

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
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M E M O R A N D U M

August 22, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JOHNSON) *VJ*
DIVISION OF CONSUMER AFFAIRS (DEMELLO) *DEM*
DIVISION OF ELECTRIC & GAS (GOAD) *GOAD*

RE: DOCKET NO. 960903-EI - COMPLAINT OF MRS. BLANCA RODRIGUEZ
AGAINST FLORIDA POWER & LIGHT COMPANY REGARDING ALLEGED
CURRENT DIVERSION/METER TAMPERING REBILLING FOR ESTIMATED
USAGE OF ELECTRICITY.

AGENDA: 09/03/96 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960903EI.RCM
MRS. RODRIGUEZ WILL PARTICIPATE BY TELEPHONE.

CASE BACKGROUND

On April 11, 1996, Blanca Rodriguez filed a complaint with the Consumer Affairs Division (CAF) of the Florida Public Service Commission against Florida Power & Light Company (FPL). In her complaint, Mrs. Rodriguez contended that FPL had unfairly backbilled her account for meter tampering.

In a report provided to CAF, FPL stated that the backbilled account was for service provided to 3151 SW 84 Court, Miami, Florida, in the name of Juan Rodriguez, the husband of Mrs. Rodriguez. FPL records indicated alleged meter tampering at the Rodriguez residence.

On May 29, 1996, CAF's Bureau of Complaint Resolution sent a letter to Mrs. Rodriguez advising her of its initial finding that FPL appeared to be in compliance with Commission rules in its backbilling of service to the account. Mrs. Rodriguez subsequently requested that an informal conference be held.

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FPSC-RECORDS/REPORTING

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An informal conference was held at the PSC's Miami District Office on July 17, 1996. In attendance were Mr. and Mrs. Rodriguez, Sandy Morales (a relative of the Rodriguezes and young daughter of Jorge Morales, who also has a pending PSC complaint against FPL), five representatives from FPL, and one representative from CAF.

At the informal conference, Mr. and Mrs. Rodriguez stated that no one at their residence tampered with the meter. They also said that they did not pay anyone to tamper with the meter. Mr. Rodriguez said that FPL was against his family and accused FPL of meter tampering at their residences. His sister, Emelia Rodriguez (wife of Francisco Mesa), owns three houses--one of which she lives in. According to FPL records, all three houses have been billed for meter tampering. His other sister (Elia C. Morales) was also billed for meter tampering. Mrs. Rodriguez testified that FPL recorded the license tag numbers of the automobiles parked at the house her sister-in-law (Emelia Rodriguez) owned. Because they believed FPL was "out to get them," the Rodriguezes questioned why FPL pulled four meters (including theirs) on the same day, February 29, 1996.

FPL provided the following explanation: During the course of the Rodriguez investigation, it was determined that their account was somehow related to three others. On February 29, 1996, Mr. Canavan, an investigator in FPL's Revenue Protection Department, received a call from Emelia Rodriguez regarding the additional billing as a result of meter tampering at the property owned by her at 3610 SW 85th Avenue. She requested that electric service be put in her name since the service had been Cut Off for Non-Payment. FPL refused to do a name change because Emelia Rodriguez claims Homestead Exemption on this property, although she told FPL she does not live there. During the conversation, Emelia Rodriguez also stated that she lived at 7863 SW 5th Street and would not be moving into 3610 SW 85th Avenue, where an unnamed tenant had resided. Mr. Canavan recognized this address as being one of four accounts in which dial tampering had been documented. They are as follows: 3151 SW 84 Court, 6550 SW 17 St.; 3250 24 Terr., #A; and 7863 SW 5th St. According to the Dade County tax rolls, the following people are associated with the above addresses: Blanca and Juan Rodriguez (3151 SW 84 Ct., Miami); Jorge Morales and Elia C. (6550 SW 17 St., Miami); Francisco Mesa and Emelia Rodriguez (3250 SW 24 Terr., Miami); and Francisco Mesa and Emelia Rodriguez (7863 SW 5th St., Miami). The customers associated with these four accounts are all related by marriage and/or by birth. FPL had previously been identified these accounts as being "associated."

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In light of Emelia Rodriguez's (wife of Francisco Mesa and sister of Juan Rodriguez) call, FPL said the possibility existed that she may have realized that the account at her listed home address, 7863 SW 5th Street, could be under investigation by the company. Based on FPL's experience in these types of tampering cases, the possibility also existed that Emelia Rodriguez might possibly alert others at the other three accounts. As a result of the conversation with Emelia Rodriguez and in accordance with standard FPL procedure, FPL personnel decided the four meters should be immediately removed to prevent the possibility of their destruction and to secure them as evidence. The meter department was contacted and requested to change the meters as soon as possible.

At the informal conference, FPL asked the customer to explain possible changes in electric usage. Mrs. Rodriguez reported that her bills usually ranged from \$70 to \$90. According to FPL, her usage showed that her bills ran higher than the stated amounts. The Rodriguezes did provide a copy of a Metropolitan Dade County permit and inspection record for construction work done at the residence (3151 SW 84 Ct., in Miami) in 1994, but FPL contends that no explanation or justification was provided to explain the significant difference in usage. Based on this large discrepancy and the constant lower usage back to 1990, FPL backbilled the account for the entire allowed period (i.e. since 1990).

No agreement was reached at the informal conference. Mr. and Mrs. Rodriguez stated that they did not tamper with the meter and that "if they touch the meter, they know they have to pay." FPL said that Mr. and Mrs. Rodriguez have not shown any reason to indicate their bill for the backbilled account should be recalculated.

CAF requested that a late-filed exhibit be produced in English and in Spanish that would address Ms. Rodriguez's question of why four meters (all from related parties) were pulled on the same day, February 29, 1996. Once the response (which has been discussed in this recommendation) was filed, Ms. Rodriguez's complaint was set for the September 3, 1996, Agenda.

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DISCUSSION OF ISSUES

ISSUE 1: Is there sufficient cause to believe that meter tampering occurred at the Rodriguez residence at 3151 SW 84th Court, Miami, to allow FPL to backbill the Rodriguez account for unmetered kilowatt hour consumption?

RECOMMENDATION: Yes. Prima facie evidence of meter tampering noted in FPL's reports, as well as during the informal conference, makes it reasonable to believe that meter tampering occurred. Since the account was in Mr. Rodriguez' name during the entire period, he should be held responsible for a reasonable amount of backbilling.

STAFF ANALYSIS: On August 17, 1995, an FPL investigator documented a rigged yellow outer seal (taken apart and put back together to appear intact) at the meter installation serving 3151 SW 84 Ct., Miami, Florida. This condition allowed access to the meter. On September 1, 1995, the investigator documented a regressive reading, and on September 6, 1995, the investigator documented a new gold seal and the yellow one on top of the meter can (Note: the seal had been cut and left on top of the meter; the investigator place a new gold seal on the meter). On October 3, 1995, the meter reader documented a cut seal and "low usage for a big house," and the investigator also documented a regressive reading. On November 1, and December 4, 1995, the meter reader again documented "rigged seals." FPL maintains that these conditions are all indicative of the dials being turned back resulting in regressive readings, which does not allow the meter to register all electricity consumed.

On February 29, 1996, the FPL meterman documented a rigged outer seal, and the integrity seal as missing. The meter was removed for testing. The test conducted on March 12, 1996, confirmed the missing integrity seal, which allows access to the dials of the meter, and results in regressive readings.

On April 15, 1996, Mr. and Mrs. Rodriguez were contacted at their residence [3151 SW 84 Ct., Miami (Dade County), Florida]. According to FPL reports, Mr. and Mrs. Rodriguez stated that they are the owner/residents of the above-mentioned residence and are equally and solely responsible for payment of the electric bills. They have resided at this address since January 30, 1987. During that FPL interview, as well as during the informal Commission conference, FPL noted that on December 5, 1987, a previous current diversion condition was documented at the Rodriguez house [3151 SW 84 Ct., Miami (Dade County)]. That condition resulted in an additional bill in the amount of \$258.79, which was subsequently

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paid. According to FPL, a wire was found inserted through a hole in the meter canopy of Meter 5C62916. The meter was removed and replaced with a new meter, 5C21125, on December 7, 1987. Subsequently, this meter (5C21125) was replaced with a new meter (5C69684) on February 29, 1996.

According to FPL reports, the four readings taken from the meter (5C21125) during the investigation, averaged to more than 2900 kWhs per month; however, consumption had never been that high, not even in the summer. FPL stated that the customer's consumption throughout the company's record retention period is much lower than actual consumption being used. During the Commission's informal conference, Mrs. Rodriguez stated that it was impossible for her consumption to be that high (based on FPL projections), saying "that consumption is that of an industrial factory, not my house." She added that she lives alone in the house with her two boys, and her husband stays there occasionally. She further stated her mother stays on the weekends in the apartment which was added to the house. The apartment is not separately metered. According to a report by Clara L. MacVicar, FPL Revenue Protection, Mr. Rodriguez told FPL that everything was electric, including: the refrigerator, dishwasher (not used), clothes washer and dryer, central air-conditioning, and a pool pump. Mr. Rodriguez added that the water heater was changed from gas to electric two years ago and that the pool pump is only used for two hours in the summer, "once in a while." As to the electrical equipment and number of people occupying the apartment, Mr. Rodriguez stated that the apartment was completed at the end of 1994. The electric equipment in the apartment consisted of a refrigerator and one wall unit air-conditioner. When FPL asked how the central air-conditioner was used, Mr. Rodriguez told them when it is used they "put it on at night and turn it off in the morning; the temperature is set at 80 degrees."

At the informal conference, FPL exhibited a Kilowatt Hour History Summary of the Rodriguez account. FPL pointed out that their consumption since 1990 did not reflect the electrical equipment in use and emphasized that there was lower usage from 1994 to February, 1996, even with the addition of an electric water heater (instead of gas), and the refrigerator and stove which were installed in the apartment. FPL stated that the consumption prior to February 1994 did show a slight bell curve (lower in the winter and higher in the summer); however, the rest of the consumption was very erratic, and in some instances, the winter months [i.e., November, 1994 (1158 kWhs); February 1995 (1006 kWhs); and February 1996 (1106 kWhs)] were higher than the summer months. No explanation was offered by the Rodriguezes.

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FPL displayed the two rigged seals, Serial No.'s 0123111 and 0123138 at the informal conference on July 17, 1996. FPL noted for the record that they had been tampered with. When asked, "How do we know these seals are from the Rodriguez meter?" FPL testified that they had requested the log for the serial numbers issued to the particular meter reader who reported the meter tampering condition and produced the paperwork showing the identical numbers.

Mrs. Rodriguez said FPL changed the existing meter in 1988 and installed a new one "with metal brackets and a big metal lock, that only FPL could open." FPL characterized it as a "lock ring" which is opened by special keys that have found their way "into many hands." Usually, lock rings are put on meters subsequent to a current diversion activity, which had occurred at the Rodriguez residence in December 1987. Mrs. Rodriguez also said that FPL changed her meter in 1994 when construction occurred at her residence, but FPL confirmed that the company did not change the meter at that time.

Based upon the evidence of meter tampering, staff recommends that Mr. and Mrs. Rodriguez should be held responsible for electricity consumed but not paid for. FPL should be allowed to bill Mr. Rodriguez for the reasonable estimate of the energy used pursuant to Rule 25-6.104, Florida Administrative Code.

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ISSUE 2: Is Florida Power & Light Company's calculation of the backbilled amount of \$7,453.12 for unmetered electric usage and a \$349.38 investigation charge reasonable?

RECOMMENDATION: Yes, the established amount of \$7,453.12 for customer usage and a \$349.38 investigation charge are reasonable.

STAFF ANALYSIS: FPL's inspection report indicated that the Rodriguez billing history was affected by the meter tampering. FPL uses three different methods for estimating billings for dial tampering diversions: 1) Average Percentage of Usage Chart; 2) The number of days in each billing month that is rebilled; and 3) Previous Years' Kilowatt Hours Consumption for Corresponding Months Within the Corporate Record Retention Period.

In the Rodriguez case (and most residential dial tampering cases), FPL utilized **Method 1--The Average Percentage Use Method**. According to FPL, this method provides the most accurate and fair result. **Method 2--Daily Average Consumption x the number of days rebilled Method** was not used because it does not consider seasonal usage fluctuations. **Method 3--The Previous Year Consumption Method** could not be used because of the dial tampering taking place during that time.

In this case, FPL utilized two "check" readings in August, 1995 and two "check" readings in September, 1995 to obtain a daily average for each of these months. Check readings are meter readings taken between normal monthly meter read dates. These readings are taken to obtain normal kwh usage over a period where dial tampering does not occur. From these "check" readings, monthly usage can be estimated for these months by taking the usage obtained and dividing it by the number of days consumed times the number of days in the month. Once monthly usage is obtained for these months, the remainder of the months in a given year can be estimated based on system average consumption patterns for residential customers. The kwh obtained from this estimate is compared to what was originally billed, with the difference being the additional amount owed by the customer. In the Rodriguez case, the difference over the period April, 1990 to February, 1996 was \$7,453.12, excluding Current Diversion Investigative Charges (CDIC) of \$349.38. April, 1990 represents the earliest customer billing records which FPL has at this time.

Staff reviewed the billing history records and other documentation provided by FPL to support its calculation of the backbilled amount. FPL's calculation of the average consumption per month appears appropriate. As noted above, the four readings taken during FPL's investigation indicated an average consumption

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of more than 2900 kWhs per month. The customer's consumption has never been that high. In addition, the electrical usage was lower from 1994 through February, 1996, even with the addition of an electric water heater and additional appliances in the apartment.

Thus, for these reasons, staff recommends that the Commission find that the total backbilled amount of \$7,802.50, which includes \$7,453.12 for customer usage from April, 1990 to February, 1996 and \$349.38 for investigative charges, was calculated in a reasonable manner as required by Rule 25-6.101, Florida Administrative Code.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if no protest is filed within 21 days of the issuance of this order.

STAFF ANALYSIS: Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interests are affected by the proposed agency action shall have 21 days after the issuance of the order to file a protest. If no timely protest is filed, the docket should be closed.