

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

JULY 24, 1997

RECEIVED

JUL 24 1997
1.8/5
FPSC - Records/Reporting

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

FROM: DIVISION OF LEGAL SERVICES (ELIAS) *AP for me*
DIVISION OF ELECTRIC & GAS (GOAD) *RM*
DIVISION OF CONSUMER AFFAIRS (DE MELLO) *CD* *JDJ*

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: 08/05/97 - REGULAR AGENDA - POST HEARING DECISION -
PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: 90 DAY PERIOD - EXPIRES AUGUST 19, 1997

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960903EI.RCM

CASE BACKGROUND

On September 24, 1996, the Commission issued Order No. PSC-96-1216-FOF-EI, finding that Florida Power & Light Company (FPL) had appropriately backbilled this account in the amount of \$7,802.50, for consumption and investigative charges associated with meter tampering at this location. Blanca Rodriguez timely protested the Commission's action and the matter was referred to the Division of Administrative Hearings to conduct a formal hearing. On May 21, 1997, the Administrative Law Judge entered his Recommended Order.

DOCUMENT NUMBER-DATE

07461 JUL 24 97

FPSC-RECORDS/REPORTING

DOCKET NO. 960903-EI
DATE: JULY 24, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept Ms. Rodriguez' exception to the recommended order?

RECOMMENDATION: No. Ms. Rodriguez' exception should be rejected.

STAFF ANALYSIS: In an exception filed June 5, 1997, Ms. Rodriguez claims that the Recommended Order found no meter tampering. Therefore, Ms. Rodriguez claims she could not be held liable, since no meter tampering occurred. This assertion is based on an out of context, incomplete quote from paragraph 5 of the recommended order. In full, the sentence reads: "Based on that investigation, which included a review of the public records, spot checks of electrical usage during times there was no meter tampering, and an interview with petitioner and her husband, Ms. Lubert projected the amounts of electricity that had been used at the subject residence."

This assertion is inconsistent with the fact that, as noted on page 3 of the recommended order, "Prior to the beginning of the formal hearing, the Petitioner and Respondents stipulated that meter tampering had occurred." The only contested issue at the hearing was the reasonableness of the amount of the backbilling.

Therefore, staff recommends that Ms. Rodriguez' exception should be rejected.

DOCKET NO. 960903-EI
DATE: JULY 24, 1997

ISSUE 2: Should the Administrative Law Judge's Recommended Order be adopted as the Commission's final order?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The Administrative Law Judge's Findings of Fact are based on competent, substantial evidence of record. The conclusions of law appropriately apply the provisions of Florida Statutes and the Florida Administrative Code. The order recommended that the Commission enter a final order "...upholding the billing to the subject account." A copy of this recommended order is attached to this recommendation as Attachment 1. Ms. Rodriguez timely filed an exception to the recommended order. Therefore, staff recommends that the Administrative Law Judge's Recommended Order should be adopted as this agency's final order.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Absent a timely notice of appeal, no further action is required. Therefore, this docket can be closed.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BLANCA RODRIGUEZ,)
)
 Petitioner,)
)
 vs.) CASE NO. 96-4935
)
 FLORIDA POWER and LIGHT COMPANY,)
)
 Respondent,)
)
 and)
)
 FLORIDA PUBLIC SERVICE COMMISSION,)
)
 Intervenor.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on February 6, 1997, at Miami, Florida, before Claude B. Arrington, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mayra Trinchet, Esquire
42 Northwest 27th Avenue, No. 323
Miami, Florida 33125

For Respondent: Robert E. Stone, Esquire
Florida Power and Light Company
Post Office Box 029100
Miami, Florida 33102-9100

For Intervenor: Vicki Johnson, Esquire
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

The amount that Respondent, Florida Power and Light Company

(FPL), is entitled to bill the electrical account for the property located at 3151 S.W. 84 Court, Miami, Florida, owned by Petitioner, Blanca Rodriguez, and her husband, Juan A. Rodriguez, for electricity used but not metered because of meter tampering, and the amount that Respondent is entitled to bill for the reasonable costs of its investigation.

PRELIMINARY STATEMENT

FPL determined that someone had tampered with the meter for the electric service account 3151 S.W. 84 Court, Miami, Florida. This property has, at all times pertinent to this proceeding, been owned by Petitioner, Blanca Rodriguez, and her husband, Juan A. Rodriguez. Thereafter, FPL conducted an investigation and determined what it considered to be a reasonable estimate of the amount of electricity that had not been billed because of the meter tampering. The methodology used by FPL in making this estimate was based on a methodology that has been approved by the Florida Public Service Commission. Thereafter, FPL determined the value of the electricity that it estimated had been used but not billed and submitted a bill for that amount plus an amount which FPL considered to be the reasonable expenses it incurred in conducting the investigation. Thereafter, Petitioner, Blanca Rodriguez protested the proposed billing to the Florida Public Service Commission (FPSC). After review, the FPSC entered a proposed order approving the billing by FPL. Petitioner timely requested a formal hearing to challenge the proposed action of the FPSC, the matter was referred to the Division of Administrative Hearings, and this proceeding followed.

Prior to the beginning of the formal hearing, the Petitioner and the Respondent stipulated that meter tampering had occurred. They did not stipulate when the tampering occurred and they did not stipulate who tampered with the meter. The issue left for resolution was whether the billing for unmetered electricity and investigative costs was reasonable within the meaning of Rule 25-6.104, Florida Administrative Code.

At the formal hearing, Petitioner testified on her own behalf and presented one exhibit, which was accepted into evidence. Respondent presented the testimony of one witness, Helen Lubert, an employee of FPL who determined the amount of the billing at issue in this proceeding. Respondent presented five exhibits, each of which was accepted into evidence. FPSC presented no testimony or exhibit. At the request of the FPSC, official recognition was taken of Rule 25-6.105(8)(a), Florida Administrative Code. At the request of Respondent, official recognition was taken of Rule 25-6.104, Florida Administrative Code.

A transcript of the proceedings has been filed. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. Consequently, the parties waived the requirement that a recommended order be rendered within thirty days after the transcript is filed. Rule 60Q-2.031, Florida Administrative Code. The Petitioner and Respondent filed proposed recommended orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. On January 30, 1987, the FPL electric service account at 3151 S.W. 84 Court, Miami, Florida, was opened under account number 20770-66450 in the name of Juan A. Rodriguez. The account was in the name of Juan A. Rodriguez at all times pertinent to this proceeding. At the request of the Petitioner, the account was changed into her name on October 9, 1996.

2. The residence located at 3151 S.W. 84 Court, Miami, Florida, has, at all times pertinent to this proceeding, been owned by Petitioner and her husband, Juan A. Rodriguez.

3. At all times pertinent to this proceeding, Petitioner has lived in the subject residence and has received the benefit of FPL electrical service.

4. Petitioner's husband, Juan A. Rodriguez, lived in the residence from 1987 until he and Petitioner separated in 1994. Thereafter he moved back into the residence in February 1996, and he was living at the residence at the time of the formal hearing.

5. In August 1995, FPL became suspicious that someone had tampered with the electrical meter for the subject residence. An investigation was instigated and assigned to Helen Lubert, a senior revenue protection investigator employed by FPL. Petitioner stipulated to the experience and expertise of Ms. Lubert. Based on that investigation, which included a review of the public records, spot checks of electrical usage during times there was no meter tampering, and an interview with Petitioner and her husband, Ms. Lubert projected the amounts of electricity

that had been actually used at the subject residence. This projection made use of charts referred to as seasonal average percentage of usage charts. These charts and the methodology used by FPL have been approved by the Florida Public Service Commission.

6. FPL's records retention policy is to purge billing records that are more than six years old. When Ms. Lubert attempted in March 1996 to determine how long the meter tampering had been going on she could not locate the billing records for the subject property prior to April of 1990. In comparing the amounts that were billed with the amounts that she had projected had been actually used, Ms. Lubert found the amounts billed were substantially lower than the amounts she had projected had been used. Ms. Lubert reasonably determined that meter tampering had been occurring at the subject residence since at least April 1990.

7. Ms. Lubert testified that the projected amount of electricity actually used was reasonable and that the amount of the billing for the electricity that had been used but not billed because of meter tampering was reasonable. She also testified that the billing for the investigative costs was reasonable. In forming her opinion that the projected amount of electricity actually used was reasonable, Ms. Lubert considered that the methodology used has been approved by the FPSC, the approximate size of the residence, the type water heater and appliances in the residence, the fact that there is a swimming pool with an electrical pump, the number of occupants in the residence, the

manner in which Respondent reported she used air conditioning, and the fact that there was an apartment added to the house in 1994.

8. Ms. Lubert calculated that since April 1990 and the date of the billing, the value of the unmetered electricity that had been used by the subject account was \$7,453.12. This calculation is a reasonable estimate of the unmetered energy used. Ms. Lubert also calculated that the reasonable costs of the investigation was \$349.38. This amount is reasonable.

9. On April 5, 1996, FPL billed the subject account the sum of \$7,802.50 based on Ms. Lubert's calculations. Although her name was not on the account with FPL prior to October 1996, neither the FPSC or FPL has challenged her right to contest this billing.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Section 120.57(1), Florida Statutes.

11. Rule 25-6.104, Florida Administrative Code, provides as follows:

In the event of unauthorized or fraudulent use, or meter tampering, the utility may bill the customer on a reasonable estimate of the energy used.

12. Petitioner does not dispute that FPL is entitled to bill for its reasonable costs of investigation in addition to the reasonable value of the estimated energy used.

13. There was a dispute between the parties as to whether

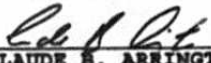
Petitioner or Respondent has the burden of proof in this proceeding. That dispute should be resolved by finding that the Respondent, as the party asserting that its determination that its billing is reasonable, has the burden of proof. See, Rule 28-6.08(3), Florida Administrative Code. In this type proceeding, it would be patently unfair to place the burden on a consumer that the billing by FPL is unreasonable. The burden should be on the utility company to prove by a preponderance of the evidence that its billing is reasonable.

14. FPL established by a preponderance of the evidence that someone tampered with the meter for the subject account and that as a result of that tampering, both Petitioner and her husband obtained the benefit of unmetered electricity. FPL also established that it reasonably estimated the value of that unmetered electricity. FPL also established that the amount charged this account for investigative costs was reasonable.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Public Service Commission enter a final order that denies Petitioner's challenge to this billing, thereby upholding the billing to the subject account.

DONE AND ENTERED this 21st day of May, 1997, in Tallahassee,
Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(904) 488-9675 SUNCOM 278-9675
Fax Filing (904) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of May, 1997

COPIES FURNISHED:

Mrs. Blanca Rodriguez
3151 Southwest 84th Court
Miami, Florida 33155

Mayra Trinchet, Esquire
42 Northwest 27th Avenue, Suite 323
Miami, Florida 33125

Robert E. Stone, Esquire
Post Office Box 029100
Miami, Florida 33102

Vicki Johnson, Esquire
Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Blanca Bayo, Director of Records
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Rob Vandiver, General Counsel
Public Services Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

DOCKET NO. 960903-EI
JULY 24, 1997

ATTACHMENT 1

William D. Talbott, Executive Director
Public Services Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.