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# Public Service Commission

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COMMISSION  
CLERK

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** March 18, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of The General Counsel (Gervasi) *RG*  
 Division of Consumer Affairs (Plescow) *JP*  
 Division of Economic Regulation (Kummer) *RT* *JP* *JP*

**RE:** Docket No. 040208-EI - Complaint of Mrs. Leticia Callard against Florida Power & Light Company regarding backbilling

**AGENDA:** 3/30/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\040208.RCM.DOC

### Case Background

On October 4, 2002, Mr. Jorge Callard filed a complaint with the Commission's Division of Consumer Affairs (CAF) on behalf of his wife, Mrs. Leticia Callard (customer of record) against Florida Power & Light Company (FPL or utility). According to Mr. Callard, FPL has inappropriately backbilled the Callards in the amount of \$9,398 for alleged unbilled energy, when the Callards had not diverted or otherwise tampered with the meter. Mr. Callard stated that the Callards have had problems with their electric service ever since Hurricane Andrew caused damage to their electric cable in 1992. Several times since then, FPL has sent its technicians to the residence to change the position of the cable, and to put a protective material over the roof of the home. On one occasion, an FPL technician dropped the meter on the ground. Mr. Callard assumes that the changes made by company technicians caused the diversion of his meter. Moreover, Mr. Callard asserted that he does not want FPL to trespass onto his property without his express permission, even if it is to read the meter.

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In response to the complaint, FPL stated that upon finding physical evidence of meter tampering, it backbilled Mrs. Callard's account from January 2, 1997, when a noticeable and sustained drop in consumption began, until July 24, 2002, when a new meter was installed. The original billing for this period, totaling \$8,660.82, was canceled and rebilled at \$17,591.79, showing a difference of \$8,930.97, plus investigation charges of \$348.21. The total backbilled amount in dispute is \$9,279.18 (\$8,930.97 + \$348.21). This amount was calculated by using actual usage from July, September, and November 1998, as those months appeared to reflect average usage, and from August 2002, the month after the new meter was set. The seasonal average percentage of usage was also taken into account in calculating the backbilled amount.

Upon review of the complaint and FPL's documentation and calculations provided in response thereto, by letter dated December 24, 2002, CAF advised Mrs. Callard that it appeared that FPL had backbilled her account in compliance with Commission rules, and that no adjustment was appropriate. An informal conference was requested, and was held on June 25, 2003. Mrs. Callard asserted that she has paid FPL what she owes the company and that she will not pay any additional amount. No agreement was reached.

After the informal conference, CAF staff and FPL continued to communicate with the customer in attempts to obtain a settlement on the matter, albeit unsuccessfully. CAF staff has had numerous conversations with both Mr. and Mrs. Callard, in English and in Spanish (Mr. Callard speaks Spanish only). CAF has attempted to explain how the backbill was calculated, that the customer was not being accused of theft, and that the Callards had apparently benefited from the usage of electric services that had not been billed due to meter tampering.

The Commission has jurisdiction pursuant to Section 366.05, Florida Statutes, and administers consumer complaints pursuant to Rule 25-22.032, Florida Administrative Code.

**Discussion of Issues**

**Issue 1:** Is there sufficient cause to determine whether meter tampering occurred at the Callard residence at 7860 SW 18th Terrace, Miami, Florida, to allow FPL to backbill the Callard account for unmetered kilowatt hours?

**Recommendation:** Yes. Prima facie evidence of meter tampering noted in FPL’s reports, as well as during the informal conference, demonstrates that meter tampering occurred. Because the account was in Mrs. Callard’s name during the entire period, she should be held responsible for a reasonable amount of backbilling.

**Staff Analysis:** In support of its conclusion that meter tampering occurred at 7680 SW 18<sup>th</sup> Terrace, FPL documented several events. On the regular read date of June 5, 2001, the meter reading was 05733, billing 1036 kilowatt hours (kwh), for a bill amount of \$91.00. On the next month’s read date of July 5, 2001, the meter reading was 05361; a regressive reading. The meter reader noted smudges and fingerprints on the meter dials, and issued an investigative request to FPL’s Revenue Protection Department.

Meter number 5C35633 was removed on July 24, 2002 (with a reading of 23974), and was sent for testing. The meter reader noted that the meter seal was cut, the head on the inner seal was missing, and the dial had apparently been tampered with. Meter No. 5C35633 was removed with a reading of 23974, and a new meter, meter no. 5C46714, was set and sealed.

Meter number 5C35633 tested with a Full Load 99.62%, Light Load 97.80%, and Weighted Average 99.26%. The tester indicated that the meter reflected the following:

Broken inner seal	Smudges on nameplate
Scratches on disk	Raised/lower disk
Smudges on register	Scratches on register
Blade wear/shiny blades	Tampered bearing screw (top)
Tampered bearing screw (bottom)	Dial tampering
Dials off scale	Tampered full load adjustment
Tampered light load adjustment	

After establishing direct benefit of the unbilled energy, the utility may bill the customer based on a reasonable estimate of usage. Rule 25-6.105, Florida Administrative Code, provides that “[i]n the event of unauthorized or fraudulent use, or meter tampering, the utility may bill the customer on a reasonable estimate of the energy used.” FPL has clearly demonstrated that the meter at 7860 SW 18<sup>th</sup> Terrace was altered in order to prevent an accurate recording of the energy used. Moreover, FPL reported that electric service was established in the name of Leticia

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Callard effective October 27, 1978. Meter number 5C35633 was set November 1, 1979, and Mrs. Callard has been the only tenant on this meter. Because the account was in Mrs. Callard's name during the entire period in question, she should be held responsible for a reasonable amount of backbilling.

**Issue 2:** Is FPL's calculation of the backbilled amount of \$9,279.18, which includes investigation charges of \$348.21, reasonable?

**Recommendation:** Yes, the backbilled amount of \$9,279.18 is a reasonable approximation of the unbilled energy plus investigative costs. The customer should be encouraged to contact FPL immediately to make payment arrangements for this amount in order to avoid discontinuance of service without notice, which is authorized pursuant to Rule 25-6.105(5)(i), Florida Administrative Code. Moreover, the customer should be placed on notice that pursuant to Rule 25-6.105(5)(f), Florida Administrative Code, FPL is also authorized, upon sufficient notice, to refuse or discontinue service for neglect or refusal to provide safe and reasonable access to the utility for the purpose of reading meters or inspection and maintenance of equipment owned by the utility.

**Staff Analysis:** FPL's documentation provides that on the regular read date of June 5, 2001, the meter reading was 05733, billing 1036 kwh, for a bill amount of \$91.00. On the next month's read date of July 5, 2001, the meter reading was 05361; a regressive reading. The meter reader noted smudges and fingerprints on the meter dials, and issued an investigative request to FPL's Revenue Protection Department. A Revenue Protection investigator visited the premises the following day, on July 6, 2001, and obtained a reading of 05497. This reading indicated that 136 kwh had been used in one day, and would project to 4080 kwh in 30 days.

On July 16, 2001, a meter reader obtained a reading of 06515. A prorated bill was issued for 572 kwh, using 06305 as the reading for service from June 5, 2001 to July 5, 2001. The bill amount was \$47.81. On the regular read date of August 3, 2001, the meter reading was 07958, billing 1653 kwh, for a bill amount of \$152.67. This reading also indicated that 1443 kwh had been used since the meter reading obtained on July 16, 2001, which would project to 2404 kwh in 30 days.

The billing from August, 2001 through June, 2002 is as follows:

<u>Service Date</u>	<u>KWH</u>	<u>Amount</u>
August 3, 2001	1653	\$152.67
September 4, 2001	1367	\$124.08
October 3, 2001	1269	\$105.90
November 1, 2001	1243	\$108.10
December 4, 2001	1112	\$ 95.88
January 7, 2002	972	\$ 82.93
February 6, 2002	976	\$ 83.32
March 7, 2002	889	\$ 75.18

April 5, 2002	1376	\$116.10
May 6, 2002	1508	\$119.06
June 5, 2002	1492	\$117.66

On June 27, 2002, the Revenue Protection investigator obtained a check reading of 22869. The previous actual reading on June 5, 2002, indicated that 2707 kwh had been used in 22 days, which projected to 3691 kwh in 30 days. The meter reading of July 5, 2002, was estimated because the meter reader was unable to gain access to the meter due to a fence. The reading of 21344 and billing of 1182 kwh generated a bill amount of \$90.66. On July 9, 2002, a verified reading of 23892 was obtained, indicating that 1023 kwh had been used since the check reading obtained on June 27, 2002, which projected to 2557 kwh in 30 days.

Upon finding physical evidence of meter tampering as described in Issue 1 of this recommendation, FPL backbilled Mrs. Callard's account from January 2, 1997, when a noticeable and sustained drop in consumption began, until July 24, 2002, when a new meter was installed. The original billing for this period, totaling \$8,660.82, was canceled and rebilled at \$17,591.79, showing a difference of \$8,930.97, plus investigation charges of \$348.21. The total backbilled amount in dispute is \$9,279.18 (\$8,930.97 + \$348.21). This amount was calculated by using actual usage from July, September, and November 1998, as those months appeared to reflect average usage, and from August 2002, the month after the new meter was set. The seasonal average percentage of usage was also taken into account in calculating the backbilled amount.

Staff has reviewed the billing history records and other documentation provided by FPL to support its calculation of the backbilled amount. In order to arrive at the total backbilled amount, FPL employed the Average Percentage Use Method approved by Order No. PSC-96-1216-FOF-EI, issued September 24, 1996, in Docket No. 960903-EI (In Re: Complaint of Mrs. Blanca Rodriguez against Florida Power & Light Company regarding alleged current diversion/meter tampering rebilling for estimated usage of electricity). The backbilled amount was determined by subtracting the billed kwh from the estimated monthly kwh. Instead of using a level kwh for the estimated monthly kwh, FPL multiplied the annual estimate of kwh to the specific monthly percentage usage, which is determined for each month in each year. This step reconciles seasonal usage. FPL's calculation of the average consumption per month appears appropriate.

For the foregoing reasons, staff recommends that the Commission find that the total backbilled amount of \$9,279.18 for unbilled consumption from January 2, 1997, to July 24, 2002, including \$348.21 for investigative charges, was calculated in a reasonable manner as required by Rule 25-6.104, Florida Administrative Code. The customer should be encouraged to contact FPL immediately to make payment arrangements for this amount in order to avoid discontinuance of service without notice, which is authorized pursuant to Rule 25-6.105(5)(i), Florida Administrative Code.

Moreover, as noted in the case background, Mr. Callard has asserted that he does not want FPL to trespass onto his property without his express permission, even if it is to read the meter. During a meeting between Mr. Callard and FPL staff held on July 11, 2003, Mr. Callard threatened that if any more FPL employees came onto his property, there would be serious consequences, "to the effect that he would lose several years of his life." The customer should be placed on notice that pursuant to Rule 25-6.105(5)(f), Florida Administrative Code, FPL is authorized, upon sufficient notice, to refuse or discontinue service for neglect or refusal to provide safe and reasonable access to the utility for the purpose of reading meters or inspection and maintenance of equipment owned by the utility.

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**Issue 3:** Should this docket be closed?

**Recommendation:** Yes, if no timely protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order.

**Staff Analysis:** If no timely protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order.