael Gizewski's checking account and had his name and the 410 Avocado Avenue address imprinted on them. Mr. Gizewski denies having signed the checks. He said Mr. Sciortino may have signed the checks and then reimbursed him with cash since Mr. Sciortino had access to his checking account.

7. Mr. Gizewski said that he had personally questioned Mr. Sciortino about the meter tampering discovered at 410 Avocado Avenue and that Mr. Sciortino had responded that he had no knowledge of the condition found. According to company reports, FPL's first notification of the current diversion occurred on February 14, 1995, with a letter and billing statement sent by mail

to the customer of record, Michael Gizewski. FPL emphasized that Mr. Gizewski was not contacted when the company pulled the meter on November 15, 1994.

Subsequent to the informal conference on June 1, FPL filed a supplementary investigative report with the Commission. Mr. Gizewski has insisted that Mr. Sciortino resided at the 410 Avocado Avenue address from January, 1994 until January, 1995. FPL's investigation revealed that Mr. Joseph Sciortino passed away on January 20, 1995. Prior to his death, Mr. Sciortino resided at the Hope House of the Palm Beaches, 355 Edmor St., West Palm Beach, Florida from May 13, 1994, to November 26, 1994. From there he was transferred to a hospital and then later to a nursing home where he subsequently passed away. FPL has obtained a letter from the facility supervisor for the Hope House of the Palm Beaches, along with a copy of the Certificate of Death to substantiate these facts. Besides, an identification card issued by the State of Florida shows Mr. Sciortino's residence as 103 North E Street, Lake Worth, the same address at which Mr. Gizewski claims to have resided. Since Mr. Gizewski was first notified of the current diversion after Mr. Sciortino's documented death on January 20, 1995, it is apparent that no discussion between the gentlemen regarding the meter tampering ever happened.

8. Mr. Gizewski proffered two explanations regarding kwh usage: 1) that his frequent travel to New York, particularly for the Easter holidays and during the summers, may have caused the low kwh usage; and 2) his new central air-conditioning system may have caused the later sudden increase in his electric bills after the damaged meter was replaced. According to Mr. Gizewski, the house formerly had two wall/window unit air conditioners. He claimed that he started the installation of a central air conditioning system in October 1994 and that he completed the installation approximately November 1994. It was noted in FPL's investigative report that the air conditioning system's plumbing appeared to be old and that there was excessive algae buildup around the condensation run-off line. Based on these physical signs, it appears probable that the central air system was not recently installed.

Mr. Gizewski was asked to provide the following documentation in a post-conference filing to the Commission: 1) some proof of when the installation of his central air conditioning unit was completed; 2) any record of his signing over his account with FPL to Mr. Sciortino's name; and 3) some documentation of his travel to New York which could justify the periods of low kwh usage prior to

the time Mr. Sciortino purportedly became the tenant. None of the requested supporting documentation has been provided to us.

FPL maintains that meter tampering occurred while the account was in Mr. Gizewski's name. We agree. Based upon the prima facie evidence of meter tampering and the history of extremely low kilowatt hour consumption, without any documented or supported explanation for the low kwh usage, we find it reasonable to believe that meter tampering occurred while the account was in his name.

After a new meter was set at Mr. Gizewski's residence at 410 Avocado Avenue on November 15, 1994, his untampered meter registered 2735 kwh for the billing period of December, 1994. That consumption figure combined with the two months readings prior to the alleged meter tampering (October and December, 1991) were applied to seasonal average percentage of use charts which estimate that at the rate of consumption the residence would consume 35,903 kwh per year. FPL maintains that the months used in the calculation more closely reflect the actual kwh used in the residence. We agree. FPL's monthly rebilled amount was based on that usage.

FPL calculated the backbilled amount of \$3,494.22 in a reasonable manner in compliance with Rule No. 25-6.104, Florida Administrative Code. There are no extenuating circumstances that would warrant an exception to the rule. Before FPL had learned about Mr. Sciortino's health history and early demise, the company had offered to compromise and reduce the backbilled charges for the one-year period Mr. Sciortino had supposedly lived at the account address. No resolution or compromise was reached at that time, and based upon the new facts uncovered, a reduction is certainly not warranted now.

In addition, FPL has itemized its investigative costs of \$271.16, which we find reasonable. The company is authorized by the Commission to recover these costs from the customer of record, Mr. Gizewski.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that there is sufficient cause to find that meter tampering occurred at 410 Avocado Avenue, that Mr. Michael Gizewski is the sole customer of record responsible for the unmetered kilowatt hour consumption and that it is appropriate for Florida Power & Light Company to backbill him for said unmetered electric usage. It is further

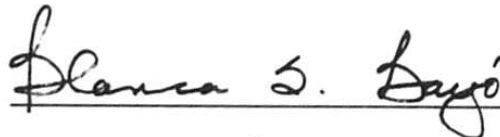
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ORDERED that Florida Power & Light Company's calculation of the backbilled amount of \$3,494.22 for unmetered electric usage is reasonable. It is further

ORDERED that Florida Power & Light Company's itemized investigative costs are reasonable and that the company is authorized to recover \$271.16 from Mr. Gizewski. It is further

ORDERED that this Order shall become final and effective and this docket shall be closed unless an appropriate petition for formal proceedings is received by the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 October, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 15, 1995.

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 substantially 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 wastewater 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.

KVH History Summary

Name: Michael Gizowski Meter Set Date: Dec-91
Address: 410 Avocado Ave Customer Connect Date: 8/23/91
Current Account: 35913-10069 Case #: 95E114757209
Previous Account: 42-07-287-48300-0

Month	1995	1994	1993	1992	1991	1990
Jan	2344	2118	1568	2429		
Feb	2110	2133	1536	2180		
Mar	2452	1530	1296	1803		
Apr	2726	2431	1276	1070		
May	3482	1597	1048	1445		
Jun	4365	1564*	1380	2228		
Jul		1410*	1276	1731		
Aug		1710	1509	2211		
Sep		2144*	2508	2944	2165	
Oct		1914*	1838	1844	3458	
Nov		1922	1917	1835	3399	
Dec		2710	2195	1587	2459	
Annual		23123	19347	23307	11481	

* = Estimated Bill