

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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DIVISION OF
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HEARINGS

BLANCA RODRIGUEZ,)
)
) Petitioner,)
vs.)
)
) FLORIDA POWER AND LIGHT COMPANY,)
)
) Respondent.)

CASE NO. 96-4935/A

RECORD OF PROCEEDINGS

February 6, 1997

Record of proceedings had in the foregoing cause before the Honorable Claude B. Arrington, Administrative Law Judge, Courtroom 13-2, Dade County Court House, 73 West Flagler Street, Miami, Florida, on Thursday, February 6, 1997, noticed to commence at 10:00 o'clock a.m., with the oath administered, all proceedings, questions propounded and answers received through Spanish Interpreter Marialina Villa, who was first duly sworn.

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APPEARANCES:

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VICKI JOHNSON, ESQ.
 Public Service Commission
 Division of Legal Services
 2540 Shumard Oak Boulevard
 Tallahassee, Florida 32399-0858
 Attorney for Intervenor

ALSO PRESENT: Marialina Villa, Spanish Interpreter

* * * * *

I-N-D-E-X

WITNESS FOR THE RESPONDENT	DIRECT	VD	CROSS	RD	RC
Helen Lubert	13		29	38	
WITNESS FOR THE PETITIONER					
Blanca Rodriguez	45, 47	46	51		
REBUTTAL WITNESS FOR THE RESPONDENT					
Helen Lubert					57

* * * * *

EXHIBITS

	ID	EVD
Respondent's Exhibit No. 1	11	12
Respondent's Exhibit No. 2	11	12
Respondent's Exhibit No. 3	12	12
Respondent's Exhibit No. 4	12	12
Respondent's Exhibit No. 5	12	12
Petitioner's Exhibit No. 1	43	47

1 THEREUPON, the following proceedings were had:

2 * * * * *

3 THE COURT: Okay. Let's go on the record.

4 This case will come to order.

5 This is the formal administrative hearing being
6 conducted for the State of Florida, Division of
7 Administrative Hearings. Case is 96-4935.

8 My name is Carl Arrington, and I'm the
9 Administrative Law Judge hearing this case that has been
10 assigned for hearing.

11 The case is styled Blanca Rodriguez versus Florida
12 Power and Light Company, with the Public Service
13 Commission appearing as an intervenor.

14 At this time I would ask that the parties enter
15 their respective appearances, beginning with the
16 petitioner?

17 MS. TRINCHET: Mayra Trinchet on behalf of Blanca
18 Rodriguez.

19 THE COURT: I don't see a Notice of Appearance on
20 your behalf at any point in the pleadings.

21 I notice that we have sent you copies of the Notice
22 of Hearing.

23 I assume that we have the correct address for you.

24 MS. TRINCHET: That's correct.

25 THE COURT: Okay. Thank you.

1 And you are here representing her? You're an
2 attorney and you're representing her as her attorney?

3 MS. TRINCHET: Yes, yes.

4 MR. STONE: And my name is Robert E. Stone for
5 Florida Power and Light Company, and I'm here with my
6 company representative Helen Lubert.

7 MS. JOHNSON: And I am Vicki Johnson representing
8 the Commission Staff, the Florida Public Service
9 Commission.

10 THE COURT: Thank you.

11 Before we went on the record, I gave the parties the
12 opportunity to confer for a few minutes.

13 Mr. Stone, do you have a report to give me on that?

14 MR. STONE: Yes, your Honor.

15 Counsel for the petitioner and myself have
16 conferred, and we have discussed a stipulation and the
17 stipulation is as follows:

18 There are two issues in this case: One issue is
19 whether meter tampering occurred; and the next issue is if
20 it occurred, then what is a reasonable estimate of the
21 rebilling.

22 Counsel and I have stipulated that meter tampering
23 has occurred, and that we are not saying that her client
24 did it or her client's husband did it. We're just saying
25 that meter tampering has occurred.

1 And under the Rule 25-6.014 of the Florida
2 Administrative Code, once it has been established meter
3 tampering has occurred, then we go to the second issue of
4 the rebilling.

5 And that's the point of contention at this point, if
6 I'm stating the stipulation correctly.

7 MS. TRINCHET: That is so correct.

8 MR. STONE: And they're prepared to present their
9 testimony, and we have our witnesses on that issue as
10 well.

11 THE COURT: Would it be fruitful for me to give the
12 parties a few more minutes to see if you can resolve that
13 issue or did you exhaust that discussion?

14 MR. STONE: Counsel and I discussed it, however, the
15 actual clients have not today, so I'm open to further
16 discussions if they are.

17 THE COURT: I'll give you -- do both of you have
18 some authority today if I gave you five more minutes and
19 if you can come to a number, we can settle the case.

20 MS. TRINCHET: Yes.

21 THE COURT: I'm going to give you five more minutes
22 and ask you to step back out in the hall.

23 If you can resolve it, fine; if not, let's go.

24 Let me just tell everybody for your planning, I've
25 been informed that Judge Bloom needs this courtroom

1 between 12:00 and 12:30, so we'll be breaking to
2 accommodate that usage.

3 MS. TRINCHET: Okay.

4 MR. STONE: Okay. Thank you. We'll step aside.

5 (Thereupon the hearing was recessed briefly and was
6 thereafter resumed)

7 MR. STONE: Your Honor, we have a proposal we'd like
8 to make to their counsel very briefly. We might be able
9 to work something out.

10 THE COURT: Okay.

11 MR. STONE: Well, we tried, your Honor, and we did
12 not get to where we thought we could, so I think we're
13 going to need to proceed with some testimony.

14 THE COURT: Do you need to relate the settlement
15 offer to your client?

16 MS. TRINCHET: Yes, your Honor.

17 THE COURT: Ready to proceed?

18 MS. TRINCHET: Yes, your Honor.

19 I'm invoking the rule, by the way.

20 THE COURT: Let me ask that all witnesses remain
21 outside. Please don't discuss the case among yourselves.
22 You can discuss the case with the attorneys that are
23 involved in the proceeding.

24 MR. STONE: Your Honor, we don't need to exclude
25 those that are not testifying.

1 THE COURT: No.

2 With the stipulation, can you release any of your
3 witnesses?

4 MR. STONE: We'd like to keep them available just in
5 case there's an issue.

6 THE COURT: How many witnesses do you have?

7 MR. STONE: The respondent will have at this point
8 just one witness.

9 MS. TRINCHET: We have one.

10 THE COURT: And do we have an interpreter here?

11 MS. VILLA: Your Honor, I have not been introduced.
12 I am an interpreter, Marialina Villa, Professional
13 Translating Services.

14 THE COURT: Good morning. I'll swear you in at the
15 appropriate time, if necessary to do so.

16 Are you going to have your client testify?

17 MS. TRINCHET: Yes, sir.

18 THE COURT: So we will need an interpreter.

19 Okay. Even though you're designated as the
20 respondent, Mr. Stone, I would assume that you would have
21 the burden of going forward at this point.

22 MR. STONE: Your Honor, can we discuss that a
23 moment?

24 THE COURT: Sure.

25 MR. STONE: It's been my limited experience in this

1 proceeding, that as the respondent, we don't have
2 necessarily the burden of proof, however, we don't mind
3 going forward with the testimony in order to make it as
4 clear as possible to the Court. Being that Ms. Rodriguez
5 is the petitioner, however, we don't want the burden to
6 proof to fall on us.

7 And just by way of reference, there has been one
8 other case that was before the Division of Administrative
9 Hearings before the Honorable Linda Rigot in the Matter of
10 Arturo Taboada, T-A-B-O-A-D-A, Case Number 91-0331 of the
11 Division of Administrative Hearings, and this issue was
12 specifically discussed.

13 And in that case, and I'm quoting from the official
14 transcript, the hearing officer indicated, and I'll quote
15 here, "I believe the petitioner in that particular case
16 would have the burden of proof in this proceeding, and I
17 have requested FPL Company to assume the burden of going
18 forward first with the evidence."

19 THE COURT: I think that's the very words I used,
20 that you need to go forward with the evidence.

21 MR. STONE: I was just concerned about the burden of
22 proof in this matter.

23 So we can proceed.

24 Do you care for any opening remarks, comments?

25 THE COURT: That's up to you. I read through the

1 file.

2 MR. STONE: Then we'll proceed, if that's okay,
3 directly with our first witness?

4 MS. TRINCHET: I have no objection.

5 MR. STONE: We'd like to call Ms. Helen Lubert.

6 MS. TRINCHET: Your Honor, I have invoked the rule.
7 It's only going to be one witness from Florida
8 Power?

9 MR. STONE: This is our witness on this issue. The
10 other folks are not testifying in this case that are in
11 this room here.

12 MS. TRINCHET: Okay.

13 MR. STONE: Would you prefer that I stay at my
14 station here or does it matter to your Honor?

15 THE COURT: No.

16 THEREUPON:

17 HELEN LUBERT,

18 having been first duly sworn, was
19 examined and testified as follows:

20 THE COURT: State your name for the record. Spell
21 your last name, please.

22 THE WITNESS: Helen Lubert, L-U-B-E-R-T.

23 THE COURT: Let me ask: Do you need an interpreter
24 here to translate for your client during this testimony?

25 MS. TRINCHET: Yes.

1 THE COURT: Well, she just stepped outside.

2 MS. TRINCHET: I didn't even notice that. She was
3 going to the restroom.

4 THE COURT: Okay. We'll wait just a minute.

5 MS. TRINCHET: She told me she needed to go to the
6 restroom.

7 THE COURT: We may get started this morning after
8 all.

9 Do you have any exhibits that you want me to go
10 ahead and premark?

11 MR. STONE: Well, your Honor, I do. I didn't gather
12 them together because I have them separated in different
13 witnesses' piles. Let's see if I can shorten it.

14 THE COURT: Okay. The translator is back.

15 You're going to need to translate for her when the
16 witness is testifying, please.

17 Ready to go, Mr. Stone.

18 MR. STONE: Yes, your Honor.

19 May I approach you?

20 THE COURT: Yes.

21 MR. STONE: Shall I describe them as I give them to
22 you or we can mark them at this point?

23 I don't believe there's going to be any objections.

24 MS. TRINCHET: I don't have any objection, your
25 Honor.

1 THE COURT: Okay. Do you want to describe them or
2 do you want the witness to describe them?

3 MR. STONE: What I'd like to do is just have them
4 marked and moved into evidence at this time.

5 I'd probably best be able to describe them at this
6 stage.

7 First item I'd like to introduce as FPL's Number One
8 is the Revenue Protection Investigation Kilowatt Check
9 Sheet, check sheet for short.

10 THE COURT: This is being marked as Respondent's
11 One.

12 (Thereupon the foregoing instrument was marked
13 Respondent's Exhibit No. 1 for Identification, this date)

14 THE COURT: I'll assume you'll move them in at one
15 time.

16 MR. STONE: Right.

17 The next exhibit would be the Appeal Record Meter
18 Reading History.

19 THE COURT: That is being marked as Respondent's
20 Two.

21 (Thereupon the foregoing instrument was marked
22 Respondent's Exhibit No. 2 for Identification, this date)

23 MR. STONE: The third item is the KWH summary.

24 THE COURT: That is being marked as Respondent's
25 Three.

1 (Thereupon the foregoing instrument was marked
2 Respondent's Exhibit No. 3 for Identification, this date)

3 MR. STONE: Number Four would be the additional
4 billing worksheet.

5 THE COURT: That is being marked as Respondent's
6 Four.

7 (Thereupon the foregoing instrument was marked
8 Respondent's Exhibit No. 4 for Identification, this date)

9 MR. STONE: And the last one at this stage, we'll
10 have the FPL bill.

11 THE COURT: And that is being marked as Respondent's
12 Five.

13 (Thereupon the foregoing instrument was marked
14 Respondent's Exhibit No. 5 for Identification, this date)

15 THE COURT: Any objection?

16 MS. TRINCHET: No, sir.

17 THE COURT: There being no objection, FPL Exhibits
18 One through Five are admitted.

19 (Thereupon the foregoing instruments marked as
20 Respondent's Exhibits Nos. 1, 2, 3, 4 and 5 were received in
21 evidence this date)

22 MR. STONE: It might be easier if I ask the
23 questions from over here since I'll show Ms. Lubert.

24 THE COURT: Let me ask: Did I ask whether you plan
25 to order a transcript?

1 MR. STONE: Possibly.

2 DIRECT EXAMINATION

3 BY MR. STONE:

4 Q. Ms. Lubert, please state your full name and your
5 profession?

6 A. My name is Helen Lubert, and I'm a Senior Revenue
7 Protection Investigator for FPL.

8 Q. And FPL is?

9 A. Florida Power and Light.

10 Q. And how long have you been a Senior Revenue
11 Protection Investigator?

12 A. I've been employed by FPL since July of 1974, and
13 I've been in the Revenue Protection Department since -- for
14 the past 12 years, ten of them as an investigator.

15 Q. And what are your job responsibilities as a Senior
16 Revenue Protection Investigator?

17 A. To investigate suspicious and reported cases of
18 theft of energy and to determine if in fact an unauthorized
19 use has occurred.

20 I also extensively research customer billing records
21 and public records, whatever I might need to assist me in my
22 investigation, and also bill the accounts, if applicable.

23 Q. Please give the Court the benefit of your training,
24 what seminars or courses you may have taken?

25 MS. TRINCHET: I can stipulate to her expertise.

1 MR. STONE: Okay. Then we'll move forward.

2 THE COURT: What does exactly that mean, you
3 stipulate to her expertise?

4 MS. TRINCHET: I stipulate that she's familiar with
5 the billing and the investigations, you know, so we can
6 bypass a half an hour of testimony.

7 MR. STONE: Okay. That's fine.

8 MS. TRINCHET: As an ex-prosecutor, I know her. I
9 know she's capable to proceed.

10 BY MR. STONE:

11 Q. All right. Ms. Lubert, at some point in time did
12 you have occasion to rebill the account at 3151 Southwest 84th
13 Court?

14 A. Yes, I did. I rendered billing on that account. I
15 received from the FPL investigator that has been in charge of
16 the investigation all the documents he had prepared while
17 conducting the investigation. The most important one, I guess
18 if we're discussing the billing, is the Revenue Protection
19 Kilowatt Check Sheet.

20 Q. I believe that's Number One, FPL's Number One.

21 A. Yeah, that's it.

22 And I reviewed and verified the investigator's
23 calculation.

24 What we have on this investigation sheet is readings
25 that were taken by this investigator in between the regular

1 read date.

2 And a regular read date is when the meter reader
3 goes out on a monthly basis to read the meter to render the
4 regular electric bill.

5 In between those regular read dates, our
6 investigator obtained readings, because he suspected that dial
7 tampering was occurring here.

8 Those readings reflect -- well, by determining the
9 kilowatts used in between each check reading and dividing by
10 the number of days between each reading, we were coming out
11 with the customer's actual projected consumption for the
12 month. We would obtain a daily average kilowatt usage and
13 then multiply that by 30, and that would tell us what the
14 customer was in actuality using for that particular month.

15 In this specific case I used the two check readings
16 taken in August by the investigator to obtain a monthly
17 projection for September of 2,811 kilowatts, and I used the
18 two check readings taken in September and projected them out
19 to 3,087 kilowatts for the month of October 1995.

20 I had prepared also a Kilowatt History Summary which
21 establishes the customer's consumption on a monthly basis for
22 FPL's record retention period, which is five years, plus the
23 current year.

24 When I compared these projections to the customer's
25 billing during that period of time, these projections of

1 actual consumption were so much higher than anything the
2 customer had been billed during that period of time, that
3 that's when I made the determination to back bill the account
4 from April of 1990, which was the record retention, maximum
5 record retention time limit at that time.

6 Q. Let me stop you just briefly there.

7 And if you could, demonstrate on the kilowatt hour
8 check sheet the example of how you got to the calculation of
9 the projected monthly usage?

10 A. Right. Beginning at the bottom, on August 3rd, we
11 have the regular read date. That's the very bottom figure.
12 And the reading was 11117.

13 Now, the investigator was in on August 17th. He
14 obtained a reading 12652.

15 That equates for a usage of 1535 kilowatts in 14
16 days. And if we divide the 1535 by 14 and multiply it by 30,
17 the projection for that month is 3289 kilowatts.

18 We did the same thing August 25th. The investigator
19 was out there. He obtained a reading. And it had been eight
20 days since he had been out there, and in eight days 622
21 kilowatts had been used.

22 And again, if you obtain a daily average and
23 multiply it by 30, the projected monthly consumption was 2,333
24 kilowatts.

25 Q. Without belaboring the point, you did that also for

1 the month of September?

2 A. For September as well.

3 Q. And did you arrive at a monthly projection based on
4 actual consumption of the customer?

5 A. Absolutely. This is actual consumption during the
6 period of time that we knew that dial tampering was not
7 occurring.

8 If I might add, to further validate the high
9 consumption at this particular residence, we removed the meter
10 from the field on February 29th, 1996. The removal reading
11 was 18125.

12 THE WITNESS: I don't know if have you that, Judge.

13 That's on the Meter Reading History.

14 BY MR. STONE:

15 Q. This document, Meter Reading History?

16 A. Yes, that's it.

17 The previous regular read date had been February
18 8th, and between February 8th and February 29th, the customer
19 had consumed 1444 kilowatts in a period of 21 days, which
20 equates to 69 kilowatts per day.

21 And again, multiplied by 30, gave us a projection
22 for 2,070 kilowatts in the month of March, which is a
23 relatively cool month. I mean, it's not a summer month. It's
24 not August or September where there's high consumption. So
25 2,070 is very high for March.

1 To go even one step further, the first reading that
2 we took after we installed the new meter on February 29th, the
3 reading -- the first reading was taken on March 8th, and that
4 was 00231, which means that the customer had used 231
5 kilowatts in a matter of eight days, and now that averages out
6 to 29 kilowatts per day, which indicates to me, and from my
7 experience, that once the diversion was discovered, the
8 customer cut back and that's something that's very commonly
9 done.

10 Q. What was the comparison --

11 MS. TRINCHET: Objection. Assuming facts not in
12 evidence.

13 THE COURT: Well, you stipulated to her expertise,
14 and I think that includes the ability to express opinions.

15 MS. TRINCHET: But opinion is one thing. She's
16 assuming that on this particular case "X" was done.

17 MR. STONE: She's basing it on her experience, I
18 think.

19 THE COURT: I think she's basing it on her
20 experience.

21 I'm going to overrule the objection.

22 BY MR. STONE:

23 Q. Please continue.

24 A. The fact that for the 21 days prior to the meter
25 being removed from the field, the customer was using 69

1 kilowatts a day, and then right after that, they began using
2 29 kilowatts a day, that indicates to me that, yes, the
3 customer cut back.

4 And ever since then, the consumption, and I don't
5 know if your Kilowatt History Summary reflects the customer's
6 consumption after February 29th, but it's remained low. It's
7 never gone back up.

8 The account was billed using the seasonal average
9 percentage of usage charts in conjunction with the customer's
10 actual consumption as established during the time frame that
11 the account was being investigated.

12 Again, by these check rates.

13 And I'll explain what the average percentage of
14 usage chart is.

15 FPL maintains a record that tracks the residential
16 kilowatt hour sales on a monthly basis for its service areas.

17 From these records, a chart is prepared by dividing
18 the monthly sales into the annual sales to obtain a percentage
19 of usage on a monthly basis.

20 THE WITNESS: Now, Judge, if you'll refer to the
21 worksheets, I'll show you how --

22 BY MR. STONE:

23 Q. We're looking at the additional billing work sheet,
24 Ms. Lubert?

25 A. The additional billing work sheet.

1 THE COURT: This is Respondent's Four.

2 MR. STONE: Number four.

3 A. If you'll see at the top, my projection for
4 September of 1995 of 2,811 kilowatts is divided by the
5 appropriate percentage for that month as obtained from the
6 charts, and that was 10.25, and that equates to an average
7 total usage of 27,524 kilowatts.

8 And the same thing is done for October '95. We use
9 the customer's actual consumption, 3,087 kilowatts, divide it
10 by the appropriate percentage for that month, for October of
11 '95, and obtain a yearly usage of 30,665.

12 Since I used two months, I divided it by two, the
13 total of the averages, to obtain an average total yearly usage
14 of 29,040 kilowatts. This is what my rebilling is based on,
15 the customer's ability to consume 29,040 kilowatts a year.

16 This figure is then taken and applied to the
17 percentages from the seasonal chart for every single month
18 that's being rebilled, and the result is what the customer
19 should have been billed for each and every one of those
20 months.

21 FPL then gives credit to the customer for kilowatts
22 that have already been billed and that they have paid for,
23 and the difference is the Revenue Protection Bill.

24 Q. Now, you mentioned the February 20 -- I'm sorry --
25 February 8th through March 8th time period.

1 Did you take that into consideration in your
2 rebilling?

3 A. Well, I didn't use it because that would have made
4 their projection, I believe, 34,558 for the year. So that was
5 much higher. And trying to give them some sort of a benefit,
6 I didn't use it because that would have put the bill even
7 higher.

8 THE COURT: Which months did you not use?

9 THE WITNESS: I didn't use the kilowatts between the
10 time the meter was removed and the prior read date that I
11 explained was in March, and the projection was 2,070, and
12 that's a very cool month; so that would result in very
13 high rebilling.

14 BY MR. STONE:

15 Q. Again, your yearly figure that you arrived at is
16 based on the actual consumption of the customer as documented
17 by Florida Power and Light Company?

18 A. Exactly.

19 Q. Now, please explain how you determined how far back
20 to rebill the account.

21 A. Again, because of the consumption that we knew was
22 being used --

23 Q. Which was what?

24 A. 2800 projected for September and 3,087 for October,
25 and again, the other projection that we had of 2,070 for March

1 of '96, I compared those to what the customer had actually
2 been billed all the previous years.

3 Q. What did you use to look at?

4 A. The KWH History Summary. I made that comparison
5 using that.

6 Q. That's this document?

7 A. That's correct.

8 Q. If you can point out to the Hearing Officer what
9 you're talking about there?

10 MR. STONE: And that one is, I believe, Number Two,
11 your Honor.

12 THE COURT: I'm sorry. Which one?

13 THE WITNESS: This one is typewritten and that one's
14 my handwriting. You got the original one.

15 THE COURT: That's Respondent's Three.

16 A. We compare the 2,811 and 3,087 and the 2,070, all
17 those projections, to what the customer had been using prior.

18 There's nowhere throughout our record retention
19 period that the customer was billed that high, indicating that
20 the dial tampering had been occurring for at least that period
21 of time and --

22 BY MR. STONE:

23 Q. Which is how long?

24 A. Five years, plus current. In this case was April
25 1990 on to March of 1996.

1 Q. Now, did you also take into consideration the
2 consumption since the meter has been changed out?

3 A. No, I did not.

4 Q. And why not?

5 A. Because again, from my experience in these type of
6 cases, and I've billed hundreds of these and been involved in
7 many investigations where dial tampering is concerned and on
8 other type of current diversion cases, the customer generally
9 will cut back, because it would be their contention that,
10 well, I'm using the same after the new meter was installed as
11 I was before.

12 Q. Okay. Look at the KWH since the meter was changed
13 out on February 29th of 1996.

14 Do you have an opinion as to that consumption, if
15 it's being controlled or not?

16 A. Absolutely.

17 Q. And why is that?

18 A. It's -- first of all, the consumption is steady.
19 It's continuously 800, 800, 800, an average of 850 every
20 month.

21 Q. Why is that unusual?

22 A. That's unusual because in south Florida with our
23 weather patterns, we have a bell curve. I mean, that's almost
24 inevitable. Unless you live in an apartment with a little
25 refrigerator, you have no air conditioning, your consumption

1 will fluctuate. It will go higher in the summer time when
2 more air conditioning is used, and it will drop in the cooler
3 months. And it's not possible for a house as the one the
4 Rodriguezes live in the and with the type of equipment that
5 they have that there would be no fluctuation in the
6 consumption.

7 Q. Okay. Speaking about the Rodriguez' house at 3151
8 Southwest 84th Court, have you ever been there?

9 A. Yes, I have.

10 Q. Okay. And did you in fact interview with them to
11 discuss this billing?

12 A. I witnessed the interview with the person that went
13 to interview them, yes.

14 Q. Would you describe to the Court what the house looks
15 like, generally, and how big it is and the type of electrical
16 equipment in it?

17 A. Well, if I'm able to refer to my notes.

18 Okay. The house, I'm not sure what the square
19 footage is, but has all electric appliances, is equipped with
20 all electric appliances, including refrigerator, dishwasher,
21 which they did indicate they did not use, clothes washer and
22 dryer, central air conditioning, a pool pump, because they
23 have a nice pool, and they have a water heater.

24 And in addition to that, they have an apartment
25 added on to the house with a wall unit air-conditioner and

1 another refrigerator.

2 So they have two refrigerators, a central
3 air-conditioner, a wall unit air-conditioner; of course, water
4 heater and so on.

5 Q. Did they indicate to you how they used their central
6 air conditioning unit?

7 A. Yes. And they indicated that they turn it on at
8 night and turn it off in the morning at a temperature of 80
9 degrees.

10 Q. Just based on your years of experience, the
11 temperature of 80 degrees thermostat setting on a central air,
12 is that consistent with the kilowatt hour history that
13 they were actually billed in prior years?

14 A. No, not really. It would probably be a lot higher.
15 Because although 80 is -- personally I find it uncomfortable,
16 the fact is in the summer time when the weather gets in the
17 nineties, that air-conditioner is going to be cycling on quite
18 a bit, so there should be a higher consumption.

19 Q. Did the Rodriguezes indicate to you when this
20 apartment was put on the property? Would 1994 sound about
21 right?

22 A. Yes.

23 Q. Okay. Now, taking that into consideration that an
24 apartment was put in in 1994, can you render any opinion as it
25 relates to the Kilowatt Hour History Summary?

1 A. Considering that they added another room to the
2 house with an air-conditioner and a refrigerator, the
3 consumption should have increased, but it did not.

4 Q. Can you demonstrate on the Kilowatt Hour History
5 Summary very briefly?

6 A. What month was it?

7 Q. 1994.

8 MR. STONE: And again, we're referring to Exhibit
9 Number Two, I believe.

10 THE COURT: Three.

11 MR. STONE: Three.

12 A. In 1994 the consumption should have increased when
13 in fact it actually went lower than the previous years as a
14 result of the addition.

15 BY MR. STONE:

16 Q. Did you listen to the Rodriguezes during the
17 interview process after you submitted the billing?

18 A. Yes.

19 Q. Okay. Did you hear their concerns about the
20 billing? Did you take into consideration any of their
21 arguments? You listened to them?

22 A. I listened to them.

23 Q. Anything that they said cause you to change your
24 opinion in any way, shape or form as to the rebilling in this
25 case?

1 A. No, absolutely not.

2 Q. Okay. And did Florida Power and Light render a
3 bill?

4 A. FPL rendered a bill.

5 MR. STONE: I believe that's Number Five. I think I
6 got that one.

7 A. The rebilling was in the amount of \$7,802.50.

8 BY MR. STONE:

9 Q. And in your opinion, based on your years of
10 experience and based on all the facts that you had available
11 to you at the time of the rebilling, is this a reasonable
12 estimate of the billing?

13 A. I feel this is a fair and very reasonable estimate
14 based on the facts that we have.

15 Q. Okay. And is your rebilling based on the guidelines
16 that are provided by the Florida Public Service Commission?

17 A. Yes, the average percentage of usage charts are
18 approved by the Public Service Commission.

19 Q. And have you used these average percentage of usage
20 charts in the past?

21 A. Thousands of times.

22 MR. STONE: I believe I'm done.

23 May I just have a second, your Honor?

24 I believe that's all I have at this time, your
25 Honor.

1 THE COURT: Well, let me ask before we go forward,
2 is there -- I saw something about an investigative charge.

3 Is there still a dispute about that or not?

4 MR. STONE: If I may inquire of the witness.

5 BY MR. STONE:

6 Q. Is that included in the --

7 THE WITNESS: That's included in the bill, Judge.
8 That's the cost incurred by FPL to monitor and document
9 and correct the condition.

10 BY MR. STONE:

11 Q. And are those charges approved by the Florida Public
12 Service Commission?

13 A. Yes, they are.

14 Q. One final question, I'm sorry, and then I'll sit
15 down.

16 Did this matter go before an informal hearing in
17 front of the Florida Public Service Commission?

18 A. Yes, it did.

19 Q. And they did approve the rebilling?

20 A. They ruled in FPL's favor.

21 THE COURT: Let me make sure I understand.

22 The \$7,802.50 that you discussed includes all
23 investigative charges?

24 THE WITNESS: Yes.

25 THE COURT: Okay. Thank you.

CROSS-EXAMINATION

1
2 BY MS. TRINCHET:

3 Q. Ms. Lubert, when was the -- am I pronouncing it
4 right? Lubert?

5 A. Yes.

6 Q. When was it that -- the date that you first became
7 aware that there was something wrong with the meter?

8 A. I received the documents from the investigator; I
9 can't tell you the exact date, but it was in March of 1996.

10 Q. That's when you first were notified that there was
11 something wrong with the meter at this particular residence?

12 A. Correct, correct.

13 Q. And when did you meet with the Rodriguezes?

14 A. April 17th, 1996.

15 Q. Did you make an attempt in April when you were at
16 the residence to check to see what appliances were gas and
17 what appliances were electric?

18 A. We asked. The person that interviewed the
19 Rodriguezes asked them what -- if their house was equipped
20 with all electrical appliances.

21 And Mr. Rodriguez stated that everything was
22 electric, and the only thing had been that the water heater
23 was changed from gas to electric two years prior.

24 So at that specific moment in time everything was
25 electric.

1 Q. Did you make a determination when this residence was
2 purchased by Mr. Rodriguez and Mrs. Rodriguez?

3 A. I believe that's in the files, as far as the actual
4 date of purchase.

5 What I'm more concerned with was the connect date,
6 the day they connected service with Florida Power and Light.

7 Q. When was that?

8 A. It was January 30th of 1987.

9 Q. And when was it that the meter was removed
10 physically by your company?

11 A. February 29th, 1996.

12 Q. Now, you have referred to numerous documents that
13 are currently in evidence: The Revenue Protection
14 Investigation Sheet, the Kilowatt Summary and also the bill
15 which you referred to as being \$7,802?

16 A. Correct.

17 Q. And also the additional billing work sheet, correct?

18 A. Correct.

19 Q. Okay. Now, in each sheet and each document that I
20 have referred to, the name on these sheets are Juan Rodriguez,
21 correct?

22 A. That's correct.

23 Q. Do you see Juan Rodriguez here?

24 A. I saw him earlier but not right now, no.

25 Q. Is he part of this case, ma'am? As we're here

1 today, are you seeking any monetary damages from
2 Mr. Rodriguez?

3 A. Yes.

4 Q. Is he here today?

5 A. I don't see him here right now.

6 Q. And this amount, the \$7,802, is the total owed on
7 this property, correct?

8 A. As far as the current diversion charges, yes.

9 Q. And again, the billing, all the documents that you
10 referred to while you were on the stand, the name is Juan
11 Rodriguez, correct?

12 A. That's correct.

13 Q. Have you checked to see who the title of this
14 property is under?

15 A. I'm certain that's in the file. I don't have that
16 information with me right now.

17 Q. So you don't know?

18 A. If I can have the file, I'll be able to tell you,
19 yes.

20 Q. Would it refresh your memory if you looked at the
21 document?

22 THE WITNESS: Do we have that information with us,
23 Mr. Stone?

24 A. The owner's name is Juan A. Rodriguez and Blanca
25 Rodriguez.

1 BY MS. TRINCHET:

2 Q. So your memory is now refreshed?

3 A. Yes, it is.

4 Q. Okay.

5 A. Thank you.

6 Q. You indicated that the connect date was 1987 and you
7 removed, you changed the actual meter in February, is that
8 correct?

9 A. Yes.

10 May I add something?

11 Q. Yes, if you like.

12 A. I want to explain something.

13 This meter that we removed on February 29th was not
14 installed there in January of '87. It had been installed in
15 December of 1987.

16 And the reason for that was because we discovered
17 there was a previous current diversion case on this account on
18 the previous meter, and the meter that is now in question was
19 a brand new meter installed there by Revenue Protection
20 Department as a result of a current diversion condition at
21 this house which was billed current diversion charges and the
22 Rodriguezes subsequently paid.

23 Q. So what you're saying is that this meter had been
24 changed previously?

25 A. This meter had been installed brand new in December

1 of 1987. That's what I'm saying.

2 Q. The one that you removed?

3 A. The one that we removed on February 29th of 1996.

4 Q. Okay. Were you aware that in 1994 there was
5 construction and permits were issued by Dade County for the
6 meter to be transferred from one part of the house to the
7 other?

8 A. I believe that came up during the interview, that
9 they had applied for a permit.

10 Q. Would it refresh your memory if you see a permit?

11 A. I've never seen the permit.

12 Q. Did you investigate to see if there was actual
13 construction on the property and whether that meter had been
14 moved from one side of the property to the other by a licensed
15 electrician?

16 A. Well, I think that we asked the customer for
17 Certificate of Occupancy or inspection, and they were not able
18 to provide that to us at the time.

19 Q. Did you at any time make an attempt, ma'am, to check
20 with Dade County records to see if in fact they had been
21 issued a permit of construction and whether in fact an
22 electrician had moved, physically moved the meter from one
23 part of the residence to the other?

24 MR. STONE: I'm going to object on relevancy
25 grounds, your Honor. It doesn't really speak to the

1 rebilling issue.

2 MS. TRINCHET: Your Honor, we're talking about --

3 THE COURT: I'm going to overrule the objection.

4 Counsel, one of the things she said at the very
5 beginning of her testimony is she checks public records
6 for different matters.

7 MS. TRINCHET: That's correct.

8 THE COURT: Go ahead.

9 A. I personally did not check that, however, it's not
10 that it wasn't checked. There was someone else involved with
11 this case at that point. Okay. And that's possible that it
12 was checked. I didn't have control of the case at that point
13 in time.

14 BY MS. TRINCHET:

15 Q. Okay. But you personally cannot testify --

16 A. Personally at that point, no. No, I cannot.

17 Q. You cannot sit here today and testify that Dade
18 County did in fact issue permits?

19 A. I did not look for that, no.

20 Q. Okay. Did you check to see, ma'am, the location of
21 where originally that meter back in 1987 was positioned in the
22 property and where it was subsequently removed from,
23 physically?

24 A. No.

25 Q. You don't know?

1 A. No.

2 Q. Do you know under what name this bill had been
3 coming for the past nine years, ten years? Who had you been
4 billing?

5 A. Juan A. Rodriguez.

6 Q. At any point did you bill Blanca Rodriguez?

7 A. I billed the name on the account, Juan A. Rodriguez.

8 Q. Are you aware of any separation between the
9 Rodriguezes?

10 A. Mrs. Rodriguez had indicated that they were
11 separated, and she stated that her husband did not live in the
12 house permanently for the past two years. That was as of
13 April when they spoke to her. Then he stayed there on and off
14 once in awhile.

15 We asked her where did he live.

16 And they would not provide us with that information.
17 She was unable to tell us where he lived, just that he would
18 stay there once in awhile.

19 Q. Do you know whether he's responsible for paying the
20 bill? I mean, did you see a check? Have you made copies as
21 to the payment, how it's made?

22 A. No.

23 Q. So you don't know whether it's Mr. Rodriguez that
24 had been paying this bill throughout these years?

25 A. Right. I don't know.

1 Q. You said that there was an alert on the type of
2 consumption in February, correct, in February of '96?

3 A. Right.

4 Q. That it was completely off with what you would
5 consider normal for that particular month.

6 Have you -- I mean, has your company removed this
7 particular meter since February 1996?

8 A. I'm sorry. I don't understand the question.

9 Q. Okay. You stated that there was, in your opinion,
10 there was a high consumption and there was something wrong in
11 the way that the electricity was consumed in February. It was
12 very high for 21 days, I believe you said.

13 A. I'm saying it's high. There's nothing wrong with
14 it.

15 Q. Okay. Have you since checked the meter physically
16 and have you removed -- have you since checked the meter
17 physically and have you removed it?

18 A. No, we have not removed that meter since then.

19 Q. Did you try to investigate as to why this particular
20 high reading of those 20 days? Were you not informed that
21 there was five people that had come from Cuba and were staying
22 there at the Rodriguez' house or did you make an attempt to
23 find out why it was so high?

24 A. I believe that that was addressed.

25 If you allow me a second to review the interview

1 that I witnessed.

2 Q. Sure. Go ahead.

3 A. I believe I remember that being covered. I believe
4 that that was addressed by Mrs. McVicar when she interviewed
5 Mr. and Mrs. Rodriguez and she asked them about the
6 fluctuations in the usage, and they were not able to provide
7 any type of explanation. At that point Mr. Rodriguez became
8 very irate and asked us to leave, so we never received an
9 explanation on that particular matter.

10 Q. Did you check the new construction, the '94
11 construction of the property, the additional room you referred
12 to?

13 A. Did I physically check it?

14 Q. Yes.

15 A. No, ma'am, I did not.

16 Q. So you don't know whether in fact somebody lives
17 there or not?

18 A. We know what the customers told us, which was the
19 apartment was built for her mother to come and stay on the
20 weekends but that in fact, I believe when we were out there,
21 her brother was living in it.

22 Q. Okay. But you don't know for what period of time
23 that particular part of the residence has been occupied?

24 A. No, no.

25 MS. TRINCHET: Nothing further.

1 MR. STONE: A few follow-up, your Honor.

2 THE COURT: Yes.

3 REDIRECT EXAMINATION

4 BY MR. STONE:

5 Q. Ms. Lubert, if I can refer you to the investigation
6 as a result of your interview, witnessing the interview on
7 April 17th of '96.

8 Did the Rodriguezes, both Blanca and Juan Rodriguez
9 admit that they were responsible for the payment of the
10 electric bills?

11 A. Yes, they did. When asked who was responsible for
12 payment of the electric bills, Mrs. Rodriguez stated that both
13 she and her husband were responsible.

14 Q. Okay. And this account, this electric service
15 account, have you reviewed it during the course of the
16 investigation since the informal conference back on July 17th,
17 1996?

18 A. Yes, I have.

19 Q. Okay. Has there been any change of name on the
20 electric service account?

21 A. No, there's not.

22 MR. STONE: Let me ask if I can show you this? May
23 I approach?

24 BY MR. STONE:

25 Q. See if these documents refresh your memory as to any

1 change of name on the electric service account?

2 A. Okay. It has been changed.

3 Q. And what was the name changed to?

4 A. Blanca Rodriguez.

5 Q. At whose request?

6 A. Blanca Rodriguez.

7 Q. And this is the same account at the same address,
8 3151 Southwest 84th Court?

9 A. Yes.

10 THE COURT: When was that change made, please?

11 MS. TRINCHET: When was the change?

12 MR. STONE: I'm sorry.

13 THE WITNESS: October 9th, 1996.

14 BY MR. STONE:

15 Q. And that was after the informal Public Service
16 Commission conference that we had?

17 A. That's correct.

18 Q. Ms. Lubert, do you know who filed the Public Service
19 Commission complaint against Florida Power and Light Company?

20 A. I believe it was Mrs. Rodriguez.

21 Q. Blanca Rodriguez?

22 A. Yes.

23 MR. STONE: That's all that I have. Thank you.

24 THE COURT: Thank you, thank you very much.

25 MR. STONE: Short of that, just moving in the

1 exhibits, moving them into evidence if they're not already
2 in.

3 THE COURT: They're in.

4 MR. STONE: If they already have, that's really all
5 the testimony we have.

6 THE COURT: Respondent's One through Five have
7 previously been admitted. If the record does not reflect
8 that, let it reflect the admission of those documents at
9 this point.

10 MR. STONE: And finally, on behalf of the
11 respondent, your Honor, I reviewed the Court file the
12 other day and I noted the Public Service Commissions's
13 documents in there.

14 If your Honor can take notice, official recognition
15 of those documents that are in the Court file as it
16 relates to the proceedings.

17 MS. TRINCHET: I have no objection.

18 THE COURT: Well, I know what's in my file. I will
19 take official recognition of what's in my file.

20 The use of hearsay in these type proceedings is
21 limited, as you're both aware, and if I find hearsay in
22 these records that you're asking me to take official
23 recognition of, then I will treat it as hearsay and if
24 it's only thing that substantiates a finding of fact, then
25 I cannot by statute base a finding of fact on that.

1 With that clarification, FPL rests at this point?

2 MR. STONE: That's correct, your Honor.

3 THE COURT: Intervenor have anything they care to
4 present at this point?

5 MS. JOHNSON: We have nothing.

6 MS. TRINCHET: Your Honor, just for the record, I
7 didn't hear, and at this time I would state, that I didn't
8 hear the jurisdiction mentioned on Direct. I don't
9 believe that the jurisdiction was addressed, whether it
10 was in Dade County, what part of the county or what part
11 of the state, actually, this residence was located.

12 So just for the record, I would state that at this
13 point the Court doesn't have any jurisdiction because the
14 witness never testified as to what part of --

15 THE COURT: Well, you know, if you want to take a
16 position that your client doesn't have standing to contest
17 this matter, then we'll do that and we'll go home right
18 now, but that's not the way I understand the issues to be
19 framed by your stipulation.

20 The issue, as I understand it, is the amount of the
21 back billing.

22 MS. TRINCHET: Is the billing.

23 THE COURT: And if you want to contest jurisdiction
24 at this point --

25 MS. TRINCHET: No. I was just contesting it on the

1 part of the billing issue, and I wanted the record to
2 reflect so, that there was no mention. In case my client
3 owns other property outside Dade County, I just wanted to
4 make sure that what we're dealing here is Dade County, no
5 other property, no other issue other than this particular
6 property.

7 THE COURT: The account is reflected on the
8 different exhibits, that Respondent's One reflects the
9 address, Respondent's Two reflects the address,
10 Respondent's Three reflects the address, Respondent's Four
11 reflects the address; Respondent's Five reflects the
12 address.

13 MS. TRINCHET: But it reflects the address as to a
14 particular individual that's not present in court today.

15 I just want the record to reflect that, that that
16 particular --

17 THE COURT: I don't know where you're going with
18 that argument.

19 I mean, if you're saying that your client doesn't
20 have standing or the wrong person is here today --

21 MR. STONE: They're the one that filed the action.

22 THE COURT: She's the one that brought the
23 Complaint.

24 MS. TRINCHET: No, no, your Honor.

25 I'm basically saying the jurisdiction. If we're

1 talking about this particular property, we can proceed in
2 Dade County.

3 You're referring to the exhibits that are in
4 somebody else's name. It is not her name.

5 Now, we can proceed with the issue of the billing,
6 but I just want the record to reflect that it is this
7 particular residence and not any other residence that
8 might come up in the future, that we are only dealing with
9 this particular residence.

10 THE COURT: Your statement is reflected on the
11 record.

12 MS. TRINCHET: Thank you. We're ready to proceed.

13 THE COURT: Okay.

14 MS. TRINCHET: Your Honor, I already showed counsel.

15 THE COURT: You want this as Petitioner's One?

16 MS. TRINCHET: Yes. You can mark these as a
17 composite.

18 (Thereupon the foregoing instrument was marked
19 Petitioner's Exhibit No. 1 for Identification, this date)

20 THE COURT: Thank you. Let me swear -- you're going
21 to call your client at this point?

22 MS. TRINCHET: Yes.

23 THE COURT: And she needs a translator?

24 MS. TRINCHET: Yes, sir.

25 THE COURT: Let me go ahead and swear the

1 interpreter.

2 Would you state your name for the record, please?

3 THE INTERPRETER: Marialina Villa from Professional
4 Translating Services.

5 THE COURT: You gave us your name earlier, but I'm
6 not sure whether we were on the record at that point.

7 Do you swear or affirm that you will make a true and
8 accurate translation of the questions asked, answers
9 given, and any documents that you're called upon to
10 translate?

11 THE INTERPRETER: I do.

12 THE COURT: Translate. I'm going to administer the
13 oath.

14 THEREUPON:

15 BLANCA RODRIGUEZ,

16 having been first duly sworn, was
17 examined and testified as follows:

18 THE COURT: State your name for the record, spell
19 your last name.

20 THE WITNESS: Blanca Rodriguez.

21 THE COURT: Let me remind counsel that we have to be
22 out of here at 12:00, and even if we have to interrupt the
23 witness' testimony, we'll have to do that.

24 MS. TRINCHET: I want to apologize ahead of time,
25 because since I'm bilingual; I've done this in all my

1 trials in my entire life when there's an interpreter,
2 sometimes I'm thinking in the Spanish language and I'll
3 just blurt it out, so I'm letting the Court know ahead of
4 time that I've done this many, many times.

5 DIRECT EXAMINATION

6 BY MS. TRINCHET:

7 Q. State your name for the record, please.

8 A. Blanca Rodriguez.

9 Q. And where do you live, Blanca?

10 A. 3151 Southwest 84th Court.

11 Q. How long have you lived there?

12 A. Ten years.

13 MS. TRINCHET: If you would like to instruct the
14 witness that she has an interpreter, because she seems to
15 be answering in English, also?

16 THE WITNESS: Okay. I understand some things.

17 BY MS. TRINCHET:

18 Q. Who did you purchase this property with?

19 A. With Alberto Rodriguez, my husband then.

20 Q. Then? What do you mean "then"?

21 A. Yes, because at that time -- well, we're still
22 married but we have been separated for the past three years.

23 Q. When did you change the appearance of your house?

24 A. 1994, I finished in 1994.

25 Q. What kind of changes were you making to this house?

1 A. We added an apartment for my mother whenever she
2 retired for her to live in that apartment. She paid for it.
3 She had it made.

4 Q. Did you request -- I'm going to show you what has
5 been marked Petitioner's Exhibit One and ask you if you
6 recognize that?

7 A. Yes, this is the meter change that the electrician
8 did when he moved everything.

9 Q. I'm going to show you to see if your memory is
10 refreshed.

11 A. Yes, this is the permit we took out in court -- in
12 Dade County.

13 MS. TRINCHET: I'm going to move that this be
14 admitted into evidence.

15 MR. STONE: May I briefly look at it? She showed it
16 to me earlier but . . .

17 May I voir dire the witness very briefly on this?

18 VOIR DIRE EXAMINATION

19 BY MR. STONE:

20 Q. Mrs. Rodriguez, does your signature appear on this?

21 A. No. That's the permit I took out in my name and the
22 signatures are of the inspectors that pass by inspecting.

23 MR. STONE: No further questions.

24 THE COURT: You have no objection?

25 MR. STONE: No.

1 THE COURT: Petitioner's One is admitted into
2 evidence.

3 (Thereupon the foregoing instrument was received in
4 evidence Petitioner's Exhibit No. 1, this date)

5 CONTINUED DIRECT EXAMINATION

6 BY MS. TRINCHET:

7 Q. Who took out that permit?

8 A. Alberto and I went because the property was in both
9 of our names.

10 Q. Was that meter in fact moved from one part of the
11 property to the other?

12 A. Yes. Because the place that the meter was, that was
13 the place that the addition was made, so the meter had to be
14 moved to another position.

15 Q. And who moved that meter?

16 A. The electrician with Dade County's permit.

17 Q. You didn't move that meter, did you?

18 A. No, I've never touched the meter. I don't even
19 change bulb lights at home.

20 Q. Could you please tell the Court what, if anything,
21 occurred in February of 1996 in your residence? Did you have
22 any visitors in your home?

23 A. Yes. In February of '96 I received -- and I told
24 them that I had had some visitors, relatives of mine that came
25 from Cuba. They stayed with us for awhile until they moved to

1 Utah.

2 Q. How many of them?

3 A. Five.

4 Q. Had your ex-husband been living in this property?

5 A. When?

6 Q. Since 1987.

7 A. Yes.

8 Q. When did he move out?

9 A. In 1994.

10 Q. Right about when you made the construction for your
11 mother?

12 A. Yes.

13 Q. Could you tell the Court what you informed them,
14 what you informed the investigators as to what appliances were
15 in fact gas and which ones weren't?

16 A. Yes. I explained to them that all my equipment was
17 new. I changed them for high efficiency equipment, including
18 the air-conditioner, everything. The water heater used to be
19 gas, and I also changed it to electric. But I don't have a
20 dishwasher.

21 In the apartment I have one wall unit which is never
22 put on because my mother doesn't live in the apartment. My
23 mom comes some weekends. She doesn't always come.

24 That's what I explained. At our house the only
25 people that live there is my two children and myself.

1 Q. Since when?

2 A. Since 1994.

3 Since February of '96, Alberto has been staying.

4 Before he used to stay every now and then because of
5 the children.

6 After the problem with FPL, he's staying at the
7 house for longer periods of time because I have been very
8 upset and the children, too, so he stays there for longer
9 periods.

10 Q. When did you change the bill into your name?

11 A. October of last year. I called and changed it
12 because before they wouldn't do it, change it.

13 Q. And who had been paying the electric, the
14 electricity bill in your house?

15 A. My husband.

16 Q. Have you ever physically gone outside and looked at
17 your meter?

18 A. I've seen it but I've never touched it.

19 Q. What is your current financial position?

20 MR. STONE: Objection to relevancy, your Honor.

21 THE COURT: Just a minute.

22 What would be the relevance of that? I don't
23 understand.

24 MS. TRINCHET: Ability to pay, your Honor.

25 THE COURT: I'm sorry?

1 MS. TRINCHET: Ability to pay.

2 THE COURT: That's not a factor in this.

3 BY MS. TRINCHET:

4 Q. The bills, since you changed it to your name in
5 October, have you paid for them or has Albert continued to pay
6 for them?

7 A. He continues to pay the bills because I don't work,
8 but since I'm the one that actually lives in the property, I
9 wanted to change it to my name for whenever I have -- well, I
10 don't know but. . .

11 Q. And you did this because you wanted it in your name
12 for what reason?

13 A. Well, because I want to have the bills in my name
14 because I'm the one living in the property. At this time he's
15 paying the bills.

16 Q. And you did this in October '96?

17 A. Yes.

18 Q. And prior to, prior to October '96, whose name did
19 the bills come under?

20 A. Juan Alberto Rodriguez.

21 Q. Could you please tell the Court -- you heard
22 Ms. Lubert testify as to the low consumption of your property.

23 Could you please tell the Court why you consumed the
24 amount you've been consuming for the last few months?

25 A. When my husband left the house, since he was going

1 to be paying my bills, I had to limit things like electricity,
2 because he told me that he would pay to a hundred dollars of
3 the electricity bill, not any more; so I had to save
4 electricity, electrical consumption up to a hundred dollars.
5 He would pay up to a hundred dollars because I don't work.

6 Q. And how did you cut back?

7 A. Electricity?

8 Q. Yes.

9 A. When my husband was there, the air-conditioner was
10 used a little bit more. He's -- I don't have any problem with
11 the heat. He has a problem. My house is very well
12 ventilated, fresh. The children and myself both sleep in the
13 same room.

14 Q. And before that time, there was more rooms being
15 used?

16 A. When my husband was living at the house, we used to
17 use two of them. I would be with him in one and the children
18 in another.

19 Also, there was an older man that I had in the
20 house. I had him in the third room of the house. I had him
21 until '94. That was in 1994. So at that time there were two
22 more people in the house. There were five of us.

23 MS. TRINCHET: I have nothing further, your Honor.

24 CROSS-EXAMINATION

25 BY MR. STONE:

1 Q. Good morning, Ms. Rodriguez. I just want to clarify
2 some points that you just talked about.

3 Your husband Juan Rodriguez, is he currently living
4 at the house?

5 A. He's staying at the house. He's not living there.
6 Sometimes he leaves. But most of the time he's staying at the
7 house.

8 Q. And I think you said since February of 1996?

9 A. Yes. After the problem with FPL, I asked him to
10 come so he would be at the house. And I told the ladies, when
11 they were at my house, that he was going to be staying there.

12 Q. So both you and Mr. Juan Rodriguez are living at the
13 house presently?

14 A. Sometimes due to his job, he goes for awhile. Like
15 during the summer, he was Naples for awhile working.

16 Q. The times that both of you are there, you both are
17 receiving the benefit of the current electric service?

18 A. Yes.

19 Q. Okay. I believe you also said that prior to 1994
20 Mr. Juan Rodriguez also lived at the property; is that
21 correct?

22 A. Yes.

23 Q. And you were living there also prior to 1994?

24 A. Yes.

25 Q. And again, whatever electric service was consumed by

1 you between 1987, when you moved in, to 1994, both you and
2 Mr. Rodriguez received the benefit of it, is that correct?

3 A. Yes.

4 Q. Okay. Why didn't you change the name on the
5 electric account in 1994 when he moved out?

6 A. Because he continued paying the bills.

7 Q. Okay. He would give you the money to pay the bills?

8 A. Yes.

9 Q. And you received the benefit of that electric
10 service from 1994 to February of 1996?

11 A. Yes.

12 Q. And you just recently, back last October of 1996,
13 changed the electric account into your name?

14 A. Yes.

15 Q. And correct me if I'm wrong. Maybe I misunderstood
16 you.

17 Did you say you are limiting your usage right now of
18 electric service?

19 A. No, no.

20 Q. Okay. Then I misunderstood you.

21 You mentioned in February of 1996 you had five
22 relatives from Cuba come to visit?

23 A. Yes, they came at the end of January and they left
24 in mid-February.

25 Q. Okay. What date in mid-February did they leave, do

1 you recall?

2 A. I don't recall. It's been a long time but it was
3 mid, the middle.

4 Q. Do you know the date --

5 A. I'm not sure.

6 Q. Do you know the date they arrived?

7 A. They came like at the end of January.

8 Q. But they left in the middle of February?

9 A. Approximately.

10 Q. Do you have any training or experience in rebilling
11 electric accounts that are rebilled as a result of meter
12 tampering?

13 THE INTERPRETER: I'm sorry. Could you repeat that?

14 BY MR. STONE:

15 Q. Do you have any training or experience in rebilling
16 electric accounts that have been rebilled due to meter
17 tampering?

18 A. I don't understand the question.

19 Q. Do you have any training in rebilling electric
20 meters?

21 A. No.

22 Q. You don't have any professional training working in
23 a utility company?

24 A. I've never worked for FPL.

25 Q. For no utility you've worked?

1 A. No. I'm not an electrician either.

2 Q. Finally, Ms. Rodriguez, you testified earlier that
3 your husband was only paying or giving you a hundred dollars
4 per month?

5 A. Yes, that's what he gives me.

6 Q. Isn't it true you're trying to keep your consumption
7 at that 100-dollar level or below?

8 A. No. More or less. Because I normally consume the
9 same. It's not that I'm saving. It's just that it's my
10 normal house consumption.

11 Q. And do you know the square footage on your house?

12 A. No.

13 MR. STONE: Thank you. That's all I have.

14 THE WITNESS: But my house, as a matter of fact, is
15 small. The addition was made but it's separated. It
16 doesn't have any --

17 MS. TRINCHET: We have nothing further.

18 We rest, your Honor.

19 THE COURT: Okay. Thank you very much. I have just
20 one exhibit from the petitioner.

21 MS. TRINCHET: Yes, and we're moving it.

22 MR. STONE: Your Honor, we'd like to call a rebuttal
23 witness very briefly.

24 THE COURT: Petitioner's One has already been
25 admitted.

1 MR. STONE: Just a brief rebuttal witness.

2 THE COURT: Okay. Let me just check with
3 Ms. Johnson.

4 If you have anything you want to add at any point,
5 just let me know; otherwise, I'm going to assume that you
6 don't.

7 MS. JOHNSON: At some point, Judge, I'd like to ask
8 the Court to take official recognition of a Commission
9 Rule.

10 THE COURT: Okay. Why don't we do that after
11 rebuttal.

12 MS. JOHNSON: Okay.

13 THE COURT: I don't think there's any doubt that I
14 can take official recognition of a Commission Rule, so
15 that shouldn't be a point of contention.

16 MR. STONE: No. We'd like you to as well.

17 THE COURT: Okay.

18 MR. STONE: We call Ms. Lubert very briefly back to
19 the stand.

20 THE COURT: Ms. Lubert you were previously sworn.
21 You're still under oath.

22 THE WITNESS: Yes, sir.

23 THEREUPON:

24 HELEN LUBERT,

25 having been previously duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. STONE:

4 Q. Ms. Lubert, you've sat here through the testimony of
5 Ms. Blanca Rodriguez?

6 A. Yes, I have.

7 Q. Okay. Has anything that Ms. Blanca Rodriguez
8 testified here today change in any way, shape or form, your
9 opinion regarding the rebilling in this particular case?

10 A. No, nothing at all.

11 MR. STONE: Thank you.

12 MS. TRINCHET: I have nothing further.

13 THE COURT: Thank you.

14 MR. STONE: Nothing further from FPL.

15 THE COURT: Okay. Ms. Johnson.

16 MS. JOHNSON: Yes, the Commission would just ask
17 that the Court take official recognition of Commission
18 Rule 25-6.105, which is refusal or discontinuance of
19 service by utility, and direct your particular attention
20 to paragraph eight.

21 And if I might, I'd like to read this into the
22 record.

23 This says, "The following shall not constitute
24 sufficient cause for refusal or discontinuance of service
25 to an applicant or customers."

1 "A: Delinquency in payment by a previous occupant of
2 the premises unless the current applicant or customer
3 occupied the premises at the time the delinquency occurred
4 and previous customer continues to occupy the premises,
5 and such previous customer shall benefit from such
6 service."

7 THE COURT: Would you be kind enough to provide me
8 with a copy of that, if that's your only copy?

9 MS. JOHNSON: That is my only copy.

10 THE COURT: Provide a copy to my office.

11 MS. JOHNSON: Yes, I will.

12 THE COURT: You can provide counsel with a copy.

13 And all you have to do is transmit it with a cover
14 letter and send a copy to the other counsel and that
15 should take care of it.

16 MS. JOHNSON: Yes, I will.

17 THE COURT: Okay.

18 MR. STONE: May I just incorporate?

19 I thought she was going under a different rule. If
20 I could incorporate one other rule.

21 And that's 25-6.104, and I do have an extra copy of
22 that one. And it's just the rule that we're here on today
23 regarding the rebilling and reasonable estimate.

24 THE COURT: What was your rule number?

25 MS. JOHNSON: 25-6.105 and I read paragraph 8-A.

1 THE COURT: Any objection to taking official
2 recognition of either of these rules?

3 MS. TRINCHET: No.

4 THE COURT: Official recognition will be taken of
5 those rules.

6 Is this complete? Does it go beyond subparagraph J.

7 MR. STONE: I'm relying on 6.104. 105 does go on to
8 the next page. I don't have an extra copy of the
9 following page. I was moving 104.

10 THE COURT: I thought you said 105 is what you're
11 moving.

12 MR. STONE: 104.

13 THE COURT: Okay. I'm looking at my notes wrong.

14 It's my practice to give the parties the opportunity
15 to give a closing statement at the formal hearing.

16 As you are both aware, you have the opportunity to
17 submit to me a proposed recommended order, and it's very
18 common to incorporate closing arguments in that post
19 hearing submittal, but I like to at least give the parties
20 the opportunity to do both, if you so desire, without
21 encouraging you to do so.

22 MS. TRINCHET: I wouldn't mind doing it in the
23 proposed order to save time. I know Judge Bloom wants to
24 get in here and I know him for many years.

25 MR. STONE: That's okay with us, too, your Honor.

1 THE COURT: That's fine.

2 How much time -- do you intend to order a
3 transcript?

4 MR. STONE: I probably will, yes.

5 THE COURT: How much time following the filing of
6 the transcript do you need to present your PROs?

7 MR. STONE: 20 days. Is that reasonable?

8 MS. TRINCHET: That's fine.

9 MR. STONE: I'll go ahead on the record here order
10 it so we can get that going.

11 20 days from the date of filing of the transcript.

12 MS. TRINCHET: 20 days after we receive it.

13 MR. STONE: It has to be filed --

14 THE COURT: Well, these deadlines are triggered by
15 the filing of the transcript in Tallahassee, not the time
16 you happen to receive it in your office.

17 You would need to check with our clerk or ask the
18 court reporter to let you know when it's filed with the
19 Division.

20 It's my practice that if the parties agree to an
21 extension of that time, a reasonable extension of that
22 time, that we don't need to go through the time and
23 expense of a conference call. If one of you just call me
24 and tell me that everybody has agreed to it, then I'll
25 verbally authorize it.

1 MS. TRINCHET: I have no problems. In fact, no.
2 I'm sorry. I didn't let you know. I let Vicki know that
3 I was in a drug case in Chicago, and that's six weeks over
4 there.

5 So as long as they let me know, I'll prepare the
6 argument and the proposed order.

7 MR. STONE: Okay.

8 THE COURT: Okay. Right now it's set for
9 transcript, plus 20 days. And that's what it will be
10 unless otherwise extended.

11 Okay. Anything further from anybody?

12 MS. TRINCHET: Your Honor, who is it that I would
13 address it to? Your Honor, specifically?

14 THE COURT: You may want to look at Chapter 60Q-2, I
15 believe is still the appropriate cite for our rules, and
16 they would, they would speak to the contents of the post
17 hearing submittal.

18 Basically, it's proposed findings of fact, argument
19 as to what the law is and argument of how the law is being
20 applied and what the results should be in the case.

21 And then I'll will submit my order to the Public
22 Service Commission thereafter.

23 MR. STONE: I have the cite as 60Q-2.031.

24 MS. TRINCHET: I have such a bad cold, I completely
25 missed your name, your Honor.

1 THE COURT: It's on the pleadings. My name is
2 Arrington. You have it there.

3 MS. TRINCHET: Yes, yes. Thank you.

4 THE COURT: Thank you.

5 There being nothing further, this hearing is
6 concluded.

7 (Thereupon, the hearing was concluded)

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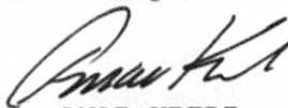
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1 COURT CERTIFICATE

2
3 STATE OF FLORIDA)
: ss.
4 COUNTY OF DADE)

5
6 I, AMAR KREDI, Registered Professional Reporter,
7 certify that I was authorized to and did stenographically
report the foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

8 Dated this 24th day of February, 1997.

9 

10 AMAR KREDI
11 Registered Professional Reporter
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