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When the phase connection was properly repaired, FPC calculated the amount the meter had under-registered usage based on historical billing data, and issued a bill to Dundee for \$70,707.92. Dundee disputed the historical time period used for this calculation and at the customer's request FPC recalculated the back bill amount using a different base period which resulted in a bill of \$55,130.46. The final bill rendered to Dundee at this time was for \$44,104.37, which included an additional 20 percent reduction from the calculated amount.

The Florida Public Service Commission (FPC) first became aware of this complaint through a letter from the customer's consultant Mr. Maury Blalock, in November 1996. At that time, staff of the Electric and Gas Division (EAG) conducted an investigation. At the request of the customer, the investigation was handled as an informal complaint, not subject to the rules governing the Division of Consumer Affairs. EAG staff conducted independent research, gathered information from the utility, solicited input and additional information from the customer, and conducted an on-site interview with the customer in a effort to ascertain all the relevant facts. Based on the results of the informal investigation, staff advised the customer by letter that the rebilling appeared to be reasonable.

On August 4, 1997, staff sent a letter to Mr. Blalock, stating that staff recognized that Mr. Blalock disagreed with staff's previous informal findings and suggested that if he wished to pursue the matter, he should file a complaint with CAE. Staff attached a copy of Rule 25-22.032. On August 6, 1997, in a letter from Mr. Blalock to staff, Mr. Blalock indicated that Dundee Citrus had asked him to file a formal complaint requesting an informal conference pursuant to Rule 25-22.032. This letter summarized the customer's position and again alleged a cover-up by FPC. The letter also reiterated Dundee's offer of \$15,000 in payment to resolve this matter.

The core issue in this case is the appropriate amount Dundee Citrus has been rebilled for improper usage registration between August 28, 1995 and March 14, 1996. Both parties apparently agree that the customer was not without service for any significant time period and that the meter with the jumper cable caused an under-registration of usage.

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On October 3, 1997, the staff sent Mr. Black a letter confirming that staff had received his formal request for an informal conference. This recommendation addresses the request for an informal conference and the complaint.

### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the request for an informal conference and the relief request in the complaint, filed by Dundee Citrus Growers, be granted?

**RECOMMENDATION:** No. Given the extensive prior investigation and review by staff as well as the fact that the customer has refused FPC's settlement offer, it does not appear that there is any benefit to be derived from an informal conference. As such, staff recommends that the customer request for an informal conference be denied. The amount of the backbilling of \$44,104.37, is a reasonable estimate based upon previous usage. Therefore, the complaint of Dundee Citrus Growers should be denied.

#### **I. CALCULATION OF BACKBILLING AMOUNT**

**STAFF ANALYSIS** For nearly a year, the staff has conducted an extensive investigation into the matters raised by Dundee, including an on-site visit to the customer's operations. Much of the customer's concerns is discussed below.

The customer maintained originally that his usage was significantly different during the time period in question than for the historical period FPC had used to compute the rebilling amount. Even though FPC did adjust slightly the time frame for the rebilling calculation, Dundee argued that the FPC estimate overstated the amount of energy used because the actual production of the plant was significantly below the production during the historical time period. Despite repeated requests from staff and FPC for documentation to support this position, none was provided by Dundee. However, as a citrus packer, Dundee must register the number of containers it packs with the Florida Department of Agriculture (FDQA). Staff contacted the FDQA to obtain packing receipts for the historical time period used for the rebilling and the period in question in this dispute to evaluate Dundee's position. Although the records are on a fiscal year basis, not a monthly basis, it appears that Dundee packed more containers during the time period of the complaint, which would result in more usage than the historical data indicated, not less. During the site visit by EAG staff members, Dundee appeared to reverse its position on this, saying production did not influence the usage because Dundee served as a storage facility as well as a peeling plant.

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and certain equipment operated whether or not Dundee actually packed any produce.

In addition, there was a dispute concerning the operating characteristics of the meter design in place at the time of the malfunction. According to correspondence from the customer, FPC represented that the meter in place at the time of the loss of phase was a standard three-phase meter. Dundee notes that if the metering configuration consisted of a standard three-phase meter, the loss of a phase should result in a simple 1/3 reduction in registration for a three-phase meter. Therefore, actual meter readings could be easily and simply inflated to reflect the unregistered amount of energy. This would result in an amount significantly less than the amount calculated by FPC using historical data. However, through independent research, including discussions with the meter manufacturer, an EAG safety engineer established that the meter in place at the time of the malfunction was in fact a 2 $\frac{1}{2}$  phase meter. Because of the configuration of this type of meter design, the simple 1/3 analysis was inappropriate.

While still maintaining that FPC deliberately misrepresented the meter type, the customer argued that even if it were a 2 $\frac{1}{2}$  phase meter, FPC should conduct a bench test to recreate the error and test for the appropriate loss in registration empirically. FPC argued that a simulation was inappropriate because the error produced by loss of phase on a 2 $\frac{1}{2}$  phase meter was random and the likelihood of reproducing the exact error at Dundee's location was small. Through discussions with other meter experts, the safety engineer confirmed that re-creation of the event was not a reliable indicator of the magnitude of error for loss of a phase on a 2 $\frac{1}{2}$  phase meter.

Although Dundee continually takes issue with the method used by FPC to calculate the rebilling amount, use of a similar historical billing period to estimate underbillings has been accepted by the Commission in numerous cases. As a result of our independent analysis, staff finds no support for Dundee's insistence on a simulation. Nor is there any support for Dundee's original insistence that their usage was significantly different from the historical base used to compute the rebilling. In this instance, there does not appear to be any other reasonable means for accomplishing the rebilling. The method used by FPC appears consistent with what the Commission has approved in other rebilling situations.

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Given the foregoing, staff believes that all of the issues raised by the customer have been thoroughly reviewed. Accordingly, the amount calculated by FPC and billed to Dundee Citrus to reflect under-billing of electric usage for the period August 26, 1995, through March 14, 1996, is appropriate and should be paid by the customer.

While FPC may have erred in not properly repairing or replacing the malfunctioning installation sooner, the customer did not suffer any significant harm from the temporary connection. Dundee continued to operate its business in its usual manner. Therefore, FPC appropriately calculated the amount to be rebilled for time period August 28, 1995 through March 14, 1996. The complaint should be denied. Further, the rebilled amount of \$44,104.37, over a six month time period, should be paid beginning with the next full billing cycle.

## II. REQUEST FOR AN INFORMAL CONFERENCE

The following is a discussion of some of the pertinent activities after receipt of the initial complaint by the customer.

On March 31, 1997, Mr. Blalock sent a letter to staff summarizing the customer's position. The letter also indicated that contrary to staff's statement, no meeting was ever held between staff and the customer. No new information was presented and he did not dispute any technical information presented by staff. The letter repeats allegations of FPC negligence in not repairing condition in timely matter.

On May 6, 1997, a staff analyst and a safety engineer met with Mr. Blalock and Mr. Nelson at Dundee Citrus. The meeting lasted several hours and Mr. Blalock and Mr. Nelson were afforded the opportunity to present any information they wished. Staff familiarized themselves with the file prior to the meeting. No new information was provided during the meeting. The safety engineer did note that Mr. Blalock indicated during the meeting that the customer's activities were not related to electric usage. When staff pointed out that Mr. Blalock had made the assertion that usage was a significant factor earlier, he reported that Mr. Blalock and Mr. Nelson left the room briefly. When they returned the subject was not pursued, rather the topic returned to the operation of Dundee as a cooperative and the staff left the meeting.

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up with the rebilled amount. Staff also noted that several lightning arrestors were blown which could affect the customer's service and contacted FPC for immediate repair.

On May 8, 1997, Mr. Blalock sent a letter to staff acknowledging the meeting with the staff analyst and the safety engineer, which reiterated a history of the case, again criticizing FPC for not timely repairing the meter. He also noted the blown lightning arrestors reported by staff. The letter reiterated customer's willingness to pay approximately \$15,000. The letter also alleged a cover-up by FPC of the facts.

On May 15, 1997, the safety engineer sent an e-mail message memorializing his findings with respect to clarifying information on work orders obtained from FPC which showed the removal of a 2 H phase meter and the installation of a 3 phase meter. The safety engineer repeated that he had verified the meter number shown on the removal work order with the meter manufacturer as being a 2 H phase model. He also indicated that he was faxing a copy of the work orders to replace the blown lightning arrestors noted in Mr. Blalock's letter of May 8.

On May 15, 1997, in a letter from Mr. Blalock to staff, Mr. Blalock indicated receipt of the information from staff verifying the removal and replacement of meters based on work orders supplied to staff by FPC. Mr. Blalock asserts that he requested the same information from FPC some months previous and what FPC gave staff was in conflict with that earlier information. The letter again alleges negligence and cover-ups by FPC and accuses FPC of deliberately delaying settlement of this case.

On May 28, 1997, a facsimile was sent from Mr. Mueller (ED) to staff, verifying the usage data and rebilling calculations used to arrive at the \$88,000 provided to staff earlier.

On July 17, 1997, staff sent a letter to Mr. Blalock summarizing staff's report of the May 6 meeting. Staff notes that both FPC and Dundee Citrus Growers agreed that the installed meter was malfunctioning due to a loss of phase; that staff's research had confirmed FPC's position that the error could not be reliably repeated by causing the same problem in a controlled environment; and that FPC's method of rebilling appeared to be appropriate. The letter ends by saying the informal investigation by the Division of Electric and Gas was closed and attaching a copy of Rule 25-27.017.

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F.A.C., on the procedure for filing a complaint with WFTC; an official informal conference was attached.

On July 22, 1997, in a letter from Mr. Blalock to staff, Blalock, again, attempts to convince staff of his position.

On July 25, 1997, in a letter from Carol Furbell (FPC) to Dundee Citrus, FPC indicates its receipt of staff's report upholding FPC's rebilling method and establishing a nine month payment schedule for Dundee Citrus.

On August 4, 1997, staff sent a letter to Mr. Blalock, stating that staff recognized that Mr. Blalock disagreed with staff's findings and suggested that if he wished to pursue the matter, he should file a complaint with CAF. Again staff attached a copy of Rule 25-22.032.

On August 6, 1997, in a letter from Mr. Blalock to staff, Mr. Blalock indicated that Dundee Citrus had asked him to file a formal complaint. The letter again summarizes the customer's position and alleges a cover-up by FPC. The letter also reiterated Dundee's offer of \$15,000 in payment to resolve this matter.

On August 7, 1997, in a letter from Mr. Blalock to staff, Mr. Blalock indicated that he did not disagree with staff's analysis of rebilling in staff's letter of July 17, 1997. Despite staff's analysis to the contrary, Mr. Blalock asserts that the meter was not damaged and therefore the meter simulation should be performed. It is Mr. Blalock's opinion that meter simulation is superior to use of historical data. Mr. Blalock concludes his letter by citing a previous letter asserting FPC's negligence in repairing the situation.

FPC has promptly and completely responded to all staff requests. Staff finds no support for Mr. Blalock's allegations of a cover-up. While FPC may have erred in not properly repairing or replacing the malfunctioning installation sooner, the customer did not suffer any significant harm from the temporary shutoff.

Because of the extensive inquiry made by staff to date, staff believes there are no other avenues to exhaust. Pursuant to Rule 25-22.032(4), Florida Administrative Code, the Director may make a recommendation to the Commission for a dismissal based upon a finding that the complaint states no basis for relief. In this



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case, given the extensive prior investigation and review by staff as well as the fact that the customer has refused EP's settlement offer, it does not appear that there is any benefit to be derived from an informal conference, and therefore, no basis for relief in accordance with the above referenced administrative code sections. As such, staff recommends that the customer request for an informal conference be denied.

Furthermore, Rule 25-6.103(2)(c), F.A.C., provides that in the event of a non-registering or a partially registering meter, the utility may bill the customer on an estimate based on previous bills for similar usage. In this case, staff believes that the amount of the backbilling of \$44,104.57, is a reasonable estimate based upon previous usage. Therefore, the complaint of Sandra Citrus Growers should also be denied.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected by the Commission's order in this docket files a protest within 21 days of the issuance of the order, this docket should be closed. (CRUZ-BUSTILLO)

**STAFF ANALYSIS:** If no person whose substantial interests are affected by the Commission's order in this docket files a protest within 21 days of the issuance of the order, this docket should be closed.