

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDING AND
INDEXING

DATE: MARCH 22, 2001

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

FROM: DIVISION OF LEGAL SERVICES (WALKER) *Kow RUF*
 DIVISION OF CONSUMER AFFAIRS (STOKES) *Stokes*
 DIVISION OF ECONOMIC REGULATION (WHEELER) *DPW*

RE: DOCKET NO. 010288-EI - COMPLAINT OF MICHELLE P. OHLSON
 AGAINST FLORIDA POWER CORPORATION FOR ALLEGED IMPROPER
 BACKBILLING.

AGENDA: APRIL 3, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY
 PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010288.RCM

DISCUSSION OF ISSUES

ISSUE 1: Should the request for an informal conference by Mrs. Michelle P. Ohlson be granted?

RECOMMENDATION: No. Pursuant to Section 25-22.032(8)(c), Florida Administrative Code, the Commission should dismiss Mrs. Ohlson's request because it states no basis upon which relief can be granted. (WALKER, STOKES, WHEELER)

STAFF ANALYSIS: On November 8, 1999, Mrs. Michelle P. Ohlson (Mrs. Ohlson or customer) filed complaint 289393E against Florida Power Corporation (FPC or Company) for alleged improper backbilling. The Commission has jurisdiction over this matter pursuant to Sections 366.04 and 366.05, Florida Statutes.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On November 10, 1999, the Public Service Commission's Division of Consumer Affairs (CAF) requested information from FPC regarding the customer's billing concern.

On December 9, 1999, CAF received FPC's report. Mrs. Ohlson states that she contacted FPC on August 9, 1999 about receiving a low bill in the amount of approximately \$9. FPC stated that the customer was notified that the account would be investigated and also informed the customer that her account would be re-billed if the meter was malfunctioning.

According to FPC, the meter reading was 71128 on both August 5, and August 9, 1999. Subsequently, the Company installed a new meter. The reading on September 3, 1999 revealed that 1754 kilowatt hours had been used in 25 days from August 9, 1999, resulting in a daily usage of 70.16 kilowatt hours.

The Company mailed correspondence to the customer which explained the meter problem and the rebilling of her account. Additionally, the Company offered to discuss a payment arrangement with Mrs. Ohlson. According to FPC, the customer refused to make a payment arrangement or pay any portion of the bill because she reported the low bills to FPC, and therefore, alleged that her account was improperly backbilled.

On January 7, 2000, CAF sent the customer a letter explaining the outcome of its investigations, which revealed that the account was properly backbilled for the meter problem.

On February 25, 2000, CAF received Mrs. Ohlson's letter requesting an informal conference. As of March 6, 2000, the Commission requested FPC not to take any disconnection action on the customer's account for the disputed amount, pending the outcome of the customer's informal conference request.

Mrs. Ohlson maintains that the backbilled amount of \$463 is inappropriate and contends that her payments to FPC have been qualified with the endorsement "Paid in Full", and therefore, constitute payment in full, with no amounts owed to FPC. An accord is "an agreement for the settlement of some previously existing claim by a substituted performance." 6 A. Corbin, Corbin on Contracts, Section 1278 (1962). Discharge of a claim by accord and satisfaction means a "discharge by the rendering of some performance different from that which was claimed as due and the

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acceptance of such performance by the claimant as full satisfaction of his claim." Id., at Section 127.

It is universally held that a public utility or common carrier is not only permitted, but is required to collect undercharges from established rates, whether they result from its own negligence or even from a specific contractual undertaking to charge a lower amount. E.g., Louisville & Nashville R. Co. v. Maxwell, 237 U.S. 94, 35 S. Ct. 494, 59 L. Ed. 853 (1915); W.S. Dickey Clay Manufacturing Co. v. Corder, 310 F.2d 764 (5th Cir. 1962), cert. dismissed, 373 U.S. 906, 83 S. Ct. 1294, 10 L. Ed. 2d 197 (1963); Butler v. Bell Oil & Refining Co., 70 Cal.App.2d 728, 161 P.2d 559 (1945). Additionally, a customer of a public utility simply has no defense either of estoppel or accord and satisfaction to charges which were actually furnished, but which had previously been negligently underbilled. Corporation De Gastion Ste-Foy, Inc. v. Florida Power & Light Company, 385 So.2d 124 (Fla. 3d DCA, 1980).

Rule 25-6.103(2)(a), Florida Administrative Code, provides that a utility may backbill in the event that a meter is found to be slow, non-registering or partially registering.

Mrs. Ohlson contends that she should not be responsible for paying the backbilled amount from May, 1999 through September, 1999 since she reported the low bills she received to FPC.

FPC reported that the customer's account had been previously billed the following kilowatt hours and amounts:

MONTH	KILOWATT HOURS	AMOUNT OF BILL
MAY 1999	68	\$14.24
JUNE 1999	0	\$9.08
JULY 1999	2	\$9.23
AUGUST 1999	0	\$9.08
SEPTEMBER 1999	1754	\$130.76

September usage includes 25 days on the new meter.

In calculating the backbilled amount of \$463, FPC stated that it used 70.16 kilowatt hours daily usage, along with the customer's

kilowatt hour usage from the same period (May through September), 1998. The Company backbilled the customer's account 35 kilowatt hours per day for May, 1999 and 60 kilowatt hours per day from June, 1999 through September, 1999, as follows:

MONTH	ESTIMATED KILOWATT HOURS	AMOUNT
MAY 1999	1015	\$79.17
JUNE 1999	1920	\$143.33
JULY 1999	1740	\$129.69
AUGUST 1999	1800	\$134.25
SEPTEMBER 1999	1994	\$148.95

September usage includes an additional 240 estimated kilowatt hours from the old meter for four days at 60 kilowatt hours per day, for a total of 29 days in this billing period.

Mrs. Ohlson does not challenge the reasonableness of the \$463.00 backbilled amount. However, she believes that, since she reported the low bills to FPC, she should be relieved of her responsibility to pay for electricity she consumed. To craft such a remedy would be akin to permitting this customer to pay less for the same service than other customers whose meters were functioning properly. Florida Statutes do not offer such relief.

Mrs. Ohlson's correspondence to FPC asks the questions, "why would you attempt to punish people who were honest enough to call your office to report billing inconsistencies? Is this truly the message Florida Power wishes to communicate to the public, that honesty is rewarded with billing that is retroactive, and predicted on speculative information?" The established law of the state, however, is that "No public utility shall make or give any undue or unreasonable preference...to any person or locality..." Section 366.03, Florida Statutes.

Based on a thorough review of Mrs. Ohlson's complaint, applicable laws and rules, and the report from FPC, staff believes that the backbilling is proper.

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Rule 25-22.032(8)(c), Florida Administrative Code, provides that a request for informal conference may be dismissed upon a "finding that the complaint states no basis upon which relief may be granted." Therefore, staff recommends that Mrs. Ohlson's request for an informal conference be dismissed.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed because no further action by the Commission is necessary.

STAFF ANALYSIS: There are no other matters that require Commission action in this docket. Therefore, this docket should be closed.