

State of Florida
Division of Administrative Hearings

ORIGINAL

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Director and Chief Judge

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Clerk of the Division



Harry L. Hooper
Deputy Chief
Administrative Law Judge
Steven Scott Stephens
Deputy Chief Judge
Judges of Compensation Claims

May 13, 2005

Blanco Bayo, Director of Records and Reporting
Public Service Commission
Capital Service Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

040208-EI

Re: LETICIA CALLARD vs. FLORIDA POWER & LIGHT COMPANY,
DOAH Case No. 04-2758

Dear Mr. Bayo:

Enclosed is my Recommended Order in the referenced case. Also enclosed is the three-volume transcript, together with the Petitioner's Exhibits lettered A, B, D, G-1, G-2 and I and the Respondent's Exhibits 1-2. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

As required by Subsection 120.57(1)(k), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order within 15 days of its rendition.

Sincerely,

JOHN G. VAN LANINGHAM
Administrative Law Judge

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Enclosures

cc: Richard D. Melson, General Counsel
Leticia Callard
David M. Lee, Esquire
William D. Talbott, Executive Director

DOCUMENT NUMBER-D/

04710 MAY 16

ORIGINAL

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LETICIA CALLARD,)
)
 Petitioner,)
)
 vs.) Case No. 04-2758
)
 FLORIDA POWER & LIGHT COMPANY,)
)
 Respondent.)
)
 _____)

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing on November 29, 2004, and on December 30, 2004. The first day of hearing was conducted by video teleconference at sites in Tallahassee and Miami, Florida. The second and final day of hearing was held at the courthouse in Miami, Florida.

APPEARANCES

For Petitioner: Leticia Callard, pro se
7860 Southwest 18th Terrace
Miami, Florida 33155

For Respondent: David M. Lee, Esquire
Florida Power & Light Company
Law Department
700 Universe Boulevard
Juno Beach, Florida 33408

DOCUMENT NUMBER-DATE

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STATEMENT OF THE ISSUES

The issues in this case are whether Petitioner tampered with her electricity meter and, if so, whether Respondent has established a reasonable estimate of the un-metered electricity consumed, for which Petitioner could be retroactively billed.

PRELIMINARY STATEMENT

On April 16, 2004, the Florida Public Service Commission ("PSC") issued a Notice of Proposed Agency Action Order Approving Billing Due to Meter Tampering ("Proposed Agency Order") wherein it made the following pertinent findings of fact:

[M]eter tampering occurred at Mrs. Leticia Callard's address, . . . [which] warrant[s] backbilling. . . . [T]he amount of reasonable backbilling of Mrs. Callard's account is \$9279.18 for unbilled consumption from January 2, 1997, to July 24, 2002, including \$348.21 for investigative charges.

The PSC "encouraged [Mrs. Callard] to contact [Respondent] Florida Power & Light Company immediately to make payment arrangements . . . in order to avoid discontinuance of [electricity] service without notice."

Petitioner Leticia Callard disputed the aforementioned fact-findings and timely requested a formal hearing. On August 4, 2004, the PSC referred the case to the Division of Administrative Hearings for further proceedings. An Administrative Law Judge was assigned to preside in the matter.

The final hearing took place on November 29, 2004, and December 30, 2004. Petitioner called her husband, Jorge Callard, as her only witness and introduced Petitioner's Exhibits A, B, D, G-1, G-2, and I into evidence. Respondent presented the testimony of its employees Chase Vessels, Edward List, Bert Cunill, James Bartlett, and Linda Cochran. In addition, Respondent offered Respondent's Exhibits 1 and 2, which were received in evidence.

The final hearing transcript, comprising three volumes, was filed on March 9, 2005. Each party filed a proposed recommended order ahead of the enlarged deadline, which was April 5, 2005.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2004 Florida Statutes.

FINDINGS OF FACT

1. Respondent Florida Power & Light Company ("FPL") is a utility that sells electricity to residential and commercial customers in Florida; as such, FPL is subject to the PSC's regulatory jurisdiction.

2. FPL measures the amount of electricity used by its residential customers in kilowatt-hours ("kWhs"). A customer's cumulative electricity usage is recorded on a meter. Each month, a meter reader looks at a customer's meter and records the current cumulative total of kWhs consumed. From the current cumulative total of kWhs is subtracted the previous month's

cumulative total, which equation produces the number of kWhs used during the preceding month, for which amount the customer is then billed.

3. For example, if a meter read on May 5, 2005, shows a current cumulative total of 6950 kWhs, and if the same meter, when read on April 5, 2005, had shown 5750 kWhs, then the customer's usage, for the 30-day period from April 5, 2005, to May 5, 2005, is 1200 kWhs. The customer will then be sent a bill for May 2005 reflecting the cost of 1200 kWhs of electricity.

4. Petitioner Leticia Callard ("Callard") is one of FPL's residential customers. Years before the present dispute arose, FPL installed meter #5C35633 at the house in Miami, Florida, where Callard resides.

5. Meter #5C35633 has five dials on its face that display kWhs. The dials are protected under a glass canopy, which is sealed to the meter to guard the meter's integrity. The dials cannot be accessed without breaking the seal.

6. On July 5, 2001, a meter reader conducted a regularly scheduled reading, for billing purposes, of meter #5C35633. (A customer's monthly invoice from FPL tells which day the meter reader will next look at the customer's meter.) He recorded a cumulative total of 5361 kWhs. This was a red flag because the previous reading, taken on June 5, 2001, had been 5733 kWhs.

Thus, the meter appeared to have run backwards. This is known as a "regressive reading." A regressive reading is suspicious because the dials on a properly functioning meter should move in only one direction—forward. **When a regressive reading is taken, FPL investigates further to determine if meter tampering has occurred.**

7. Accordingly, FPL sent an investigator named Chase Vessels to the Callard residence to conduct an unscheduled reading of meter #5C35633. (An unscheduled reading—that is, one taken between the normal monthly meter-read dates—is called a "check reading." Check readings are useful in investigating possible meter tampering because they occur without advance warning to the customer.) **Mr. Vessels read the meter on July 6, 2001, which then showed 5497 kWhs. This, too, was a regressive reading relative to that taken on June 5, 2001.**

8. Mr. Vessels discovered that the seal on meter #5C35633 was broken and had been "rigged" to appear intact. Mr. Vessels also noticed that there were smudges on the face of the meter around the dials, suggesting that someone might have been manipulating the dials.

9. Another check reading was taken on July 16, 2001, at which time Callard's meter showed 6515 cumulative kWhs. Thereafter, Mr. Vessels attempted to make additional check readings but was unable to access the meter without alerting the

customer. He finally saw the meter again on June 27, 2002. On that date, Mr. Vessels again noted the rigged seal and the smudges on the meter's face, near the dials.

10. Believing that tampering likely had taken place, FPL directed Edward List to remove meter #5C35633 and replace it with another one, which he did on July 24, 2002. Mr. List also observed the rigged seal and the smudges around the dials on meter #5C35633. When he removed the meter, Mr. List placed a sticker on the canopy, which he initialed, identifying the date of removal and the location from which the meter was taken. **Mr.** List then sent meter #5C35633 back to FPL for testing.

11. At FPL's Meter Technology Center, James Bartlett inspected and tested meter #5C35633. He confirmed that the seal was broken, and that the meter's face was scratched and smudged. Further, when Mr. Bartlett tested the meter, he found that it was "off scale," meaning that it was not measuring kWhs as accurately as it should have been.

12. Based on the above facts, which are established by credible and persuasive evidence in the record, the undersigned finds and determines that, more likely than not, meter #5C35633 was tampered with, preventing FPL from fully charging Callard for her actual electricity consumption. Specifically, it is determined that Callard (or someone) physically manipulated the

meter's dials, rolling them backwards to reduce the cumulative total of kWhs used and hence understate usage.

13. More difficult to determine is when this tampering occurred. As FPL acknowledges, tampering of this sort is episodic, and affects only the instant billing cycle. That is, if a customer were to tamper with his meter on, say, May 15, 2005, then the bill covering the period that includes May 15, 2005, would be inaccurate, but future bills would be correct (assuming no further tampering), just as bills covering earlier periods would be accurate or not depending on whether tampering had previously occurred during those periods. **To come up with a** reasonable estimate of the energy used but not paid for, then, it is necessary to establish, in some reasonable fashion, the period(s) affected by the tampering.

14. FPL estimates that from the billing cycle which ended on January 2, 1997,¹ until July 5, 2002, Callard used a total of 101623 kWhs for which she was not billed, due to meter tampering. The cost of this amount of electricity, according to FPL, is \$8,930.97.

15. For reasons that will be discussed later, it is determined that FPL's estimate of the amount of "un-metered" electricity significantly overstates Callard's probable actual usage and hence is not reasonable. FPL has introduced enough data into the record, however, for the fact-finder to make a

reasonable determination of the amount of un-metered electricity that Callard used.

16. As a starting point, the evidence shows the total kWhs for which Callard was actually billed each month from January 1997 to July 2002. Thus, Callard's annual "as billed" electricity usage for each of the years in question, expressed in kWhs, can easily be ascertained. The figures are as follows:

1997:	23899
1998:	27483
1999:	13383
2000:	14840
2001:	14134

In addition, from January 2002 to July 2002, Callard was billed for 8395 kWhs, according to readings taken from meter #5C35633.

17. It does not take a trained eye to spot the dramatic difference between the years 1997 and 1998, on the one hand, and 1999 through 2001 (and 2002) on the other. Based on these figures, the undersigned made the tentative determination that the tampering probably began in 1999.

18. To confirm or falsify this preliminary determination, the undersigned considered the concept of Percentage of Annual Usage, Monthly ("PAUM"). PAUM shows what part of a customer's annual energy consumption occurred in a given month; it is calculated by dividing the year's total usage (in kWhs) into the

subject month's usage. Thus, for example, if a customer consumed 30000 kWhs in 2004, and if his usage in May 2004 was 3000 kWhs, then the customer's PAUM for May 2004 would be 0.10, or 10 percent.

19. PAUM is a useful datum because residential customers tend to use more or less energy depending on the time of year. As Floridians know from common experience, for example, electricity usage in this state tends to increase in the hot summer months, when air conditioners are running, and decrease in the milder autumn or winter months, when windows are open.

20. To estimate un-metered electricity usage, FPL employs a methodology that factors in the PAUMs of an average customer for each of the months during which tampering is suspected to have occurred. Thus, in this case, FPL produced numbers that purportedly are the average customer's PAUMs for every month from January 1997 through July 2002. The following table shows the PAUMs of an average customer, according to FPL.

	1997	1998	1999	2000	2001	2002
JAN	6.84	6.88	7.51	6.57	7.43	7.43
FEB	6.59	5.75	6.32	5.79	6.48	6.48
MAR	7.03	5.82	5.72	6.13	6.78	6.78
APR	6.96	6.23	7.04	6.73	7.08	7.08
MAY	7.65	7.38	8.12	9.44	7.26	7.26
JUN	9.41	9.90	9.06	10.09	9.24	9.24
JUL	10.35	10.93	9.77	10.54	10.14	10.14
AUG	10.59	10.71	11.23	10.54	10.20	
SEP	10.26	10.82	10.81	10.43	11.01	
OCT	9.50	9.99	9.70	9.54	9.15	
NOV	7.82	8.08	7.78	7.29	7.73	
DEC	7.00	7.52	6.94	6.91	7.50	

21. Using an average customer's PAUMs, it is possible to calculate an actual customer's estimated annual usage ("EAU") even if there is a paucity of reliable data concerning the actual customer's true usage. Suppose, for example, that FPL suspects Smith is tampering with his meter and, as a result, conducts check readings on May 10, 2000, and May 20, 2000, recording cumulative totals of 7250 kWhs and 8420 kWhs, respectively. This tells FPL that Smith used 1170 kWhs in 10 days, or 117 kWhs per day. The June 2000 billing cycle is 30 days, so FPL can estimate that Smith's actual usage for that month should be approximately 3510 (30 x 117).² **If the average** customer's PAUM for June 2000 is 10.09 percent, then FPL can calculate an EAU for Smith, based on the two check readings. The formula is:

$$\text{EAU} = \frac{\text{kWhs (JUN2000)}}{\text{PAUM (JUN2000)}}$$

In this example, therefore, EAU would be 3510 ÷ 0.1009, which equals 34787. If Smith were billed for only 27500 kWhs in 2000, then the estimated amount of un-metered electricity for that period, based on an EAU of 34787, would be 7287 kWhs (34787 - 27500).

22. Here, FPL failed to introduce any evidence explaining how the average customer's PAUMs were derived, or by whom. Moreover, there is no evidence shedding light on whether the

average PAUMs were based on usage data collected in a particular county or counties, or throughout the state. Nor does the evidence show whether the usage data from which the average customer's PAUMs were derived reflect the consumption patterns of FPL customers specifically, or some other, broader group of electricity consumers.³ The undersigned therefore has determined that it would be unreasonable to apply these average PAUMs against Callard to determine EAUs for the years in question, except as a last resort, in the absence of better data.

23. As it happens, there might be better data concerning Callard's usage patterns. Using the kWhs for which Callard was actually billed for each of the months in issue, it is possible to calculate Callard-specific PAUMs.

24. Based on the number of kWhs for which Callard was billed each month from January 1997 through July 2002, Callard's PAUMs were as follows:

	1997	1998	1999	2000	2001	2002
JAN	5.10	5.27	10.16	4.10	18.25	6.88
FEB	5.04	3.21	4.86	4.55	0.06	6.91
MAR	4.23	3.60	4.55	5.16	10.26	6.30
APR	4.14	3.60	6.55	4.75	6.86	9.75
MAY	4.47	4.78	7.96	5.60	6.19	10.68
JUN	11.00	10.09	8.13	7.96	7.33	10.57
JUL	14.40	15.14	9.86	11.93	4.05	8.37
AUG	14.75	14.68	22.54	8.42	11.70	
SEP	15.25	14.73	5.75	23.09	9.67	
OCT	10.24	11.51	5.56	10.16	8.98	
NOV	6.59	8.32	5.51	7.94	8.79	
DEC	4.78	5.07	8.57	6.34	7.87	

25. Once again, the figures show a marked difference between the years 1997 and 1998, on the one hand, and 1999 through July 2002 on the other. The PAUMs for 1997 and 1998 are consistent with one another and indicate practically identical seasonal usage patterns. In contrast, from 1999 forward, the PAUMs are punctuated with several facially anomalous figures, as well as a number of irregular seasonal figures.

26. Beginning with the facial anomalies, note the extremely high PAUMs for August 1999 and September 2000—22.54 percent and 23.09 percent, respectively. These numbers are plainly out of line with the corresponding PAUMs for 1997 and 1998. Further, it seems unlikely that a customer would consume nearly one quarter of her entire annual electricity demand in one month. The same observations can be made about January 2001, whose PAUM, at 18.25 percent, is not only inconsistent with the corresponding PAUMs for 1997 and 1998, but also suggests, implausibly, that Callard used nearly one-fifth of a year's worth of electricity in one month. The PAUM for February 2001 is facially anomalous, too, but for the opposite reason: it is highly unlikely that a customer would use so little electricity (just 1/1667th of a year's supply) in a given month.

27. The seasonal abnormalities are nearly as striking. Take the PAUMs for January 1999; July 1999; September 1999; October 1999; August 2000; March 2001; July 2001; April 2002;

May 2002; and July 2002. None of these is consistent with the putatively normal seasonal use patterns reflected in the PAUMs for 1997 and 1998. Plus, the undersigned considers it highly improbable, for example, that Callard used just 4.04 percent of her annual energy demand in the hot summer month of July 2001 or, conversely, consumed a heavy 10.26 of her annual usage that year in the usually mild month of March. **These figures, in short, are not believable.**

28. The likeliest explanation for the anomalous PAUMs during the years 1999 through 2002 is that meter tampering skewed the usage percentages. Thus, the undersigned believes that Callard's PAUMs, as calculated based on "as billed" kWhs, buttress his preliminary determination that the tampering began in 1999, raising the inference that Callard's PAUMs for 1997 and 1998, as shown in the table above, likely reflect her actual seasonal usage patterns for those years.

29. To verify the validity of such an inference, the undersigned compared the average of Callard's PAUMs for 1997 and 1998 to the average of the average customer's PAUMs for the same years as reported by FPL. The table below shows the numbers.

	Callard	FPL
JAN	5.19	6.86
FEB	4.13	6.17

MAR	3.92	6.43
APR	3.87	6.60
MAY	4.63	7.54
JUN	10.55	9.66
JUL	14.77	10.64
AUG	14.72	10.65
SEP	14.99	10.54
OCT	10.88	9.75
NOV	7.46	7.95
DEC	4.93	7.26

30. Comparing one column to the other reveals that Callard's seasonal usage patterns mirror those of FPL's average customer; the energy consumption of both rises and falls in tandem throughout the year. Indeed, the PAUMs for January, June, October, and November are quite close (within about one percentage point, on average). To be sure, these figures reveal that Callard used about four percent more electricity than the average customer during the hottest summer months (July, August, September) and approximately two-and-a-half percent less during the milder winter and spring months. But the undersigned considers such disparities to be of far less consequence than the identity of the usage patterns.⁴

31. In sum, the comparison of Callard's average PAUMs for 1997 and 1998 to the average of FPL's average customer's PAUMs for those same years persuades the undersigned that the average PAUMs for Callard reasonably reflect her true usage patterns.

32. Thus, the undersigned finds and determines that, more likely than not, the tampering began in 1999—and that Callard is not liable for un-metered electricity usage during 1997 and 1998.

33. From the foregoing determination it is possible to home-in on a reasonable EAU for Callard. A good starting point is the average of Callard's total kWhs for 1997 and 1998, which is 25691.⁵ As an average of true annual usage figures (i.e. numbers untainted by tampering), this number should be a reasonably accurate predictor of Callard's probable annual usages in the years 1999 to 2002. Comparing this average figure to the EAUs that can be derived from meter readings taken in subsequent years at times when tampering is not suspected should either confirm the reliability of 25691 as a valid predictor of subsequent annual usage, or invalidate it.

34. Recall the check readings of 5497 and 6515, respectively, that were taken on July 6, 2001, and July 16, 2001. These readings show that Callard consumed 1018 kWhs in 10 days, or 101.8 kWhs per day during the August 2001 billing cycle. Since that was a 29-day billing period, it is reasonable

to infer that Callard should have been billed for approximately 2952 kWhs in August 2001 (29×101.8). Because Callard's average PAUM for August is 14.72 percent, the EAU based on these check readings is 20054 ($2952 \div 0.1472$).

35. Next, there is a reading of 1774 kWhs, which was taken on August 5, 2002, from the replacement meter that had been installed on July 24, 2002. This reading demonstrates that Callard used 1774 kWhs in 12 days, or 147.8 kWhs per day during the August 2002 billing cycle. This was a 31-day cycle, so it is reasonable to infer that Callard should have consumed 4582 kWhs in August 2002.⁶ Because Callard's average PAUM for August is 14.72 percent, the EAU based on this initial reading from the replacement meter is 31128 ($4582 \div 0.1472$).

36. The average of the respective EAUs based on the check readings from July 2001 and the reading of the replacement meter on August 5, 2002, is 25591 kWhs⁷—which is remarkably similar to the average of Callard's total kWhs for 1997 and 1998. (The latter figure, again, is 25691.) That these averages are so close not only reconfirms the undersigned's determination that no tampering occurred in 1997 and 1998, but also persuades him that in any month where the number of Callard's "as billed" kWhs produces an EAU within the range of 20054 kWhs to 31128 kWhs, tampering is unlikely to have occurred.

37. Using the "as billed" kWhs for each month from January 1999 to July 2002, and applying the average of Callard's PAUMs for 1997 and 1998 as shown in paragraph 29 above, the undersigned calculated an EAU for every month in which tampering might have occurred. The results are set forth in the table below.

	1999	2000	2001	2002
JAN	26204	11715	49692	18728
FEB	15738	16344	194	23632
MAR	15536	19541	36990	22679
APR	22661	18217	25065	35556
MAY	23002	17948	18098	32570
JUN	10313	11204	9820	14142
JUL	8937	11984	3873	8003
AUG	20489	8485	11230	
SEP	5137	22855	9119	
OCT	6838	13860	11664	
NOV	9879	15804	16662	
DEC	23266	19087	22556	

38. It is easy to spot, in the above figures, the months where tampering likely occurred: they are the months whose "as billed" kWhs number produces an EAU of less than 20054 (usually quite a bit less). Likewise, the months where tampering probably did not occur are readily distinguished: they are the ones where the EAU is greater than 20054. As it happens, there are not many close calls. The figures for most months either reflect obvious tampering or clearly appear to be legitimate.

39. Based on the above data, the undersigned finds and determines that, in all likelihood, tampering did not occur in

the following 14 months: January, April, May, August, and December 1999; September 2000; January, March, April, and December 2001; and February, March, April, and May 2002.⁸

40. The average EAU for these 14 months is 27658. Therefore, the undersigned finds and determines that a reasonable EAU for 1999, 2000, and 2001 is 27658 (a figure, incidentally, that differs little from Callard's actual annual usage in 1998).

41. To determine an EAU for the first seven months of 2002, the undersigned added Callard's average PAUMs for those months and found that Callard used, on average, 47.06 percent of her annual electricity consumption during the months from January to July. Thus, it is found and determined that a reasonable EAU for the first seven months of 2002 is 13016 (27658 x 0.4706).

42. With these numbers in hand, the reasonable amount of un-metered electricity consumption for which Callard is liable can now be ascertained, as shown in the following table:

	EAU	"As Billed" Usage	Difference (Un- Metered Usage)
1999	27658	13383	14275
2000	27658	14840	12818
2001	27658	14134	13524
2002	13016	8385	4621

It is found and determined that from January 1999 to July 2002, Callard consumed a total of 45238 kWhs of electricity for which she was not billed, due to meter tampering.

43. The value of 45238 kWhs of electricity, delivered during the period at issue, is \$3,975.66.⁹

44. It was previously found that FPL's estimate of the amount of Callard's un-metered electricity usage was unreasonable. The undersigned will now summarize the reasoning behind this determination.

45. FPL's first methodological flaw was assuming, without proving, that the meter tampering began in January 1997. In this regard, FPL offered no evidence—at least none that was persuasive—that Callard's meter was tampered with that year, or in 1998 for that matter. In fact, contrary to FPL's assumption, the data in evidence persuasively establish that no meter tampering occurred during 1997 and 1998. Thus, it would be unreasonable to retroactively bill Callard for the months from January 1997 through December 1998, as FPL proposes to do.

46. FPL's second methodological flaw was assuming, without proving, that the average customer's PAUMs (which figures were not really properly proved, either) could reasonably be applied to Callard. The unreasonableness of this particular assumption is magnified by the fact that there exists reliable data (from 1997 and 1998, when no tampering occurred) about Callard's

actual PAUMs, making resort to the average customer's PAUMs unnecessary.

47. These two flaws led FPL to derive an EAU for Callard for the years in question (including, erroneously, 1997 and 1998) that significantly and unreasonably overstated her probable usage. To calculate an EAU, FPL first assumed that tampering had not occurred in July 1998, September 1998, November 1998, or during the initial 12 days' service of the replacement meter, from July 24, 2002 to August 5, 2002. (FPL did not persuasively explain its selection of the particular months of 1998, but for reasons already detailed, the undersigned agrees and has found that no tampering occurred then—or at any other time in 1998.)

48. Next, FPL calculated an EAU for each of the foregoing periods, using the "as billed" kWhs for the chosen months of 1998 and a projected monthly total for August 2002, to each of which was applied the average customer's PAUM for the respective period. The following table shows the numbers.

Month/Year	KWhs	Avg. FPL Customer's PAUM	EAU
July 1998	4160	10.93	38060
September 1998	4048	10.82	37412
November 1998	2286	8.08	28292
August 2002	4440 ¹⁰	10.20	43529

49. Taking the average of the foregoing EAUs, FPL concluded that Callard's true annual usage from January 1997 to July 2002 averaged 36824 kWhs. (This figure is substantially greater than the amount the undersigned ultimately has determined reflects Callard's average annual usage—27658.)

50. As an aside, the undersigned observes that if accurate PAUMs are applied to reliable figures for monthly kWhs consumption, then the resulting EAUs, as calculated from the periodic readings, should be fairly close to one another. With this in mind, notice what happens when Callard's average PAUMs (based on 1997 and 1998 usages) are substituted for the average customer's PAUMs in FPL's equations:

Month/Year	KWhs	Callard's Avg. PAUM	EAU
July 1998	4160	14.77	28165
September 1998	4048	14.99	27005
November 1998	2286	7.46	30643
August 2002	4440	14.72	30163

51. Using Callard's average PAUMs for the periods in question produces EAUs that are, more so than FPL's numbers, fairly close to one another, which outcome persuasively reestablishes that Callard's average PAUMs are true numbers, and hence more reasonably applied in this case than the average FPL customer's PAUMs.¹¹

52. Indeed, a comparison of the two preceding tables underscores the unreasonableness of FPL's methodology. Notice that FPL happened to pick the three peak summer months (July, August, and September), when Callard's usage exceeds the average customer's by 4.2 percent on average. FPL's approach has a built-in bias against Callard and is guaranteed to produce inflated EAUs.

53. At any rate, once FPL had concluded that Callard's average annual usage should be 36824 kWhs, it multiplied that figure times the average customer's PAUM for each of the 67 months from January 1997 to July 2002, producing monthly "re-bill" amounts of kWhs. For example, the average customer's PAUM for December 2001 is 7.5 percent. Thus, FPL contends that Callard should have been billed for 2762 kWhs that month ($36824 \times .075$); it refers to this figure (2762) as the "re-bill" amount for December 2001. FPL then added together all the "re-bill" figures, subtracted therefrom the aggregate of the "as billed" numbers, and came up with a difference of 101623 kWhs, for which FPL contends Callard is liable.

54. This amount, however, exceeds a reasonable estimate of the un-metered energy consumed, by 56385 kWhs. The undersigned therefore rejects FPL's calculation.

55. As a final point, FPL claims that it is entitled to recover from Callard \$348.21 as reimbursement for investigative

costs. FPL failed to offer any proof, however, concerning the goods and/or services upon which it spent this sum.

Consequently, while the amount requested is neither shocking nor unreasonable on its face, there is no evidential basis on which the undersigned can make a finding that the sum of \$348.21 is reasonable in this case.

CONCLUSIONS OF LAW

56. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569, and 120.57(1), Florida Statutes.

57. Florida Administrative Code Rule 25-6.104 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.

58. The burden of proving meter tampering and a reasonable estimate of the un-metered energy used was on FPL. See Rodriguez v. Florida Power and Light Co., et al., DOAH Case No. 96-4935, 1997 WL 1052759, *3 (Fla.Div.Admin.Hrgs. May 21, 1007).

59. Rule 25-6.104, under which FPL is traveling, plainly does not authorize the utility to recover investigative costs, as FPL has sought to do here. In support of this particular claim, FPL relies on In Re: Complaint of Mrs. Blanca Rodriguez against Florida Power & Light Company regarding alleged current

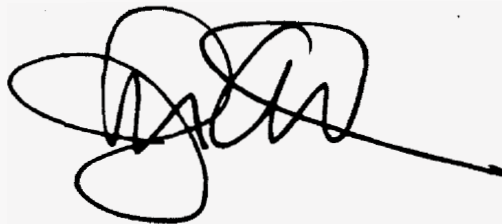
diversion/meter tampering rebilling for estimated usage of electricity, Docket No. 960903-EI, Order No. PSC-96-1216-FOF-EI (PSC Sept. 24, 1996), where the PSC proposed that FPL recover a sum for investigative charges. In Rodriguez, however, the PSC did not cite any law supporting its award.

60. Based on the unambiguous language of Rule 25-6.104, the undersigned concludes that no legal basis exists for awarding investigative costs to FPL in this matter.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commission enter a final order authorizing FPL to retroactively bill Callard \$3,975.66 for the un-metered energy she used from January 1999 through July 2002.

DONE AND ENTERED this 13th day of May, 2005, in Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of May, 2005.

ENDNOTES

^{1/} The evidence shows that FPL generally took its regular reading of Callard's meter during the first week of each month, typically on or before the fifth day. For convenience, the undersigned henceforth will refer to the billing cycle that ended on January 2, 1997 (or February 4, 1998, etc., as the case may be), simply as the "January 1997 bill" (or "February 1998 bill," etc.), or words to that effect, even though, in reality, the time period covered by the January 1997 bill was mostly December 1996. Similarly, references herein to electricity used in a particular month, say January 1997, are intended to mean electricity used during the billing cycle that ended that month, even though, given the usual meter-read date, most of that electricity likely would have been consumed in the immediately preceding month.

^{2/} The assumption here is that tampering has not occurred between the check readings, on the theory that the customer, who would not be expecting the unscheduled meter-reads, would fail to roll back the meter dials ahead of the check readings.

^{3/} Detailed information about the usage data underlying the average PAUMs, which is not available in the instant record, might have provided a basis for determining whether the average customer's PAUMs could fairly be applied in calculating Callard's un-metered energy consumption. This is because the more the average customer resembles Callard, the likelier the average customer's PAUMs will match Callard's. But the converse is true as well. It is commonly known in this state, for example, that the climate of North Florida differs from that of South Florida. One would expect, therefore, that the seasonal usage patterns of a Jacksonville resident would differ from those of a Miami resident, reflecting the climatic differences between the two regions. Thus, if the average customer's PAUMs were based on data collected statewide, then the average customer probably lives in a somewhat less tropical environment than Callard, and accordingly probably has somewhat different seasonal usage patterns.

^{4/} As mentioned previously, FPL offered no evidence in support of its average PAUMs, and consequently the undersigned does not

know what the profile of the average customer is. As a result, there is no reason for the undersigned not to assume that the average customer enjoys somewhat milder summers (which would tend to reduce energy consumption) and faces somewhat colder winters (which would tend to increase energy consumption) than Callard typically experiences in Miami, Florida. Consequently, the undersigned does not view Callard's deviations from the average percentages as evidence of meter tampering.

^{5/} This figure was obtained by adding 23899 and 27483 and dividing the resulting sum by two.

^{6/} Basing the EAU's on, say, a 30-day billing cycle, instead of, as above, 29 and 31 days, respectively, would obviously produce different numbers from the ones shown—but not materially different numbers. Because the outcome is not affected one way or the other, the undersigned has opted simply to use the actual number of days in the relevant cycle for his calculations.

^{7/} This figure was obtained by adding 20054 and 31128 and dividing the resulting sum by two.

^{8/} It is noted that the EAU's for January 2001, March 2001, April 2002, and May 2002 are greater than 31128 and hence out of the range established by the July 2001 check readings and the initial reading of the replacement meter in August 2002. The undersigned considers it possible that Callard tampered with the meter during these months and (whether by accident or design) overstated her true usage. Because there is no evidence suggesting that such occurred, however, the undersigned has decided that treating the "as billed" kWhs for these months as true and correct figures is more reasonable than any alternative.

^{9/} This dollar amount was arrived at by multiplying the known cost of one kilowatt-hour, which is approximately 8.8 cents ($\$8,930.97 \div 101623$) times the amount of un-metered usage (45238 kWhs).

^{10/} The figure of 4440 kWhs was based on the assumption that Callard had used 148 kWhs per day throughout the August 2002 billing cycle. See paragraph 35 in the text, supra. FPL multiplied 148 kWhs/day times 30 days to arrive at an estimate of 4440 kWhs for the month of August 2002.

^{11/} As well, the average of these EAUs is 28994—an amount reasonably close to the number of kWhs (27658) the undersigned has determined reasonably reflects Callard's true average annual usage.

COPIES FURNISHED:

Leticia Callard
7860 Southwest 18th Terrace
Miami, Florida 33155

David M. Lee, Esquire
Florida Power & Light Company
Law Department
700 Universe Boulevard
Juno Beach, Florida 33408

Richard D. Melton, General Counsel
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Blanco Bayo, Director of Records and Reporting
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

William D. Talbott, Executive Director
Public Service Commission
Capital Circle Office Center
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.

Month	Year	KWH	Percent	Yearly	Projected
Jul	1998	4160	10.93	38060	
Sep	1998	4048	10.82	37412	
Nov	1998	2286	8.08	28292	
Aug	2002	148	10.20	43529	proj

Asbill: 106538
 Rebill: 208161
 Addit Kwh: 101623
 Avg of Yearly Total: 36824
 Cdic Charge: 348.20

Respondent's Ex. 1
 04-2758
 MW

Remarks: Account Rebilled From Billing Period Ending 01/02/97 to 07/24/02 (NMS), using Seasonal Average
 $3756 / 31 \text{ days} = 121.16 \text{ per day} * 19 \text{ days on old meter} = 2302$
 $2302 + 1774 \text{ on NMS} = 4076$
 Proj based on nms usage

Month: Svc To: Days: Kwh Read: Kwd Read: Kwh Asbill: Kwd Asbill: Pct Usage: Kwh Rebill: Kwd Rebill: Remarks:

Aug	8/5/02 00	31	1774	0	4404	0	10.20	4404	0	
Jul	7/5/02 00	30	21344	0	1182	0	10.14	3734	0	
Jun	6/5/02 00	30	20162	0	1492	0	9.24	3402	0	
May	5/6/02 00	31	18670	0	1508	0	7.26	2673	0	
Apr	4/5/02 00	29	17162	0	1376	0	7.08	2607	0	
Mar	3/7/02 00	29	15786	0	889	0	6.78	2497	0	
Feb	2/6/02 00	30	14897	0	976	0	6.48	2386	0	
Jan	1/7/02 00	34	13921	0	972	0	7.43	2736	0	
Dec	12/4/01 00	33	12949	0	1112	0	7.50	2762	0	
Nov	11/1/01 00	29	11837	0	1243	0	7.73	2846	0	
Oct	10/3/01 00	29	10594	0	1269	0	9.15	3369	0	
Sep	9/4/01 00	32	9325	0	1367	0	11.01	4054	0	
Aug	8/3/01 00	29	7958	0	1653	0	10.20	3756	0	
Jul	7/5/01 00	30	6305	0	572	0	10.14	3734	0	
Jun	6/5/01 00	32	5733	0	1036	0	9.24	3402	0	
May	5/4/01 00	29	4697	0	875	0	7.26	2673	0	
Apr	4/5/01 00	29	3822	0	970	0	7.08	2607	0	
Mar	3/7/01 00	29	2852	0	1450	0	6.78	2497	0	
Feb	2/6/01 00	32	1402	0	8	0	6.48	2386	0	

Month	Year	KWH	Percent	Yearly	Projected
Jul	1998	4160	10.93	38060	
Sep	1998	4048	10.82	37412	
Nov	1998	2286	8.08	28292	
Aug	2002	148	10.20	43529	proj

Asbill: 106538
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 Proj based on nms usage

Month: Svc To: Days: Kwh Read: Kwd Read: Kwh Asbill: Kwd Asbill: Pct Usage: Kwh Rebill: Kwd Rebill: Remarks:

Jan	1/6/01 00	31	1394	0	2579	0	7.43	2736	0	
Dec	12/5/00 00	33	98815	0	941	0	6.91	2545	0	
Nov	11/2/00 00	29	97874	0	1179	0	7.29	2684	0	
Oct	10/4/00 00	29	96695	0	1508	0	9.54	3513	0	
Sep	9/5/00 00	30	95187	0	3426	0	10.43	3841	0	
Aug	8/3/00 00	30	91761	0	1249	0	10.54	3881	0	
Jul	7/5/00 00	30	90512	0	1770	0	10.54	3881	0	
Jun	6/5/00 00	30	88742	0	1182	0	10.09	3715	0	
May	5/4/00 00	30	87560	0	831	0	9.44	3476	0	
Apr	4/5/00 00	30	86729	0	705	0	6.73	2478	0	
Mar	3/7/00 00	30	86024	0	766	0	6.13	2257	0	
Feb	2/4/00 00	30	85258	0	675	0	5.79	2132	0	
Jan	1/6/00 00	30	84583	0	608	0	6.57	2419	0	
Dec	12/4/99 00	30	83975	0	1147	0	6.94	2556	0	
Nov	11/3/99 00	30	82828	0	737	0	7.78	2865	0	
Oct	10/5/99 00	30	82091	0	744	0	9.70	3572	0	
Sep	9/3/99 00	30	81347	0	770	0	10.81	3981	0	
Aug	8/4/99 00	30	80577	0	3016	0	11.23	4135	0	
Jul	7/6/99 00	30	77561	0	1320	0	9.77	3598	0	

Month	Year	KWH	Percent	Yearly	Projected
Jul	1998	4160	10.93	38060	
Sep	1998	4048	10.82	37412	
Nov	1998	2286	8.08	28292	
Aug	2002	148	10.20	43529	proj

Asbill: 106538

Rebill: 208161

Addit Kwh: 101623

Avg of Yearly Total 36824

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 $3756 / 31 \text{ days} = 121.16 \text{ per day} * 19 \text{ days on old meter} = 2302 . 2302 + 1774 \text{ on NMS} = 4076$
 Proj based on nms useage

Month: Svc To: Days: Kwh Read: Kwd Read: Kwh Asbill: Kwd Asbill: Pct Usage: Kwh Rebill: Kwd Rebill: Remarks:

Jun	6/4/99 00	30	76241	0	1088	0	9.06	3336	0	
May	5/5/99 00	30	75153	0	1065	0	8.12	2990	0	
Apr	4/6/99 00	30	74088	0	877	0	7.04	2592	0	
Mar	3/5/99 00	30	73211	0	609	0	5.72	2106	0	
Feb	2/4/99 00	30	72602	0	650	0	6.32	2327	0	
Jan	1/6/99 00	30	71952	0	1360	0	7.51	2765	0	
Dec	12/3/98 00	30	70592	0	1394	0	7.52	2769	0	
Nov	11/2/98 00	30	69198	0	2286	0	8.08	2286	0	
Oct	10/2/98 00	30	66912	0	3163	0	9.99	3679	0	
Sep	9/2/98 00	30	63749	0	4048	0	10.82	4048	0	
Aug	8/4/98 00	30	59701	0	4034	0	10.71	4034	0	
Jul	7/6/98 00	30	55667	0	4160	0	10.93	4160	0	
Jun	6/4/98 00	30	51507	0	2772	0	9.90	3646	0	
May	5/5/98 00	30	48735	0	1314	0	7.38	2718	0	
Apr	4/6/98 00	30	47421	0	990	0	6.23	2294	0	
Mar	3/6/98 00	30	46431	0	990	0	5.82	2143	0	
Feb	2/4/98 00	30	45441	0	883	0	5.75	2117	0	
Jan	1/6/98 00	30	44558	0	1449	0	6.88	2533	0	
Dec	12/3/97 00	30	43109	0	1143	0	7.00	2578	0	

Month	Year	KWH	Percent	Yearly	Projected
Jul	1998	4160	10.93	38060	
Sep	1998	4048	10.82	37412	
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 Proj based on nms usage

Month: Svc To: Days: Kwh Read: Kwd Read: Kwh Asbill: Kwd Asbill: Pct Usage: Kwh Rebill: Kwd Rebill: Remarks:

Nov	10/31/97	30	41966	0	1574	0	7.82	2880	0	
Oct	10/2/97 00	30	40392	0	2448	0	9.50	3498	0	
Sep	9/2/97 00	30	37944	0	3645	0	10.26	3778	0	
Aug	8/1/97 00	30	34299	0	3525	0	10.59	3900	0	
Jul	7/2/97 00	30	30774	0	3441	0	10.35	3811	0	
Jun	6/3/97 00	30	27333	0	2630	0	9.41	3465	0	
May	5/2/97 00	30	24703	0	1069	0	7.65	2817	0	
Apr	4/3/97 00	30	23634	0	989	0	6.96	2563	0	
Mar	3/5/97 00	30	22645	0	1010	0	7.03	2589	0	
Feb	2/3/97 00	30	21635	0	1205	0	6.59	2427	0	
Jan	1/2/97 00	30	20430	0	1220	0	6.84	2519	0	

Revenue Protection Management System Main Menu

File Edit Screens Reports Maintenance Window Help

Print Field Info Close All RPT Account Case Court Date Court Status Detail Generic Inspection Meter Test Remarks Clock Layer Casefile Exit

Casefile

21928-67477 81 6 213 10/27/78 1 44 5C 20746

LETICIA CALLARD W. 305 718-4513

7860 SW 18TH TER H. 305 264-6804

MIAMI FL 33155 S. 81401246

	2002	2001	2000	1999	1998	1997	1996
January	972	2579	608	1360	1449	1220	1552
February	976	8	675	650	883	1205	1197
March	889	1450	766	609	990	1010	997
April	1376	970	705	877	990	989	1160
May	1508	875	831	1065	1314	1069	1051
June	1492	1036	1182	1088	2772	2630	2436
July	1182	572	1770	1320	4160	3441	2373
August	4404	1653	1249	3016	4034	3525	3354
September	2378	1367	3426	770	4048	3645	2754
October	0	1269	1508	744	3163	2448	2723
November	0	1243	1179	737	2286	1574	1244
December	0	1112	941	1147	1394	1143	942

CDIC RPIN RPIP CARR Preview Checklist Review Review More Cust Cont Misc KWH Worksheet

Ready

Start Corporate Portal - MI... B SESSION - EXTRA... A SESSION - EXTRA... Linda Cochran - Inb... Revenue Protec... Microsoft Word 9:13 AM

Responsible Exhibit 2
04-2758

Petitioner's Exhibit A
04-2758 AM



METROPOLITAN DADE COUNTY

BNZ PERMIT AND INSPECTION RECORD

07/16/91

PERMIT NO. 91-084429

PROCESS NO. C91107945

FOLIO: 3040100130190

JOB SITE ADDRESS 7860 SW 18 TERR

REQUIRED INSPECTIONS

INIT

DATE

BUILDING

18

- 004 FOUNDATION
- 005 TIE BEAM-COLUMN
- 001 FINAL

55

- 011 STEEL & MAIN DRAIN ✓

PLUMBING

10

- POOL PIPING
- 021 POOL PIPING
- 001 FINAL

RB

8-5-91

ELECTRICAL

23

- SWIMMING POOLS
- 048 ROUGH/SLAB ✓
- 001 FINAL

SFK

8/15/91

7-26-91 Steel & Main drain rejected. Steel OK
pressure ok needed NOC

For final
Correct electrical.
① Remove light to light out
back of house
② Service is over
SFK
8/15/91

"A"
EXH

RE: PSC INQUIRY 494349E

EXH "B"

* SUMMONS * SUMMONS * SUMMONS * SUMMONS * SUMMONS * SUMMONS *



MIAMI-DADE COUNTY BUILDING DEPARTMENT
11805 S.W. 26 STREET
MIAMI, FLORIDA 33175
TEL: (786) 315-2424 FAX: (786) 315-2912

DATE: 11/25/2002

TO: Jorge and Leticia Callard
7860 sw 18 terr

Miami Fla, 33155

PROPERTY LOCATION: 7860 SW 18 terr FOLIO: 3040-1000-130-0190

YOU ARE HEREBY NOTIFIED that an inspection of the above premises disclosed that you have violated the provisions of the Florida Building Code which have been adopted as the uniform building code for Miami-Dade County, Florida or provisions of the Code of Miami-Dade County.

Type of Violation:

- Building, Electrical, Plumbing, Mechanical
Chapter: 27 Section: 2701.2
Florida Building Code, Code of Miami-Dade County, Other Adopted Standard, South Florida Building Code

Failure to comply with the national Electrical Code (N.E.C.) as contained in NFPA 70, to wit: SECTION 230-24

REQUIREMENTS FOR CORRECTION

Obtain required permit(s), make corrections and obtain required inspection approvals.

Received By: Date: Date Mailed: Return Receipt Number:
Date Posted: 11/25/2002 mailed
How Posted: Posted on front door

Therefore you are hereby directed that on or before Monday, November 25, 2002

You are to correct said VIOLATION and NOTIFY THE UNDERSIGNED BUILDING INSPECTOR that the VIOLATION has been corrected. Failure to make the correction(s) will result in one or more of the following actions: issuance of a ticket(s) in the amount of \$500.00 or more, filing of a civil suit or criminal charges against you or initiation of an unsafe structures case requiring demolition of the structure. Also, failure to comply with this notice may result in the department withholding issuance of other permits to you or referral of this matter to the appropriate licensing board.

PLEASE GOVERN YOURSELF ACCORDINGLY.

MIAMI-DADE COUNTY
BUILDING DEPARTMENT

BY: [Signature]
PRINT: Alexander Ossorio
TITLE: BUILDING INSPECTOR
PHONE: 786-315-2147

Case Number: 2003015594
E-Mail Address: bldgdept@miamidade.gov
HomePage: http://www.miamidade.gov/bldg

Petitioner's Exhibit
04-2758

EXH "D"

Pettener's Exhibit
D**Ernesto Rencurrell**

From: Jim Ruehl
 Sent: Tuesday, January 28, 2003 7:43 AM
 To: Ernesto Rencurrell
 Subject: RE: Consumer Complaint #494349E--Customer Name-Jorge Luis and Leticia Callard

04-275844

Thanks Ernie, I've forward this to consumer affairs.

-----Original Message-----

From: Ernesto Rencurrell
 Sent: Monday, January 27, 2003 10:57 PM
 To: Jim Ruehl
 Subject: Consumer Complaint #494349E--Customer Name-Jorge Luis and Leticia Callard

1/27/2003

I received the fax on the above mentioned subject Monday morning when I got to the office. I immediately called the house of Mr. and Mrs. Callard early in the morning since I will be out of town the week of February the 3rd. Mr. Callard answered the phone and I introduced myself. I asked him if he or his wife were going to be available sometime today. He said that he would be available today in the morning. I asked him if he wanted to meet about 8:30 A.M. and he said that it was fine.

Mr. Callard was waiting for me outside in his front yard when I approached the house. I gave him my business card. He invited me into his house and proceeded to the rear exterior of the house. He started by showing me the pole in the rear where the original service drop was attached which use to service his house on the back. This pole is in the rear of 7850 N.W. 18 Terrace (next door neighbor). This pole is approximately 18 feet east of the property line, therefore Florida Power and Light Company (FPL) was encroaching on his neighbor's southwest corner of property. He told me that FPL relocated the service drop to the pole on the rear southwest corner of his own property due to a large "Nispero" tree that use to be located in the southeast corner of the property. This pole is inside his own property close to the southwest corner of the property line. After this was completed he removed the tree and built a pool in that same area.

He said that the service drop was relocated in 1991. The service drop was installed with a section of the triplex cable resting on Mr. Callard's southwest corner part of his roof. He mentioned that FPL had promised to relocate the service drop to his southwest corner edge of wall which is closest to the pole. This would eliminate the hazardous condition of having the cable laying on the roof all the way to the weatherhead. Apparently FPL did not relocate the service drop.

After Hurricane Andrew struck in 1992, Mr. Callard said that he called FPL to have his service drop relocated because the cable was rubbing against the fiberglass roof due to the strong winds. He was concerned about the possibility of damage to the cable insulation, therefore creating a bigger problem. He said that FPL went to his house and installed rubber sleeves on the length of the cable laying on the roof. FPL mentioned again that they would relocate the service drop, therefore eliminating the hazardous condition. FPL never did relocate the service drop. Mr. Callard mentioned to me that at that point he notified the Florida Public Service Commission in Tallahassee.

According to Mr. Callard a representative from FPL met with an inspector from Metro-Dade County at his house. They suggested that the weatherhead could be relocated to the southwest corner edge of wall (very close to pole) and that it would go through the roof to meet the current local Miami-Dade County electrical codes. In the existing condition, the National Electric Safety Code on Table 234-1 states that a service drop with insulation must be a minimum of 3.5 feet from the roof. FPL is in violation of the NESC code.

FPL has given a letter of "RELEASE AND COMPROMISE OF ALL CLAIMS" to Mr. Callard so he can

sign and notarize it. The letter basically states that FPL will pay up to \$3,000 to relocate the service drop while relieving FPL of any liability on their part. Mr. Callard has refused to sign and notarize the letter.

My recommendation would be the same as suggested by FPL and Miami-Dade County to have the weatherhead relocated from its present location to the rear of the southwest corner edge of wall and installed through the roof to meet the current local and national electrical codes. This would eliminate the cable running through that particular area of the fiberglass roof. Another solution would be to convert from an overhead service to an underground service by installing the meter can and downpipe in this same area.

If there are any questions, please call me at (305)470-5604.

Ernie Rencurrell

Exb. "G1"



FIRE/RESCUE

WHEN REQUESTING INFORMATION OR REPORTS CONCERNING THIS INCIDENT, PLEASE REFER TO:

3032964
Incident Number

3/3/03
Incident Date

Fire, rescue reports are available approximately 2 weeks after the incident.

Miami-Dade Fire Rescue Department
Central Records
9300 N.W. 41st Street
Miami, Florida 33178
(786) 331-4900

To obtain a report call recorded message at (786) 331-4916 or see instructions on back of card.

125.01-19 6/00

Contact/Case # 119988-B

DORA
DISTRICT/UNIT

- Offense Report
- Crash Report
- Contact Only

RN13
Date/Time of Contact

Sgt. D. Smith
Name/Rank/ID #



TELEPHONE
3-503
DATE REPORTED



An Internationally Accredited Police Agency

Contact/Case # 258046-B

D3301
DISTRICT/UNIT

- Offense Report
- Crash Report
- Contact Only - No Report Written

05-14-03 8:00 PM
Date/Time of Contact

DOLAN, J. #3541
Name/Rank/ID #



TELEPHONE
305-595-6263
DATE REPORTED
05-14-03



An Internationally Accredited Police Agency

Contact/Case # 259274B

D
DISTRICT/UNIT

- Offense Report
- Crash Report
- Contact Only - No Report Written

Date/Time of Contact

Name/Rank/ID #



TELEPHONE
05/15/03
DATE REPORTED



An Internationally Accredited Police Agency

Petitioner's Exhibit
A-1 04-775

Exp 11
62

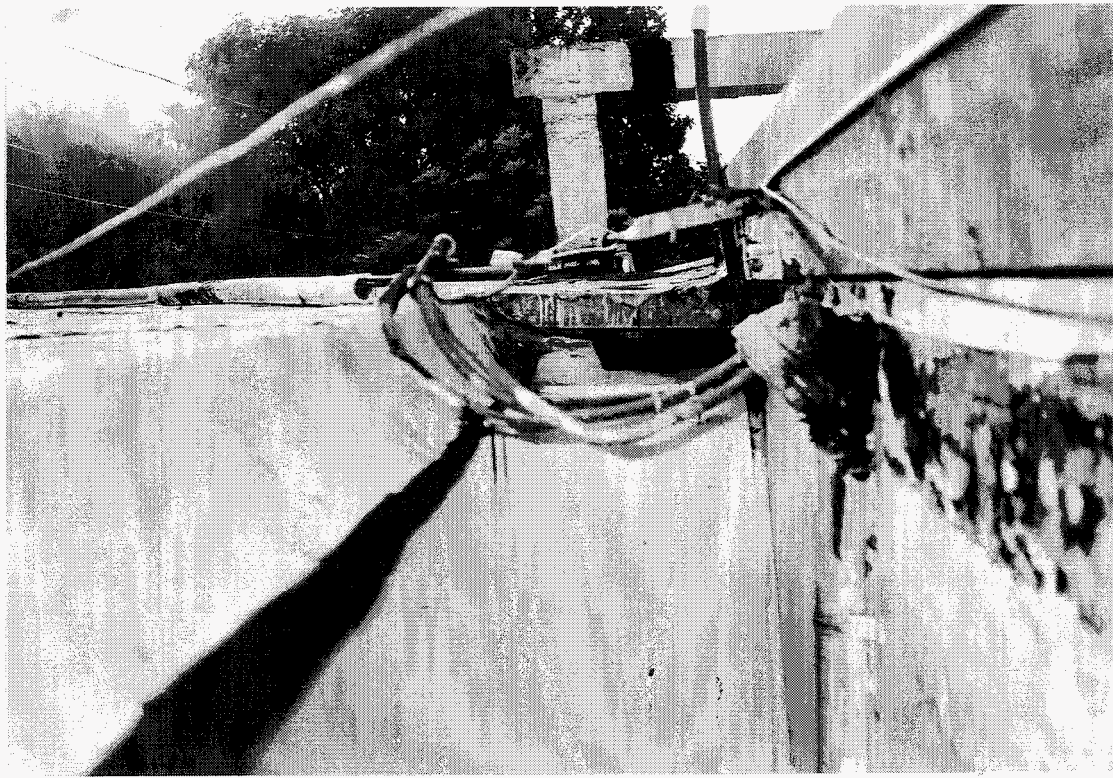
MISCELLANEOUS INCIDENT REPORT											SUPP.
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REPORTER ADVISED THAT AT APPROX.											
1400 HOURS AN UNKNOWN F.P.L. WORKER											
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TO DO ELECTRICAL WORK. THE REPORTER											
WAS REFERRED TO F.P.L. AND THE PUBLIC											
SERVICE COMMISSION IF HE WANTED TO											
MAKE A COMPLAINT ABOUT THE WORKER'S											
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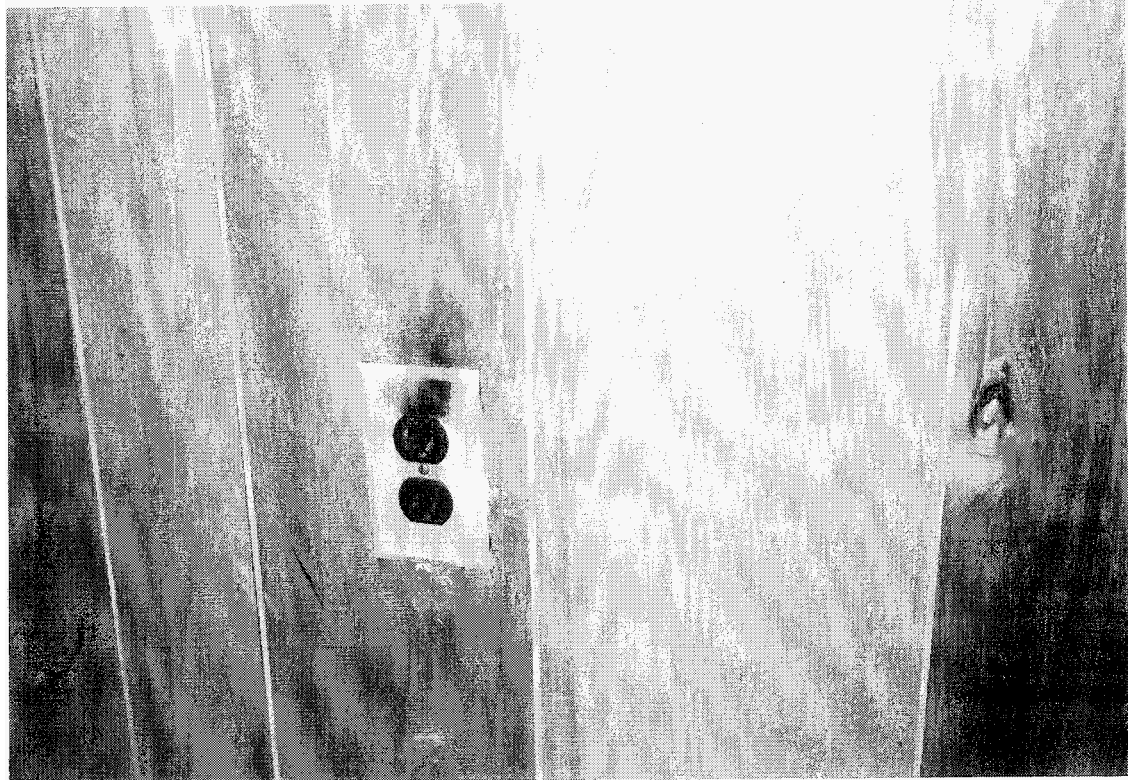
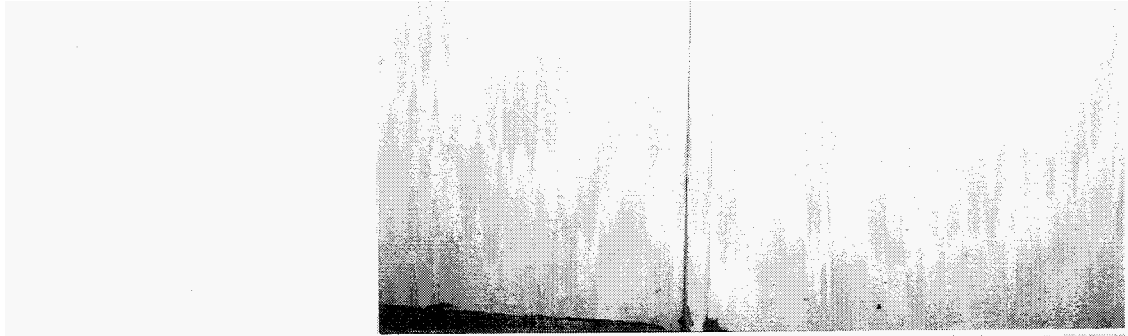
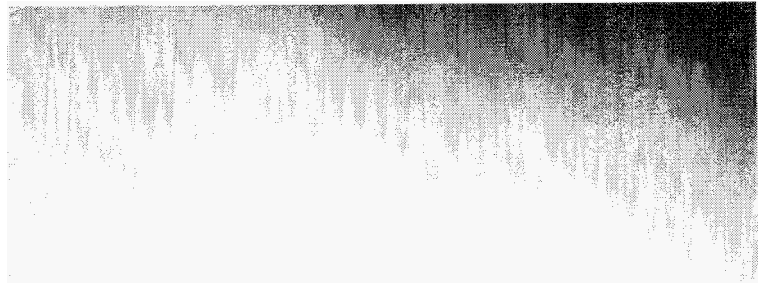
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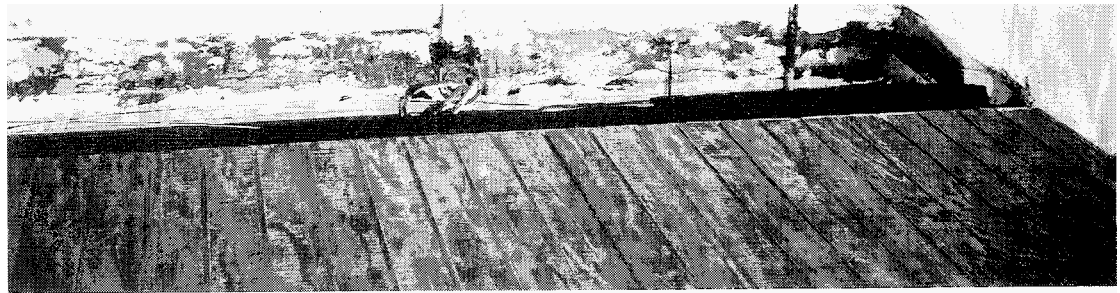
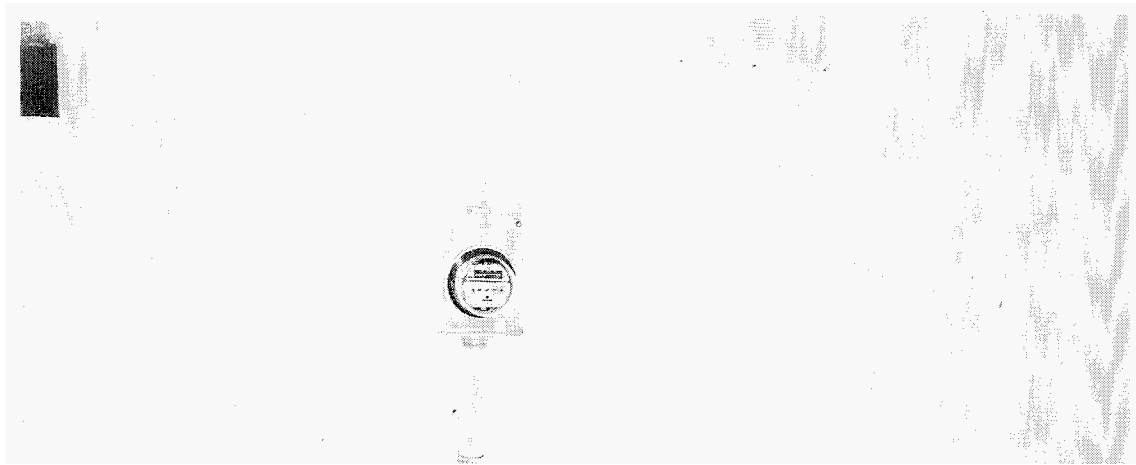
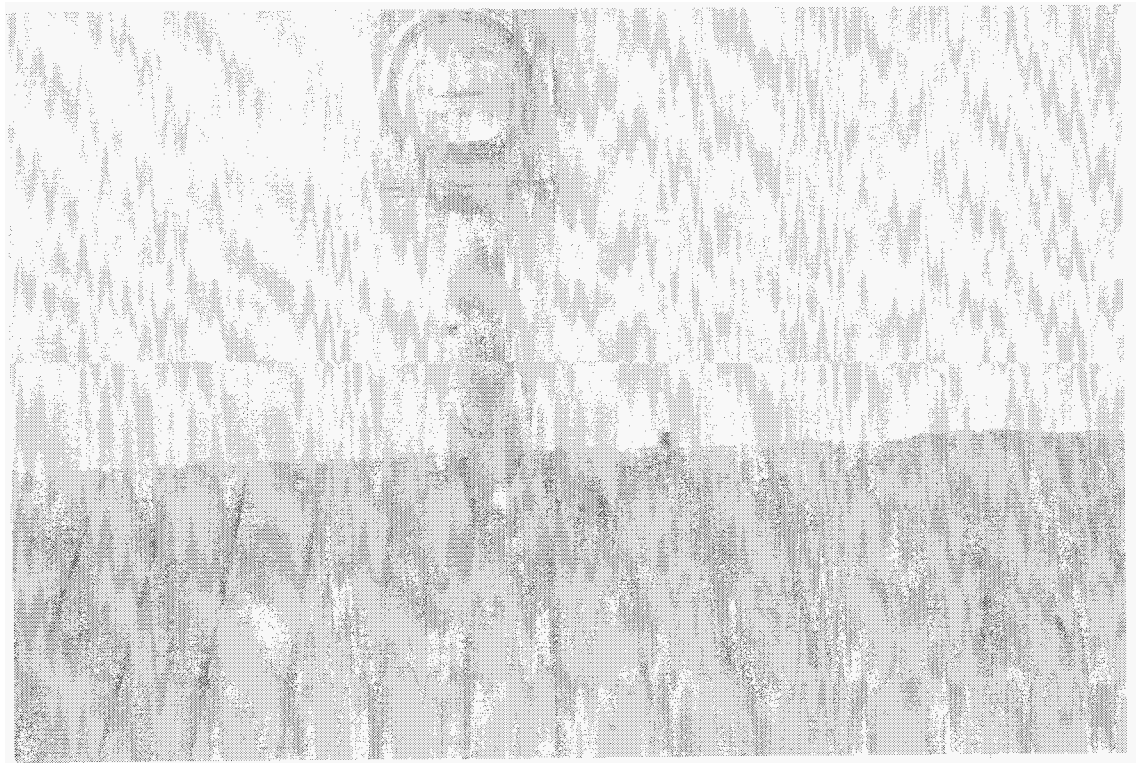
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Petitioner's Exhibit C
04-2758

Petitioner's
composite Exhibit I
(7 photographs)
04-2758 JW







STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

Case No. 04-2758

FILED
2005 MAR -9 A 11:36
DIVISION OF
ADMINISTRATIVE
HEARINGS

LETICIA CALLARD,
Petitioner,

vs.

FLORIDA POWER & LIGHT COMPANY,
Respondent.

/

November 29, 2004
401 Northwest 2nd Avenue
Video Room N-106
Miami, Florida

- - -

Hearing by Video Teleconferencing
at sites in Miami and Tallahassee
before Administrative Law Judge
John G. Van Laningham

- - -

Taken before DIANA KELLY, Professional
Reporter and Notary Public, in and for the State of
Florida at Large, pursuant to Notice of Taking
Deposition filed in the above cause.

ORIGINAL

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DIVISION OF
ADMINISTRATIVE
HEARINGS

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APPEARANCES

ON BEHALF OF THE PETITIONER
LETICIA CALLARD

ON BEHALF OF THE RESPONDENT

DAVID M. LEE, ESQUIRE
Florida Power & Light Company
Law Department
700 Universe Boulevard
Juno Beach, Florida 33408

Also present: Paul Bolivar

INDEX

Witness	Direct	Cross	Redirect	Recross
Chase Vessels	36	43	46	51
Edward List	54	58		
Bert Cunill	66	88	92, 95, 100	92, 93
Linda Cochran	102	104		

P R O C E E D I N G S

1
2 Thereupon,

3 THE COURT: Let's go on the record and get
4 underway. Are you ready? This is the case
5 number 04-2758. It's styled Leticia Callard
6 versus Florida Power & Light Company.

7 My name is John Van Laningham. I'm an
8 administrative law judge and I have been
9 assigned to preside in the final hearing of
10 this matter which is getting underway for final
11 hearing on November 29th, **just after 9 o'clock**
12 in the morning as scheduled.

13 Before we proceed let me ask that the
14 parties make their appearances for the record.
15 I'll start with the Petitioner and Mrs.
16 Callard, I know you're down there. If you
17 could introduce yourself for us and for the
18 record, please.

19 MRS. CALLARD: My name is Leticia Callard.

20 THE COURT: All right. Good morning.

21 MRS. CALLARD: Good morning.

22 THE COURT: And I understand you have your
23 husband with you as well?

24 MRS. CALLARD: Yes, sir.

25 THE COURT: Do you have anyone else there

1 either representing you or assisting in the
2 presentation of your case?

3 MRS. CALLARD: No.

4 THE COURT: All right. Very good. Good
5 morning to you both and for Florida Power &
6 Light.

7 MR. LEE: Good morning, your Honor. My
8 name is David Lee, L-e-e. I'm an attorney for
9 Florida Power & Light. Also with me today is
10 Linda Cochran, Rosanne Lucas. Also present
11 here is a witness, Jim Bartlett.

12 And then present down in Miami for Florida
13 Power & Light are three witnesses and then
14 someone else from our office. Starting nearest
15 us is Chase Vessels and then next to him is
16 Bert Cunill. Then at the end is Ed List and
17 the last gentleman in the suit is Paul Bolivar.

18 THE COURT: Good morning to you all.
19 Before we get underway I guess there are a few
20 matters in the file that we ought to take a
21 look at.

22 I received last week a letter from Mrs.
23 Callard that raised a couple of issues and I
24 entered some orders on them, but they may have
25 not have gotten out last Wednesday because our

1 computers were down. So, let me go over those
2 briefly.

3 The letter from Mrs. Callard requested
4 first of that I disqualify myself from
5 presiding over the case based on having
6 presided in another matter, unrelated matter,
7 involving the Callards sometime early this
8 year. I'm denying that motion as legally
9 insufficient.

10 Also a request made with regards to
11 arranging for an interpreter for Mr. Callard.
12 And before I discuss that any further let me
13 ask Mrs. Callard, is there an interpreter down
14 there now? Did you arrange for that or not?

15 MRS. CALLARD: No, I didn't know how to
16 arrange for that. I faxed a letter per your
17 secretary for that request.

18 THE COURT: All right. Let me address
19 that issue just briefly and cover the points
20 that were in the order that hasn't gone out
21 yet.

22 First of all, Mrs. Callard, for the
23 benefits of the parties, Division of
24 Administrative Hearings does not have a
25 procedure or budget for retaining or hiring

1 interpreters which is to say that I don't have
2 any authority on my own to make arrangements to
3 hire and pay for an interpreter.

4 What generally happens in these situations
5 is requests for interpreters are presented to
6 the referring agency which in this case is the
7 Public Service Commission.

8 I believe, Mrs. Callard, when you called
9 earlier last week my secretary told you or
10 should have told you or tried to tell you to
11 make that request to the Public Service
12 Commission directly.

13 But in any event when your letter came in
14 on last Tuesday I myself placed a call to the
15 staff attorney over at the agency to find out
16 whether there was any process whereby they
17 might arrange for an interpreter and she told
18 me that they didn't have such a policy
19 practice, but that you could make that request
20 directly to the agency clerk whose name and
21 phone number I have here, although at this
22 point it's a little late to do that.

23 And unfortunately that request did come in
24 fairly close to the final hearing, particularly
25 given that we had a short last week with the

1 Thanksgiving holidays.

2 But the bottom line is that the decision
3 to retain an interpreter in an administrative
4 case really rests with the agency and often
5 times those matters are handled between the
6 parties and the agency prior to final hearing.
7 They don't create controversies although this
8 case is obviously a little bit different in
9 that the agency is over here as an active
10 litigant.

11 Let me ask you, Mrs. Callard, what role
12 are you envisioning for your husband? I notice
13 he's not a named party. Did you anticipate
14 having him testify as a witness?

15 MRS. CALLARD: The problem is is that my
16 husband is the one that has been dealing with
17 Florida Power & Light and has talked to whoever
18 and has met with whoever. It hasn't been
19 myself and he doesn't speak any English. And
20 that's the reason why we requested because he's
21 informed of all the details.

22 THE COURT: All right. So, your plan was
23 to have him testify?

24 MRS. CALLARD: He is the one that's going
25 to be doing the talking because I don't know

1 all the details. I'm usually at work and he's
2 the one that does it all. The case is in my
3 name because I'm the one on the bill, but the
4 one that's been handling the whole situation
5 has been my husband. I'm not aware of meetings
6 or I know what's going, but he knows the
7 details.

8 THE COURT: All right. So, your plan was
9 to have him present the case?

10 MRS. CALLARD: Exactly.

11 THE COURT: All right. Let me ask you
12 this, Mrs. Callard, why wasn't this issue
13 raised earlier? Coming as it did so close to
14 the hearing has made it very difficult for us
15 in the division and also for the agency to do
16 anything. Can you just give me a little idea
17 of what the background is on your request. I
18 want the record to be clear on this, if you
19 would please.

20 MRS. CALLARD: When I spoke to your
21 secretary earlier in the week I mentioned to
22 her that I didn't know that I personally had to
23 take care of this.

24 THE COURT: When was your first request?
25 When was this phone call? Was that last

1 Monday, the week before the hearing?

2 MRS. CALLARD: Yes, that's when I spoke to
3 her but earlier in the year I had sent a letter
4 to the Public Service Commission where I stated
5 that my husband was the one that was handling
6 this case and I signed it and sent it to them.

7 THE COURT: Did you ask them for an
8 interpreter?

9 MRS. CALLARD: Not at the time. We're
10 talking about early in the year.

11 THE COURT: All right. And Mrs. Callard
12 are you able to present the case? What kind of
13 case do you plan to put on?

14 MRS. CALLARD: No, I'm not. I'm not able
15 to present the case because he is the one that
16 has met with Florida Power & Light. He's the
17 person that has spoken to various people
18 regarding this situation. I've never been
19 present and I've never -- I'm at work. The
20 case is actually his case, it's just that the
21 account is in my name.

22 THE COURT: So, what sort of evidence do
23 you have to put on besides his testimony? Do
24 you have other documents or other witnesses?

25 MRS. CALLARD: I don't have other

1 witnesses. We have the bills that we sent in,
2 that we sent to the Public Service Commission
3 to show that our bills fluctuate. We don't
4 have an attorney or anything like that.

5 THE COURT: You've got copies of bills?

6 MRS. CALLARD: I sent those in, yes.

7 THE COURT: You sent them in where?

8 MRS. CALLARD: I sent to them to your
9 office. I sent them to the Public Service
10 Commission.

11 THE COURT: You plan to offer those into
12 evidence today?

13 MRS. CALLARD: Yes. I'm sorry, I was
14 trying to explain to my husband.

15 THE COURT: You want to offer the bills
16 into evidence then? That's your intent?

17 MRS. CALLARD: The bills will prove that
18 our account fluctuates from month-to-month and
19 that throughout the years there's no change.
20 Our usage is that way.

21 THE COURT: All right. Let's me ask Mr.
22 Lee, remind me of the timeframe here, what's
23 the timeframe we're dealing with for the back
24 charges?

25 MR. LEE: We're talking from January 2nd

1 1997 through August 5th of 2002. So, five and
2 a half years.

3 THE COURT: It was roughly \$10,000?

4 MR. LEE: The exact adjusted amount was --
5 the additional billing was 9,279.18. That was
6 the difference between what she was billed and
7 what we calculated.

8 THE COURT: How many witnesses are you
9 planning to put on in your case?

10 MR. LEE: Four, maybe five.

11 THE COURT: And about how long do you
12 think that will take? Are they short
13 witnesses, long witnesses?

14 MR. LEE: A couple of them will be pretty
15 short. A couple of them might be a little more
16 in depth. I still don't think the hearing
17 should take quite that long. I guess it's all
18 relative. It depends on how much questioning
19 they have for them as well.

20 THE COURT: You all have the burden of
21 proof?

22 MR. LEE: That's an issue that I haven't
23 quite solved, but I've been coming into the
24 hearing -- although I don't necessarily agree,
25 I have been coming into the hearing with the

1 assumption that that's the way the court was
2 going to rule that we would have to go forward
3 with the burden itself. I was prepared to
4 proceed that way.

5 THE COURT: Is the question unsettled to
6 your knowledge?

7 MR. LEE: I couldn't find any case law one
8 way or the other that said we did have the
9 burden of proof. So, I just presumed that if
10 the issue came down I'd at least be prepared to
11 go forward as if it was.

12 THE COURT: Was your plan then to go first
13 in the order of proof?

14 MR. LEE: If your Honor ruled that we had
15 the burden of proof then yes, I would go first.
16 If your Honor ruled she did then I'd obviously
17 allow her to go first.

18 THE COURT: And you're going to put on
19 evidence? Just tell me briefly the theory of
20 your case is that the meter was tampered with?

21 MR. LEE: Correct. It's basically a two
22 stage theory of our case. The first stage is
23 the fact that we noticed that there was meter
24 tampering. We pulled the meter, tested the
25 meter, our people believe there was tampering

1 with the meter and we then went back and
2 reviewed their billing history.

3 The second phase would be by looking at
4 the billing history and applying an approved
5 estimation method based on meter tampering and
6 coming up with the adjusted billing amounts.

7 THE COURT: Is the billing history
8 relevant to the -- not to the question of
9 whether the meter was tampered with I suppose,
10 but the question of how much you allege was not
11 paid for, how much the unmetered usage was?

12 MR. LEE: It goes to both, but I would say
13 the billing probably more focuses on the
14 difference between what we calculate the
15 estimate would be, but there are some instances
16 where the billing seems to indicate that there
17 was tampering going on.

18 THE COURT: Are there formulas for that?
19 Is that how you determine the unmetered amount?

20 MR. LEE: Correct. We used a formula
21 that's been approved by the Public Service
22 Commission and that's the formula we used in
23 this case.

24 THE COURT: Does that take into account
25 the customer's prior usage before the point in

1 time when the alleged tampering occurred?

2 MR. LEE: It can do both, it can either
3 apply to prior usage or if there are ways that
4 we verified actual usage we can use things that
5 monitor the person tampering and in this case I
6 think we used a mixture of both.

7 THE COURT: Essentially your case involves
8 evidence that focuses on direct proof of meter
9 tampering and evidence relating to the
10 application of the Commission's formula for
11 determining amounts of unmetered use based on
12 the customer's bills and other factors that the
13 formula will take account of?

14 MR. LEE: Correct.

15 THE COURT: All right. Ms. Callard, let
16 me ask you, you heard Mr. Lee give me the
17 general outline of the thrust of FP&L's case
18 and you told me you plan to look at the bills
19 which goes to one prong or one aspect of the
20 power company's case.

21 On the other point about the direct
22 evidence of the tampering with the meter, do
23 you have evidence that you plan to offer to
24 rebut that?

25 MRS. CALLARD: Your Honor, we had in '91

1 Florida Power & Light moved a cable from where
2 we had our cable, was running east and it was
3 moved to the west side of the house. Okay.
4 And that particular cable was in violation of
5 Florida Power & Light.

6 THE COURT: When was that? Did you say
7 1991?

8 MRS. CALLARD: Yes.

9 THE COURT: All right. So, you're going
10 to testify about that?

11 MRS. CALLARD: Yes. This cable was giving
12 us trouble where it was sparking electricity
13 through a tree at the house and that's when we
14 first called Florida Power & Light with the
15 electrical problem.

16 THE COURT: All right.

17 MRS. CALLARD: And so we called them
18 because my husband was doing a job and caught
19 some current from that cable. That's when we
20 first called Florida Power & Light to have this
21 fixed.

22 They came out and they put like a rubber
23 hose around the cable and they said that they
24 would be back to repair that.

25 THE COURT: This was in 1991?

1 MRS. CALLARD: Yes. And they never came
2 back to repair that and that cable just stayed
3 there.

4 THE COURT: Let me ask you this Mrs.
5 Callard, are you familiar with those
6 circumstances? Can you testify about them?

7 MRS. CALLARD: Well, I'm familiar, but
8 there's some things that I have to ask him
9 because he was the one that reported it
10 initially and he was the one that handled with
11 the officers of Florida Power & Light that
12 situation.

13 Then we started having electrical problems
14 within the house where we started having surges
15 and we had appliances blow out.

16 THE COURT: Mrs. Callard, let me stop you
17 there because you're probably going to want to
18 testify about that and I don't need to hear all
19 the details right this moment. Just so I'm
20 clear you and your husband are the only
21 witnesses that you plan to call to testify?

22 MRS. CALLARD: Yes.

23 THE COURT: All right. Well, I suppose
24 one thing we could do to go ahead and get the
25 hearing accomplished is Mrs. Callard if you can

1 present the case maybe you could translate for
2 your husband. If she did that would there be
3 any objection?

4 MR. LEE: Well, my main problem is that
5 while I know she can translate to tell him
6 what's going on I just hate to have her
7 translating his testimony and then if he -- I
8 don't know which of the two of them plan on
9 cross examining our witnesses. I don't know
10 that's going to work, where I'm not sure what's
11 getting translated and whether it's being
12 translated accurately. I just don't know.

13 THE COURT: Then that's a potential
14 problem. Go ahead, Mrs. Callard.

15 MRS. CALLARD: I'm saying that's the same
16 thing for me, I can translate some things, but
17 I don't know whether I'm translating every
18 detail also. I'm sorry, your Honor.

19 MR. LEE: And the other issue was I just
20 didn't know which of the two of them was going
21 to do the cross examining of our witnesses.

22 THE COURT: Well, it would have to be Mrs.
23 Callard. It has to be somebody who can
24 communicate in English, so that we can make a
25 record and understand what's going on and we do

1 have a situation were Mrs. Callard is the
2 party. I assume from what she's told me and I
3 think I saw it in the file she's the account
4 holder, is that right?

5 MR. LEE: Correct.

6 THE COURT: So, she's the one that
ultimately is going to be responsible if
8 there's a finding made that there was unmetered
9 usage of electricity.

10 MR. LEE: Correct.

11 THE COURT: And what's the ultimate remedy
12 then, an order that finds that the usage was
13 unmetered in a certain amount and then what
14 does the order do, require them to pay the
15 money to FP&L, is that what the order looks
16 like?

17 MR. LEE: I mean the way I envisioned it,
18 of course I can't tell you how to do your job,
19 this is the way I envisioned it is we've
20 already taken an action and we've suspended
21 carrying out that action which is we've
22 rebilled them for what we thought was the
23 appropriate metering. We've already gone
24 forward and done that, we have just not taken
25 the final step which is because they haven't

1 paid that amount cut off their meter.

2 So, essentially when they filed their
3 complaint with the Public Service Commission
4 the ultimate remedy I guess was to decide
5 whether or not what we did was appropriate and
6 if they found it was then we could go forward
7 as usual which according to the administrative
8 code is unless other arrangements are made to
9 cut the power off if the bill is not paid.

10 THE COURT: Ultimately you got an order
11 from the Commission that says that if they
12 don't pay the bill you can terminate service.

13 MR. LEE: I think the bill even -- if they
14 rule in our favor and when they rule in our
15 favor the order usually reads that they
16 recommend the customer contact us to make
17 billing arrangements because we can literally
18 cut the meter off at that moment, but we don't
19 do that.

20 We usually will make an arrangement if the
21 customer's willing to try and to make sure that
22 it's paid as opposed to just going out to the
23 house and cutting the meter off.

24 THE COURT: Okay. I ask because we don't
25 get these cases very often as you might

1 imagine. In fact, this is the first one I've
2 seen. All right.

3 MR. LEE: And just so you know, the
4 biggest factor to us, obviously, we'd like to
5 get this resolved as well I'm sure as the
6 Callards, but the biggest factor to us is the
7 inconvenience of us all coming up here to
8 Tallahassee for the hearing, is really I guess
9 the biggest expense and inconvenience as to
10 that issue and creates a problem to going
11 forward.

12 THE COURT: Well, I'm certainly not
13 inclined to continue the hearing. It's been
14 set for quite a while and I know we've
15 continued it once or twice for various reasons.

16 And the question of whether or not an
17 interpreter would be needed it seems to me is
18 not one that just arose last week and frankly
19 should have been raised earlier in the process.

20 Had it been raised earlier the agency
21 would have had more time to deal with the
22 situation. As I indicated earlier it's
23 ultimately the agency that needs to make a
24 decision about whether or not it wants to
25 expend the money to hire an interpreter.

1 And obviously if the agency decides that
2 question incorrectly there's a possibility the
3 case would have to be redone at some point. I
4 hope that won't happen, but it seems to me
5 given the circumstances we really ought to try
6 to go forward, that's why I made the suggestion
7 about having Mrs. Callard try to translate and
8 at least getting that testimony out. I realize
9 that's irregular, but it seems to me given the
10 nature of the issues it might work here just to
11 get the evidence out and get all the facts out
12 that the Callards want to present.

13 I don't know that there's any other good
14 alternative unless the parties want to suggest
15 something that we can consider as a way to move
16 on, but I do want to try to have the hearing
17 today.

18 I can ask Mrs. Callard, do you have any
19 other suggestion for trying to get through
20 other than perhaps you trying to translate for
21 your husband as he testifies?

22 MR. LEE: I actually have a suggestion, I
23 don't know if Mrs. Callard would have a problem
24 with this, that actually is the area of my
25 biggest concern is Mr. Callard testifying is

1 when it comes to my chance to cross examine him
2 is I will have no way of knowing if she's
3 accurately translating A, what I'm asking him
4 and then B, what he's replying.

5 The suggestion I might make is if we do
6 all the rest of the evidence, I don't have to
7 be up here for that. We can reconvene at
8 another date just to do Mr. Callard with an
9 interpreter. I can appear down in Miami
10 because I'm down from South Florida. So, that
11 part I don't need to be up here for and I don't
12 mind that part -- that would be the biggest
13 concern I have is that interchange between me,
14 Mrs. Callard and Mr. Callard, that that's an
15 accurate translation of that.

16 THE COURT: So, you would suggest simply
17 deferring his testimony to some future date?

18 MR. LEE: Correct.

19 THE COURT: Would you have any objection
20 to having it presented by telephone?

21 MR. LEE: Not as long as I have the
22 opportunity to cross examine him, I don't have
23 a problem with that.

24 THE COURT: It'd just be easier to set
25 that up, would be by teleconference call and

1 take his testimony without much delay, I would
2 think. It's easier to do. I don't need all
3 the video facility to do that.

4 MR. LEE: I wouldn't have an objection to
5 that as long as they don't.

6 THE COURT: Mrs. Callard, Mr. Lee has made
7 a suggestion that might be a way for us to go
8 forward here and that would be to do the
9 hearing today, but to postpone your husband's
10 testimony so that that can be taken with an
11 interpreter at some date in the near future,
12 hopefully near future, where Mr. Lee could be
13 down there and you all could have a translator
14 present.

15 That way he would be able to ask your
16 husband questions and have someone, a neutral
17 translator, do the translation so there
18 wouldn't be concern about the questions being
19 asked to your husband by Mr. Lee.

20 I suggested that if we do that it might be
21 expeditious to do that testimony by telephone
22 which we could arrange to do more readily than
23 having another video link up. What would your
24 thoughts be on doing it that way?

25 MRS. CALLARD: But your Honor, you're

1 saying they would present their case today and
2 then we do ours at a later time?

3 THE COURT: You could present your case,
4 your testimony, for example, and any documents
5 that you might have and then we'd simply put
6 off the testimony of your husband for later so
7 that arrangements could be made to have an
8 interpreter present and then Mr. Lee could be
9 there in Miami with you and your husband and
10 the interpreter and take his testimony through
11 a translator, through a neutral translator, who
12 could make the record at that time.

13 MRS. CALLARD: I'm little bit confused
14 because everything that's going to be presented
15 he's going to present you.

16 THE COURT: Well, today I'm going to need
17 you to present the case because you're the only
18 one who can speak English and we need to have
19 an English speaker do that. That's the only
20 way we're going to understand what's happening
21 and the only way we can have a record.

22 MRS. CALLARD: I would have to ask him.

23 THE COURT: Well, he can assist you, but
24 you'll have to handle the questioning because
25 it needs to be done in English so that we can

1 understand what's happening.

2 MRS. CALLARD: Can you give me a minute,
3 your Honor?

4 THE COURT: All right.

5 MRS. CALLARD: Your Honor?

6 THE COURT: Yes.

7 MRS. CALLARD: My husband says that that's
8 somewhat confusing because he's not going to be
9 able to understand what is going on or what is
10 being talked about or asked throughout the
11 whole conference.

12 And the objective is for Florida Power &
13 Light to actually prove that this has been
14 done, whatever they are saying has been done.

15 THE COURT: Well --

16 MRS. CALLARD: And he's not going to be
17 able to actually understand what is be asked or
18 what is -- you understand?

19 THE COURT: I understand that that's an
20 issue. On the other hand, Mrs. Callard, you're
21 actually the named party. At this point, he's
22 appearing as a witness and actually there
23 wasn't any motion made to qualify him as your
24 representative.

25 So, technically he's here as a witness.

1 He's not here as a party, he's not here as a
2 qualified representative. You're here as the
3 petitioner representing yourself.

4 So, the real issue is whether or not we
5 can have a fair hearing without his testimony
6 because he can't testify without a translator.

7 We've got a potential solution where we
8 can just take his testimony later. As I've
9 indicated I don't want to continue the hearing.
10 The case was filed back in August and the first
11 time an issue was raised regarding a translator
12 for your husband was last Monday or Tuesday of
13 a three day week. And you know, it's an issue
14 that really needed to have been raised sooner.

15 We now have parties in both Miami and
16 Tallahassee to do this proceeding and it simply
17 isn't appropriate at this point to put the
18 final hearing off again for some extended
19 period of time. So, we're just going to have
20 to work through it, Mrs. Callard. You'll have
21 to present the case.

22 MRS. CALLARD: May I say something?

23 THE COURT: And if there's no better
24 solution -- go ahead.

25 MRS. CALLARD: Florida Power & Light

1 throughout this whole ordeal has never met with
2 me, they've also met with my husband. So, they
3 were very much aware that he doesn't speak any
4 English because they had to put someone to
5 interpret whatever they talked about. It's not
6 like it's something that they didn't know
7 about.

8 And my husband has spoken to Ms. Cochran
9 various times and she's had an interpreter for
10 him to interpret the conversations.

11 So, it's not like Florida Power & Light
12 was not aware of this because like I said I've
13 never attended any meeting or any type of
14 conference. They've also dealt with my husband
15 and they've always brought someone to
16 interpret.

17 THE COURT: Mrs. Callard, I'll take your
18 word for that, but again it wasn't FP&L's
19 responsibility it seems to me to raise the
20 issue of having an interpreter appointed for
21 the final hearing. I suppose they could have,
22 but that seems to me that responsibility fell
23 onto you ultimately and it wasn't done until
24 last week.

25 And that's put us in the position we're in

1 and it's not ideal, but it seems to me based on
2 what you've told me and my general
3 understanding of what the Respondent's case is
4 going to look like that we can still have a
5 good and fair hearing. It may take a little
6 longer to negotiate today, but it seems to me
7 we can do that and that's preferable to
8 postponing the whole hearing.

9 So, what I'm going to do is I think
10 Mr. Lee's suggestion is a good one. What we'll
11 do is we'll sever out Mr. Callard's testimony
12 and we'll have that taken at a later date,
13 hopefully not too far off in the future. And
14 we can discuss the details of that before we
15 adjourn today as to exactly how we want to do
16 that, but let's proceed that way and we can
17 take all the other evidence.

18 We'll still have to deal with what
19 arrangements will be made as far as a
20 translator for that follow-up proceeding, but
21 at least we'll have a little more time to deal
22 with that and see if the agency wants to get
23 involved and handle those details.

24 So, let's proceed that way and see if we
25 can't get the evidence, the remaining evidence

1 out and we can certainly get Florida Power &
2 Light's case.

3 Without making any ruling at this point on
4 who might legally have the burden of proof as I
5 haven't seen any law on that I'm going to go
6 ahead and have the Respondent to put on its
7 case first, even though they are a named
8 Respondent here and then we'll hear the
9 Callards' case after that. All right.

10 Before we move into the evidentiary part
11 of the proceeding I'll take brief opening
12 statements from the parties if they'd like to
13 make them. Since FP&L will go first I'll start
14 with you, Mr. Lee, did you want to make any
15 opening statement?

16 MR. LEE: Just very briefly, your Honor.
17 I think I've already said a lot of the things,
18 just to kind of put them in a logical sequence,
19 Mrs. Callard's been the account holder since
20 1978. They are the only occupants of the
21 residence. There are no other tenants there.

22 And then sometime in 2001 one of our meter
23 readers during the regular meter reading
24 noticed an irregularity. That was reported to
25 our investigative department. They sent an

1 investigator out, Chase Vessels, who in July of
2 2001 went and actually looked at the meter,
3 checked the reading on the meter and saw that
4 there is a seal on the outside of the meter
5 canopy that was tampered with and which would
6 indicate somebody has gone into the meter by
7 taking the canopy off.

8 A second time Mr. Vessels went out to the
9 residence in June of 2002, again, noticed the
10 same thing, that the meter had a seal which
11 appeared to have been tampered with allowing
12 somebody to get inside the meter, and also took
13 a meter reading that day.

14 And then the decision was made to actually
15 go out and pull the meter to actually inspect
16 it back at our office and do a more detailed
17 inspection. And that was done in August -- I'm
18 sorry, July of 2002 by Mr. Ed List.

19 That meter was then brought back to our
20 meter testing facility. Mr. List noticed some
21 irregularities with the meter, but a more
22 detailed inspection was done by Mr. Bartlett
23 where numerous problems were found in the meter
24 which indicated somebody had been altering the
25 dial readings and not just on one occasion, but

2 apparently a very repeated pattern of this
3 which will be evident when we show you the
4 meter.

5 Then once it was determined that there was
6 meter tampering Mr. Bert Cunill was then
7 referred on the case. And he's the person who,
8 his job is to -- or part of his job is to go
9 back and look at a meter billing history and
10 try to put the pieces together, so to speak,
11 and figure out where any tampering would have
12 begun and then where a more regular pattern of
13 usage was actually determined.

14 And it was determined that from about
15 January 7th of 1997 all the way to when we
16 pulled the meter off that there had been meter
17 tampering and we therefore went and did an
18 estimate based on the approved method and came
19 up with the amount that I earlier told you
20 about which was the difference in billing of
21 \$9,279.18 above what they previously had been
22 billed. And that's where we are today.

23 THE COURT: All right. Thank you, Mr.
24 Lee. Mrs. Callard, would you like to make a
25 brief opening statement at this time?

 MRS. CALLARD: As far as the meter, that

1 he is saying that they went out and looked at
2 the meter on various occasions, after they --
3 to follow up on what Mr. Lee is saying, after
4 they went ahead and took the meter Ms. Cochran
5 called my husband and he went to see her and
6 Mr. Zamora was present.

7 They showed my husband the meter without
8 any glass, it was opened and a new meter. And
9 they asked him if he saw anything different
10 between the two meters. And then they told him
11 this meter is your meter and it has no glass.

12 He said they told him that our meter had
13 fingerprints and they told us in five days in
14 the month someone had come out to read the
15 meter to investigate the meter and they
16 determined that there was some type of
17 manipulation with the meter.

18 And my husband asked them well, if you
19 felt that there was something wrong with the
20 meter why don't you have a photo or something
21 to indicate that there was something being done
22 wrong. And how is it that the person that
23 reads the meter is not able to see that there
24 was a problem with the meter the many times
25 they go out to the meter.

1 And so my husband says that he determines
2 that those prints were put on there afterwards
3 because how else would they be because no one
4 saw that beforehand, before the meter was
5 removed.

6 So, he feels there was no camera, there
7 was nothing to show us that this was done
8 before they took the meter with them.

9 THE COURT: Mrs. Callard, let me stop you
10 there because I assume your husband's going to
11 testify to these matters and he's not
12 testifying now under oath. So, I don't want to
 have him go through all of his testimony.

14 Let me just ask you, if I can understand
15 sort of the general thrust of your case, I
16 assume that you're going to tell me that you
17 did not tamper with the meter, correct?

18 MRS. CALLARD: That's right, your Honor.

19 THE COURT: And that whatever happened to
20 the meter was done by Florida Power & Light.

21 MRS. CALLARD: That's the only thing we
22 could assume, your Honor.

23 THE COURT: And the bills -- you got bills
24 showing your electricity usage during the
25 period in question that you're going to argue

1 demonstrate that you weren't stealing
2 electricity.

3 MRS. CALLARD: That's right, your Honor.

4 THE COURT: Because the bills and I
5 haven't looked at them, the bills that you're
6 going to -- do they show constant usage or
7 fluctuating usage? What do the bills show,
8 Mrs. Callard?

9 MRS. CALLARD: The bills show, your Honor,
10 we do not use the air conditioning. The bill
11 shows the up and down of the usage per month.
12 We don't have a constant usage that you could
13 say every month I use so much electricity. It
14 varies.

15 And we have one presently for just last
16 that was \$47. The month before it was \$100 and
17 something. That's what we show as a pattern
18 throughout the years.

19 THE COURT: And you're going to have some
20 testimony about something that occurred in 1991
21 with the electricity cables or line?

22 MRS. CALLARD: Yes, sir.

23 THE COURT: All right. How does that fit
24 into the overall picture? Are you suggesting
25 that was when the meter was damaged?

1 MRS. CALLARD: Yes, sir.

2 THE COURT: And your contention it was
3 damaged in 1991 by FP&L?

4 MRS. CALLARD: Yes, sir.

5 THE COURT: Okay. All right.

6 Mrs. Callard, go ahead.

7 MRS. CALLARD: Can I take a minute so I
8 can talk to my husband? Okay, your Honor.

9 THE COURT: Thank you, Mrs. Callard. I
10 have a general understanding of both sides'
11 positions. Let's move now then to the
12 evidentiary phase of the fine hearing. As I've
13 indicated I'll have Florida Power & Light go
14 first and Mr. Lee, you may call your first
15 witness.

16 MR. LEE: Okay, your Honor. We'll call
17 Chase Vessels. He's down in Miami.

18 THE COURT: All right then. Let me do a
19 couple of things here while we're getting ready
20 for the first witness. I was told before we
21 went on the record and we'll just confirm that
22 we have court reporters right now at both
23 sites, in Miami and here in Tallahassee. And
24 what we'll do is have the court reporter in
25 Miami take the testimony of the witnesses down

1 on that end. And we'll have the court reporter
2 here in Tallahassee take the witnesses that
3 testify here, as well as the balance of the
4 proceedings and I'll ask that the court
5 reporters coordinate, so we just get one
6 transcript without any duplication. Is that
7 acceptable to all the parties?

8 MR. LEE: That's fine.

9 MRS. CALLARD: Yes.

10 THE COURT: Very good. Our first witness
11 is down in Miami. Why don't you raise your
12 hand, so I know who it is who's going to
13 testify. Let me ask our court reporter in
14 Miami to swear in the witness please.

15 CHASE VESSELS

16 (called as a witness, having
17 been first duly sworn, testified
18 as follows:)

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. LEE:

22 Q Can you please state your name on the
23 record.

24 A Chase Vessels.

25 Q And Mr. Vessels, where are you employed?

1 A Florida Power & Light in Miami, Florida.

2 Q And what's your job there?

3 A I'm a field investigator for the Revenue
4 Protection Department.

5 Q How long have you been a field
6 investigator for the Revenue Protection Department?

7 A Approximately 15 years.

8 Q And as part of your job are you required
9 on occasion to go out to homes of customers and
10 inspect meters in order to determine if there's a
11 problem or any tampering going on with the meter?

12 A Yes, I am.

13 Q And do you recall if you were ever asked
14 to go out to the home of Leticia and Jorge Callard
15 at 7860 Southwest 18th Terrace in Miami, Florida?
16 Do you recall if you ever went to that location?

17 A Yes, I do.

18 Q Can you tell me the first time you went
19 out to that location?

20 A That would have been back on July 6th,
21 1991, I mean 2001.

22 Q Okay. And what is that you did when you
23 went out to the residence?

24 A I do a visual inspection of the meter and
25 I also read the meter as far as getting the reading

1 of the meter on that day.

2 Q And what's the purpose of doing a visual
3 inspection of the meter?

4 A To see if it's showing any signs of meter
5 tampering.

6 Q When you went out July 6th of 2001 to Mr.
7 and Mrs. Callard's residence did you in fact inspect
8 the meter and notice anything about it?

9 A Yes, I did.

10 Q What is it that you noticed about the
11 meter?

12 A First that the outer seal where the meter
13 was rigged the way that could be opened up without
14 trying to be detected.

15 Q When you say it was rigged was the seal
16 still there?

17 A Yes, it was, but it had been rigged so it
18 could be removed from the meter can and then
19 replaced again.

20 Q Now, when FP&L places a seal on the meter
21 is it set up so that if somebody opens that canopy
22 that seal would be broken?

23 A Correct, you would have to break the seal
24 in order to get into there.

25 Q Okay. Was there anything else you noticed

1 about the meter that day?

2 A I believe there was heavy smudges on the
3 meter face itself around by the dials.

4 Q Was this inside on the actual meter or was
5 on the glass that surrounds it that's on the outside
6 of the canopy?

A No, this was in on the meter face itself.

8 Q Is there any reason for any smudges,
9 fingerprints, dirt, et cetera to get on the face of
10 the meter when it's sealed?

11 A If it's sealed, no, that's not how it
12 should look.

13 Q Okay. And you said you also took a
14 reading off the meter; is that correct?

15 A That is correct.

16 Q And just so if you could explain to the
17 judge, the dials on the meter when somebody goes out
18 to read the meter is it reset every month or does it
19 just continuously go in a cycle?

20 A It's continuously going, it is not reset.

21 Q So, in other words the numbers always move
22 forward?

23 A Correct.

24 Q Is there ever a way or a time that these
25 numbers on the dial should move backwards?

1 A No, there isn't.

2 Q Let me ask the question this way, unless
3 somebody actually touches the dials are the dials
4 always going forward?

5 A The dials would always be going forward
6 unless somebody has gone in there to turn the dials
7 back.

8 Q Okay. And on July 6th of 2001 can you
9 tell me the reading you took off of the meter.

10 A I read 05497.

11 Q Okay. And as you stated since the meter
12 dials were always suppose to be going forward you
13 would expect that reading to be higher than whatever
14 the last reading was off of the meter, correct?

15 A Correct.

16 Q In other words it should not be lower than
17 the previous month's reading?

18 A Correct, it should not be lower.

19 Q What's the term that's used when a
20 subsequent reading actually is lower than the
21 previous month's reading? What's the term that we
22 use for that?

23 A That would indicate what we call dial
24 tampering is occurring on the meter.

25 Q Is it also called the regressive reading?

1 A Yes.

2 Q Was that the end of your involvement that
3 day?

4 A Yes, sir.

5 Q Do you do anything else? Okay. Did you
6 ever have a change to go back out to the Callard's
7 residence at 7860 Southwest 18th Terrace in Miami?

8 A Yes, I did.

9 Q And when did you go back out?

10 A That would be on June 27th, 2002.

11 Q And what was the purpose of your going to
12 their home that day?

13 A Again, I was doing a field visit. I was
14 going to get a reading on the electric meter and
15 compare it to the previous reading. And also to
16 see -- then I was also going to get a reading so
17 that when they next read the meter I would compare
18 it to that reading also.

19 Q Okay. And can you tell me what you saw
20 when you went out to the home on June 27th, 2002?

21 A I saw the same conditions as before. It
22 had a rigged outer seal and the smudges were on the
23 meter dials again.

24 Q Okay. And did you take a reading off of
25 the meter?

1 A Yes, I did.

2 Q What was the reading that you took?

3 A 22869.

4 Q Did that end your involvement with the
5 Callard residence and the Callards?

6 A Yes, sir.

7 Q Okay. Let me ask you another question,
8 the days that you went out were this just random
9 days? In other words, was there any reason you
10 picked a particular day to go out?

11 A Again, I was trying to set it up so I'd
12 compare it to the previous readings and future
13 readings. So, I guess I was trying to pick a day
14 where it was in between where it'd give me a good
15 indication about the usage on the meter.

16 Q And is the reading on a house, is it
17 usually done about the same time every month? In
18 other words, the month that the regular meter reader
19 goes out there, is that usually about the same time
20 every month?

21 A It's always within a few days.

22 Q Okay. And in fact do we tell customers on
23 their bills when the next day somebody is going to
24 go out to the house and read their meter? Do we
25 inform the customer on their bill when a person will

1 be at the house to read the meter?

2 A On a customer's bill it states the next
3 date somebody will be out to read the meter.

4 Q So, a customer would know the next time
5 FP&L is suppose to be at the house, correct?

6 A Correct.

7 Q But the days that you went out and did
8 your readings, those were days in which the customer
9 would not expect you to be there, is that correct?

10 A That is correct.

11 Q And so for lack of a better word the times
12 you went out were in the middle of the billing
13 cycle?

14 A Correct.

15 MR. LEE: Okay. That's all the questions
16 I have for Mr. Vessels.

17 THE COURT: All right. Mrs. Callard?

18 CROSS EXAMINATION

19 BY MRS. CALLARD:

20 Q Yes. We'd like to know how many times did
21 this gentleman go out to the house.

22 A I was out twice.

23 Q And what dates, I'm sorry, did you say?

24 A It would have been July 6th, 2001 and
25 June 27th, 2002.

1 Q Do you remember how our home is?

2 A How it is? I don't understand.

3 Q How the house it is in the back of the
4 house. The question is how you entered the house
5 because we have a 6-foot fence.

6 A Correct, you have 6-foot fence and the
7 meter is in the rear of your house. The first time
8 I was there I knocked on the door and a gentleman
let me in through the west side gate. The second
10 date I was there I knocked on the door and I was let
11 through the house to the back door.

12 Q That's not true. That's impossible.

13 A Those are the dates --

14 MRS. CALLARD: My husband is there
15 everyday. He's never seen your face before.
16 And the only one that's home is my husband. My
17 children are at school.

18 THE COURT: Mrs. Callard?

19 MRS. CALLARD: Yes.

20 THE COURT: Let me ask you to put the
21 questions to the witness, but not to testify.
22 You'll have a chance to give that testimony as
23 a way of rebutting the testimony that
24 Mr. Vessel has offered. You can ask him
25 questions, but don't start arguing with him

1 factually about whether or not you saw him.

2 BY MRS. CALLARD:

3 Q Okay. Your Honor, we'd like to ask him on
4 July the 6th when he went out to read the meter was
5 that an out-of-cycle reading?

6 A Correct, that was not for the regular
7 billing.

8 Q Did you notify us that you were going to
9 read the meter?

10 A No, when I knocked on the door and
11 somebody opened the gate I informed him that I
12 needed to read the meter.

13 Q Your Honor, we have a question, where the
14 gentleman talks about the seal on the meter, you say
15 that the seal was removed?

16 A No, I'm saying that the seal had been
17 rigged. The seal was there, but it had been set in
18 such a way that it could be removed.

19 Q Did you notice that the first time you
20 went out to read the meter?

21 A Correct.

22 Q Did you notice on your first visit that
23 the meter, there was something wrong with the meter
24 the first time you went?

25 A I noticed on my first visit, yes, that

1 there were smudges on the meter face, on the dials.

2 Q That is on the first visit; is that
3 correct?

4 A Correct.

5 Q Did you take a picture of the clock of the
6 meter, the way it was?

7 A No, I didn't.

8 MRS. CALLARD: Okay, your Honor, that's
9 all the questions we have.

10 THE COURT: All right. Thank you, Mrs.
11 Callard. Redirect?

12 REDIRECT EXAMINATION

13 BY MR. LEE:

14 Q Just a couple questions. Mr. Vessels, do
15 you recall if there was a pool with a pool pump at
16 the house?

17 A No sir, I don't recall that.

18 MR. LEE: Okay. That's all the questions
19 I have.

20 THE COURT: Okay. Let me ask the witness
21 a question or two and I'll let the parties
22 follow-up. Mr. Vessels, let me go back to your
23 testimony about the seal being rigged, I think
24 being your words, can you give me a little more
25 complete description of what that looks like,

1 exactly what the seal looks like and how it was
2 rigged, if you could describe that for me.

3 THE WITNESS: Basically, what a rigged
4 seal looks like is the seal itself would have a
5 plastic -- a hard plastic base to it because
6 it'll have FP&L on it and with the number. And
7 it hangs there by a metal bail and that is
8 attached to whatever, if it's a band on the
9 meter or if it's on the actual meter can on a
10 hasp and it slides through and it closes in and
11 locks.

12 What happens when it's rigged is that is
13 part of the bail is either cut or it's dug out
14 and you can take it off and then have access
15 into the meter and then you put the bail back
16 on and slide it back into the base.

17 And each time you need to go into the
18 meter you can keep doing that. You're making
19 an appearance though that the seal itself is
20 intact, but it's actually rigged, it's just
21 that you pulled it apart.

22 THE COURT: Is that seal something that
23 the Florida Power & Light personnel that deal
24 with meters, is there a special tool for
25 opening it or how does that work?

1 THE WITNESS: No, if you were going to
2 open it, if FP&L was going to change the meter
3 or open it themselves on an impact seal they
4 would just cut the seal itself.

5 What happens is other people when they
6 want to rig the seals they can use tools
7 themselves like a little file and something
8 that. You'd have to dig in and it can be
9 rigged that way.

10 THE COURT: So, the seal is kind of a
11 permanent lock then? In other words, in the
12 regular course of business FP&L isn't opening
13 the seal up to get into the meter?

14 THE WITNESS: No, they don't do that on
15 every -- the only times they would go in to do
16 that is when they're going to be changing out
17 the meter or doing a meter inspection.

18 THE COURT: Okay. Is it routinely done,
19 for example, by the person that goes out and
20 reads the meter each month?

21 THE WITNESS: No, sir. The person who
22 reads the meter will not be removing the seals.
23 They will seal meters, but they do not remove
24 seals.

25 THE COURT: When would the monthly meter

1 reader seal the seal? What circumstance would
2 that occur in?

3 THE WITNESS: It could be if the seal had
4 been -- if there was no seal on the meter. It
5 could be sometime if there was a brand new
6 meter set in a new development, sometimes those
7 meters aren't sealed. Various reasons. Maybe
8 the seal itself has gotten old and from the sun
9 and the rain and weather can like fall apart
10 and they reseal the meter then.

11 THE COURT: Okay. Now, before you went
12 out to the Callards' residence for the first
13 time in July of 2001 was there some reason why
14 you were going out? Was there some suspicion
15 of tampering or was this sort of a random
16 check? How did it come about that you were
17 there?

18 THE WITNESS: No, I had received a report
19 that there was possible meter tampering at this
20 address and that is why I went to that address.
21 It wasn't a random check.

22 THE COURT: Okay. And you went out then
23 on July 6th of '01 as you've testified and saw
24 some evidence as you've described it of
25 irregularities or tampering with the meter, the

1 heavy smudges on the dial, the seal appearing
2 to have been rigged or tampered with.

3 And then your testimony was you went back
4 out to the residence on June 27th of 2002,
5 almost a year later. Did anything happen in
6 between your first visit and the second with
7 regard to this investigation of the Callards?
8 It seems like kind of a long time there after
9 your first visit?

10 THE WITNESS: Well, I'll back up somewhat,
11 what wasn't stated also, I did have two other
12 visits there back in October and November, but
13 at that time I noted that there were cars there
14 and I did not want to stop because I'd already
15 had contact with the customer one time back in
16 July.

17 And as far as my investigations go I try
18 to keep the customer contact down to a minimum.
19 So, I was back there in August of 2001, but
20 both times I did not go onto the premise
21 because I did not want anymore customer contact
22 there.

23 THE COURT: And that's your ordinarily
24 practice in regards to these sort of
25 investigations?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. And I take it then
3 after the first visit where you saw some
4 irregularities then you didn't at that time
5 make any attempt to seal the meter up. It
6 sounds like you left it the way it was?

7 THE WITNESS: Yes sir, I did.

8 THE COURT: All right. Okay. Thank you,
9 Mr. Vessels. I'll let the parties follow-up as
10 I indicated. The way I do this is I'll let --
11 when I ask questions like this I'll let the
12 party who calls the witness have the last word
13 with the witness.

14 So, Mrs. Callard, you can go ahead and
15 follow-up with the witness on anything that I
16 asked him that you want to inquire further
17 about. If you have any questions along those
18 lines, you can ask them now.

19 RE CROSS EXAMINATION

20 BY MRS. CALLARD:

21 Q Okay. I wanted to ask the gentleman, is
22 the person that reads the meter aware when there's
23 something wrong with the meter, since you said that
24 the seal was visible?

25 A The meter readers themselves, they do get

1 some training as far as conditions to look for when
2 they are reading meters.

3 Q During the various times on a monthly
4 basis that the meter has been read has a meter
5 reader ever reported that there was something wrong
6 with our particular meter?

7 A I believe that's where the initial report
8 came from, was from a meter reader.

9 Q And when was that reported?

10 A That was on July 5th, 2001.

11 Q Is what you're saying your first visit you
12 noticed that there was something wrong with the
13 meter, is that what you are saying?

14 A On my visit first, yes, I noticed the
15 smudges on the dials and the rigged seal.

16 Q Did you at that time make a report saying
17 that you saw something wrong with the meter?

18 A I wrote it down on the sheet that I use.

19 Q Did you report it as an incident at my
20 home that there was something wrong with the meter?

21 A I don't understand, reported it.

22 Q Did you report it to your officials or
23 whoever it is that there was something wrong with
2 the meter at this home?

25 A Not at that time. I'm doing my

1 investigation, so I'm doing my own documentation.

2 Q But upon your investigation on your visit,
3 as I'm trying to understand, you said that you saw
4 there was smudges and there was something wrong with
5 the seal, is that not right?

6 A Correct.

7 Q Is that something you would report as an
8 incident that this home has this problem because
9 you're saying that you saw this?

10 A I don't report, I kept this for further
11 investigation for myself.

12 Q Is that something that you normally do
13 just keep it in a file until you're ready to report
14 it or is that something that normally is reported?

15 A It's already been reported. It was
16 reported by the meter reader. So, the report's
17 there. I'm just doing the follow-up documentation
18 on it. And I'm holding the documentation until
19 we're through and we want to have the meter removed
20 and a new meter installed.

21 Q Do we know who the meter reader was that
22 made this report?

23 A I don't know who that was, no.

24 MRS. CALLARD: Okay, your Honor, thank
25 you.

1 THE COURT: All right. Thank you, Mrs.
2 Callard. Mr. Lee, any follow-up?

3 MR. LEE: No, your Honor.

4 THE COURT: All right. Thank you, Mr.
5 Vessels. Appreciate your testimony.

6 MR. LEE: The next witness, your Honor is
7 going to be Mr. Ed List.

8 THE COURT: He's in Miami?

9 MR. LEE: Yes, he is the gentleman in the
10 blue.

11 THE COURT: All right. If the court
12 reporter would swear in the witness for us,
13 please.

14 EDWARD LIST
15 (called as a witness, having
16 been first duly sworn, testified
17 as follows:)

18 THE COURT: Thank you. Mr. Lee, you may
19 proceed.

20 MR. LEE: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MR. LEE:

23 Q Can you tell us your name, sir.

24 A My name is Edward List, employed by
25 Florida Power & Light, meterman and Revenue

1 Protection.

2 Q And what is a meterman, what is that job?

3 A Basically for the most part my job
4 involved the changing out of various type meters
5 that would go bad in the field, changing out meters.

6 Q And as part of that job you said that
7 you're a meterman who works in the Revenue
8 Protection Department, does that mean that you're
9 just changing out meters in cases where there's
10 believed to be some type of tampering or fraud going
11 on?

12 A That's correct.

13 Q Okay. And did you have occasion to go out
14 to the Callard residence at 7860 Southwest 18th
15 Terrace in Miami Florida?

16 A Yes, I did.

17 Q And why did you go out to that residence
18 and when did you go out?

19 A I believe it was on July 24th of 2002. I
20 was sent out to that address to replace the electric
21 meter.

22 Q Okay. And did you in fact go out to the
23 residence and do that?

24 A Yes, I did.

25 Q And before removing the meter do you do

1 any type of inspection to it to see what type of
2 condition it's in?

3 A I could basically give it the once over.
4 Like I said I was instructed to go out there to
5 replace the meter, so that's what I'm going to do.

6 MRS. CALLARD: I'm sorry, your Honor, he's
7 not an expert on the meter, he just changes the
8 meter. So, how should he ask him if he notices
9 anything wrong with the meter?

10 THE COURT: Well, to the extent you're
11 objecting I'll overrule. I don't think he's
12 giving me opinion testimony. I think he's
13 telling me what occurred. So, I'll allow the
14 testimony.

15 BY MR. LEE:

16 Q Okay. And you said you gave the meter the
17 once over, did you make any notes as to anything you
18 noticed about the meter at that time?

19 A I noticed that the outer seal was rigged.

20 Q Okay.

21 A And I also documented dial tampering.
22 That was what I was sent out there for, possibly
23 dial tampering and to replace the electric meter.

24 Q Okay. Did you read the meter before
25 taking it off the home?

1 A Yes, I did. I don't have that reading in
2 front of me.

3 Q Okay. Is there a document you have in
4 your possession that would tell you what the reading
5 is?

6 A I don't believe so.

7 Q Okay. And then what number was on the
8 meter?

9 A The meter of record should be 5C35633 and
10 I replaced that meter.

11 Q You replaced that meter and put a new
12 meter on the home?

13 A Yes, I did.

14 Q Okay. And what did you do with the meter
15 that you took off the home?

16 A We have removal stickers that we attach to
17 the front of the meter, the glass part or which we
18 call the canopy with the address, my initials and
19 the day that it was removed.

20 Also we usually put a type code at
21 the top, what we think might be wrong with the meter
22 which in this case would have been 21 which stands
23 for dial tampering, possible dial tampering.

24 Q Okay. And then do you bring that meter
25 back to a facility with FP&L?

1 A Yes, I do. And then it's transported over
2 into our meter testing facility to be tested.

3 Q Okay. And does that end your involvement
4 with the Callards and their meter on this house?

5 A Yes, it does.

6 MR. LEE: Okay. That's all the questions
7 I have for you at this time. Thank you.

8 THE COURT: Mrs. Callard, cross
9 examination.

10 CROSS EXAMINATION

11 BY MRS. CALLARD:

12 Q Is your job to remove just the meter?

13 A Yes, that's all I do.

14 Q Okay. You were the gentleman that
15 replaced the meter?

16 A Correct.

17 Q Do you know has there ever been a meter
18 change at our home before?

19 A I have no idea what went on at that
20 residence previous as far as electrical work or
21 meter change, only what I did on that date, just
22 replace that meter on that day.

23 Q How many times have you gone out to the
24 home to replace the meter?

25 A Just that one day, as far as I know.

1 Q Could you tell the age of the meter that
2 you removed?

3 A No.

4 Q So, you don't know how old the meter was?

5 A No, I don't know when that meter was
6 originally set at that residence.

7 Q Do you remember when you went to replace
8 the meter seeing my husband?

9 A No, I can't recall. This has been over
10 two years ago.

11 Q So, do you recollect who opened the door
12 for you to remove this meter?

13 A No, I have no recollection. Like I said
14 it's over two years ago.

15 MRS. CALLARD: Thank you, your Honor.

16 THE COURT: All right. Thank you, Mrs.
17 Callard. Any redirect?

18 MR. LEE: No, your Honor.

19 THE COURT: All right. Thank you,

end.

1 MRS. CALLARD: I'm sorry, your Honor, is
2 it too late to ask him something else?

3 THE COURT: Hold on. No, go ahead. If
4 you have another question for Mr. List, why
5 don't you finish that up with him.

6 MRS. CALLARD: Your Honor, we'd like to
7 know if this gentleman changed this meter
8 number that we have here, that we have a
9 picture of and the meter number is 5C46714.

10 THE COURT: I'm sorry, tell me that number
11 again.

12 MRS. CALLARD: 5C46714.

13 THE COURT: Did you say you have a picture
14 of that?

15 MRS. CALLARD: Yes, sir.

16 THE WITNESS: According to our record that
17 would have been the meter number that I set,
18 the new meter set on 7/24.

19 BY MRS. CALLARD:

20 Q And did you remove this meter from the
21 home and put a new meter?

22 A No, according to our records that's the
23 meter that I set, the new meter set which would have
24 been the 5C46714.

25 THE COURT: Were you finished?

1 MRS. CALLARD: I'm waiting for his answer.

2 THE COURT: What was the question?

3 MR. LEE: I think he answered.

4 THE COURT: What question is pending,
5 Mrs. Callard?

6 MRS. CALLARD: If he removed that meter
7 from the home, the meter that I read him the
8 number.

9 THE COURT: I believe he testified that
10 the number that you gave to him was the number
11 of the new meter that he placed at the property
12 on July 24th, 2002.

13 THE WITNESS: That's correct.

14 BY MRS. CALLARD:

15 Q I asked him did he remove that meter from
16 the home.

17 A No. That's the new meter set number, the
18 5C46714, that was my new meter set. I did not
19 remove that from the home.

20 MRS. CALLARD: Okay, your Honor, the meter
21 that he says he placed which is the 5C46714,
22 that meter was replaced by another meter. We
23 have a meter number here and why isn't that
24 person here that replaced this meter?

25 THE COURT: Mrs. Callard, I don't know the

1 answer to that question. Perhaps someone else
2 will testify. You can ask the witness about
3 that and see whether he knows anything and if
4 he doesn't maybe someone else that's called by
5 Florida Power & Light will and if they don't
6 then you can testify about the number that you
7 are indicating was the number of the meter that
8 replaced the one that this witness installed,
9 but he can only tell me what he knows.

10 BY MRS. CALLARD:

11 Q Okay. To your knowledge this is the meter
12 that you placed in the home when you took the
13 5C35633 meter?

14 A Correct.

15 Q You have no other knowledge of replacing
16 the meter that you put with another meter?

17 A No, I don't.

18 MRS. CALLARD: Okay, your Honor, thank
19 you.

20 THE COURT: All right. Thank you,
21 Mrs. Callard. Any redirect?

22 MR. LEE: No, your Honor.

23 THE COURT: Thank you, Mr. List.

24 MR. LEE: The next witness is Jim
25 Bartlett, your Honor, who's here in

1 Tallahassee.

2 THE COURT: I'm going to move the camera
3 in.

4 (Witness's testimony taken by
5 court reporter in Tallahassee)

6 MR. LEE: We thought we had to 12:30 to
7 allow us to get back out of the room. The only
8 other witness -- well, I may have two, but the
9 only other witness doesn't have to be in front
10 of your Honor, and I know this court reporter
11 has to leave by noon. I'm just not sure how
12 you want to proceed.

13 MRS. CALLARD: Excuse me, your Honor, can
14 I ask the gentleman a question still?

15 MR. LEE: Sure.

16 THE COURT: All right. Go ahead.

17 (Further testimony taken by
18 court reporter in Tallahassee)

19 THE COURT: We are going to reconvene to
20 take your husband's testimony depending on when
21 that occurs. It may be that you will have an
22 opportunity to look at the transcript to see
23 what exactly has occurred today, but you'll
24 have to advise your husband as best you can
25 regarding what's occurred.

1 Do you have anymore questions for
2 Mr. Bartlett, so we can complete his
3 examination?

4 MRS. CALLARD: No, your Honor. Not right
5 now.

6 THE COURT: Mr. Lee, do you have anymore
7 of Mr. Bartlett?

8 MR. LEE: No, your Honor.

9 THE COURT: All right. You have an issue
10 regarding scheduling.

11 MR. LEE: Well, the court reporter here
12 has told us off the record and before that she
13 needed to be gone by noon. Mr. Cunill is the
14 only witness left in Miami, but unfortunately
15 he's the most lengthily of all the witnesses
16 probably. He's the one that did all the
17 analysis and came up with the back billing.

18 I may or not have an issue with the hotel.
19 We just anticipated that we'd be done by 11:30,
20 12 o'clock at the latest and told them we could
21 get out of there by 12:30. So, I haven't left
22 my room, I just sort of left things as they
23 were, so to speak. So, that's basically my two
24 issues and I don't know -- I just didn't
25 anticipate taking quite this long. I know it's

1 set for any hour, but we had an extra hour just
2 in case.

3 THE COURT: I think we have the video
4 until 1:00. There may be another case coming
5 in at 1:00. Is Mr. Cunill your last witness?

6 MR. LEE: Ms. Cochran may or may not
7 testify, it just depends on if there's an issue
8 that Mr. Cunill can't testify to, she may fill
9 in a gap or two.

10 THE COURT: We have the court reporter in
11 Miami, so that wouldn't be a problem. If she
12 needed to she could take the witness here which
13 leaves the hotel issue. I don't know. So,
14 that may be the question, whether you want to
15 finish the witness or take care of that.

16 MR. LEE: Can we just take a five minute
17 break, then I can let Ms. Lucas leave. She's
18 not going to be presenting anything. That way
19 she can go back to the hotel and take care of
20 our rooms for us and that won't be an issue and
21 we can just proceed here.

22 THE COURT: All right. What we're going
23 to do Miami is we're going to take a five
24 minute break so that the FP&L folks can take
25 care of some issues they have regarding their

1 hotel here. And we'll reconvene at 11:40 and
2 take up the next witness which will be Mr.
3 Cunill.

4 MR. LEE: Thank you.

5 (Thereupon, a short recess was
6 taken.)

7 THE COURT: Everybody there? Let's go
8 back on the record. The Callards are back
9 after the break as is Mr. Lee and the various
10 other witnesses and observers. FP&L's next
11 witness will be Mr. Cunill. If our court
12 reporter in Miami will swear him in we can
proceed.

14 BERT CUNILL

15 (called as a witness, having
16 been first duly sworn, testified
17 as follows:)

18 DIRECT EXAMINATION

19 BY MR. LEE:

20 Q Can you tell us your name, sir.

21 A My name is Bert Cunill.

22 Q And where are you employed, sir?

23 A Florida Power & Light.

24 Q And how long have you worked for Florida
25 Power & Light?

1 A Approximately 18 years.

2 Q And what is your position right now?

3 A Currently I'm a connect and disconnect
4 specialist. At the time of this case I was working
5 in the Revenue Protection Department.

6 Q And what were you doing in the Revenue
7 Protection Department at the time this investigation
8 was going on?

9 A I had the inside investigation function.
10 I would review all the information that was
11 submitted from the field investigation to the
12 removal of the meter in question and also the meter
13 test results.

14 Q Okay. How long had you been doing that
15 type of job for Florida Power & Light?

16 A For about six years.

17 Q And did you do similar type of
18 investigations during those six years where you
19 would take field investigation and a customer's
20 billing history and kind of piece that together in
21 order to come up with a projection or an estimate of
22 what their actual usage was?

23 A Yes.

24 Q How many times would you say you did that,
25 could you estimate?

1 A Monthly, I would calculate roughly an
2 average of anywhere from 40 to 60 cases a month.

3 Q Okay. Is there a method that you use in
4 order to take a customer's billed usage versus what
5 their actual usage was? How do you go about doing
6 that?

7 A I look at readings that are taken off
8 cycle and compare those days and that daily
9 consumption to what is originally billed at the end
10 of the billing cycle.

11 Q And I noticed you said off cycle, could
12 you tell us what an on cycle reading is, for lack of
13 a better expression?

14 A An on cycle reading is what the meter
15 reader reads and what is billed for that current
16 billing cycle. An off cycle reading would be what a
17 field investigator would read in the middle of the
18 billing cycle.

19 Q And what's the purpose of looking at an
20 off cycle reading as opposed to just relying on what
21 the meter reader finds?

22 A To compare, to compare the daily average
23 to what is actually billed at the end of the billing
24 cycle.

25 Q And you may have heard testimony about

1 this before, but a customer is aware by virtue of
2 the bill that we send out each month the next time
3 the meter reader is going to come to the house,
4 correct?

5 A That's correct.

6 Q Where as when an investigator goes out the
7 customer would be unaware until literally the
8 investigator knocked on the door and said they
9 wanted to come read the meter; is that correct?

10 A That's correct.

11 Q So, for lack of a better expression the
12 investigator would be catching the customer by
13 surprise?

14 A Yes, that's correct.

15 Q In this particular case did you pull the
16 billing history for the Callards' residence over a
17 period of time?

18 A Yes, I did, sir.

19 Q And did you put that billing history into
20 any form of document? Did you prepare anything as a
21 result of your work?

22 A Basically what I did was I printed it
23 going all the back to 1996 and I did a comparison
24 with the field investigator's reading and I looked
25 at the original billing for certain months.

1 Q And I'm going to ask you, do you have the
2 monthly reading from when you pulled them all the
3 way through to August of 2002?

4 A Yes.

5 Q Okay. If you could hold up that document
6 and show it to Mrs. Callard also, but then show it
7 to the camera so we can see what you're looking at.

8 A Is it the check readings or the original
9 reading off the original bill?

10 Q Well, let me stop you, do you have a
11 spreadsheet that shows both the original readings
12 and as well as your adjusted readings?

13 A Yes.

14 Q And did you put that spreadsheet together
15 based on your investigative work?

16 A Yes, I did.

17 Q And is it your regular practice to create
18 this spreadsheet when you do these type of
19 investigations?

20 A Yes.

21 Q Do you keep this record as a normal course
22 of your job?

23 A That's correct, yes.

24 Q Okay. Are you the gentleman who authored
25 I guess it's a four page spreadsheet? Can you see

1 that document?

2 A That's what I have, yes.

3 Q Okay. If you could just show that to
4 Mrs. Callard also just so she can see. I provided
5 it to her, but I just want to make sure she knows
6 what we're talking about.

7 MRS. CALLARD: Okay.

8 BY MR. LEE:

9 Q Okay. And you authored this document, you
10 put it together?

11 A Well, we have a program built into our
12 computer system which pretty much populates all the
13 information that we put it and it formats it in this
14 manner.

15 Q Now, the actual readings, in other words,
16 corresponding to, I guess, on this sheet, on the
17 four different pages, looks like it begins with
18 January 2nd of 1997 and then has a corresponding
19 reading amount going all the way through every month
20 up to August 5th of 2002; is that correct?

21 A That's correct.

22 Q Is that the period of time that you
23 focused on for estimating and checking to see if the
24 billing needed to be adjusted?

25 A That's correct.

1 Q Okay. And the fields that
2 with the actual readings versus your a
3 readings, were those numbers taken from
4 that were entered by our meter readers?

5 A Yes, they were.

6 Q Did you include in that spreadsh. . . of
7 the check readings or investigator readings that
8 took place off cycle?

9 A I did not, no, but I did compare the check
10 reading and the consumption on the check reading to
11 what was actually billed and there was a difference.
12 That's the only reason why I did not select what was
13 submitted by the field investigator.

14 Q Okay. But this spreadsheet here is merely
15 your table for showing what the customer was
16 actually billed during that time period each month
17 and then based on your estimation what they need to
18 be rebilled for; is that correct?

19 A That's correct.

20 Q And then you'd use that to calculate the
21 dollar value corresponding to the kilowatt hours
22 that were used, right?

23 A Right, correct.

24 MR. LEE: Okay. At this time, your Honor,
25 I'd like to admit this as FP&L's exhibit number

1 one, a four page spreadsheet.

2 THE COURT: All right. Mrs. Callard, do
3 you have a copy of the document that Florida
4 Power & Light is offering as Respondent's
5 exhibit one for identification?

6 MRS. CALLARD: I have a copy. I don't
7 have it here.

8 THE COURT: You don't have it there?

9 MRS. CALLARD: No, sir.

10 THE COURT: Is there a copy on that end?

11 MR. LEE: Does Mr. List or Mr. Vessels
12 have a copy of that investigation?

13 MR. VESSELS: Yes, David, I can give her a
14 copy.

15 MR. LEE: Mrs. Callard, one of the other
16 gentlemen there has an extra. He'll provide it
17 to you right now.

18 MRS. CALLARD: Okay, thank you.

19 THE COURT: Mrs. Callard, Florida Power &
20 Light has identified this document as exhibit
21 one and is offering into evidence, this four
22 page document, do you have any objections to it
23 being received at this time?

24 MRS. CALLARD: No, sir.

25 THE COURT: Without objection Respondent's

1 one is admitted.

2 BY MR. LEE:

3 Q Now, Mr. Cunill?

4 A Yes.

5 Q Do you also have access to the monthly
6 meter reading history for the customer, not this
7 document, but a separate document?

8 A Yes, I do.

9 Q Do you have that with you?

10 A Yes.

11 Q I want to specifically ask you about some
12 specific readings and ask if you can tell me what
13 the readings were.

14 A Okay. You're going to give me the month,
15 date and year, right?

16 Q Yes. You have reflected on here June 5th,
17 '01, you have a reading on your spreadsheet, could
18 you also compare to what's in the billing records,
19 the meter reading records?

20 A The actual reading off of the meter was
21 5733.

22 Q And just so we understand what is that
23 number telling us? What the increments that it
24 counts up? Is that kilowatt hours?

25 A That's correct.

1 Q Is that how Florida Power & Light measures
2 electrical usage, by kilowatt hour?

3 A Yes, we look at the reading that the meter
4 reader took the previous month and we subtract the
5 current reading to the previous reading and that
6 gives you the kilowatt hours used for that
7 particular billing cycle.

8 Q Okay. And on a month-to-month basis
9 should that number ever go down? In other words, if
10 you looked at June 5th of '01 and you said the
11 reading was 05733, the next month in July when a
12 reading was done should that number be higher or
13 lower than June 5th, '01's reading?

14 A It should be higher.

15 Q And that would then tell you if you
16 subtracted the difference how many kilowatt hours
17 were used in that month?

18 A That's correct.

19 Q And I believe Mr. Vessels testified and
20 you should have access to it that on July 6th he did
21 a reading and came up with a value of 05497, do you
22 show that as well?

23 A That's correct, yes.

24 Q For July 6th, '01?

25 A Yes.

1 Q Is that number one month and one day later
2 then the July 5th reading, is that number lower or
3 higher than the previous month reading?

4 A That number is lower.

5 Q What does that indicate to you?

6 A It indicates that there's meter tampering,
7 that the meter is regressing.

8 Q It's going backwards?

9 A That's correct.

10 Q Is that ever suppose to happen?

11 A No, it works like a clock, it always
12 advances.

13 Q And so that means somebody physically had
14 to adjust the dials before the reading was done?

15 A That's correct.

16 Q How did you choose January 2nd of 1997
17 through August 5th of 2002? Why did you use those
18 dates to do your estimating?

19 A I looked at this sheet right here, I don't
20 know if you can see it, the kilowatt history sheet.

21 Q Yes, I have it.

22 A And I looked at the inconsistency of the
23 billing history, one month was higher than other
24 months and there were drops in consumption. I
25 looked at what was used after the new meter was

1 nstalled, compared that to the check reading that
2 Mr. Vessels took on July 6th, 2001 and according to
3 his check reading ten days later that meter had
4 advanced 1,018 kilowatts.

5 Q Let me stop you there, what reading are
6 you referring to ten days later, July 16th, 2001?

7 A That's correct, July 16th, 2001.

8 Q Is that also on your spreadsheet or is
9 that not a regular reading, is that a different type
10 of reading? In other words is that a date that the
11 customer would have expected us to be out there and
12 read the meter?

13 A That reading I believe came from meter
14 reading, July 16.

15 Q Okay.

16 A It's a check reading.

17 Q It's a check reading?

18 A It's an off cycle check reading from our
19 meter reading department.

20 Q And that meter reading on July 16th showed
21 06515?

22 A That's correct.

23 Q So, from July 6th to July 16th the meter
24 then it did advance?

25 A That's correct. It advanced 1,018

1 kilowatts in ten days.

2 Q And why is that number significant to you?
3 What does that help you do?

4 A That would project the billing for that
5 billing cycle at over 3,000 kilowatts. If you go
6 back and look at what was originally billed for July
7 of 2001, the original billing for July of 2001 was
8 572 kilowatts versus the projection of over 3,000
9 kilowatts that was taken.

10 Q Okay. So, when you did these checks at
11 unexpected times you were able to project what the
12 usage would have been, how much for a month?

13 A An average of 3,000 kilowatts per month.

14 Q However their actual bill based on the
15 meter reader's monthly readings came out to how much
16 usage for that month?

17 A On July, 572.

18 Q So, some 2500 kilowatt hours less when we
19 went off cycle and did verifications of the
20 readings.

21 A That's correct.

22 Q What does that indicate to you?

23 A Unmetered service, unmetered usage,
24 unbilled consumption.

25 Q Okay. What other things did you look at

1 in order to try to determine what an average usage
2 was at this residence?

3 A I went, for example, on that kilowatt hour
4 history sheet, you look at July and you look at
5 previous years, for example, in 1998, the original
6 billing for that month was over 4,000 kilowatts.

7 Q Okay. And just so I can stop you real
8 quick so we're all looking at the same thing, on
9 your spreadsheet, maybe I should have you go through
10 columns just so we can tell what it is each column
11 represents. It looks like if you read the pages
12 sideways on your four page spreadsheet the bottom
13 2/3s of the page is dominated by the spreadsheet,
14 whereas there's some other stuff at the top of each
15 page?

16 A Right.

17 Q The first column on the left that tells us
18 what, the first column when you start reading this
19 spreadsheet?

20 A That would be the month.

21 Q Okay. And then what's the second column
22 tell us?

23 A The service to date.

24 Q So, what the last day of the billing cycle
25 was?

1 A Correct.

2 Q And then the next column, what does that
3 mean?

4 A The number of days in the billing cycle.

5 Q Okay. And the next column over?

6 A Is the actual reading for that particular
7 billing cycle.

8 Q So, that's what the meter reader each
9 month went out to the house and read off of the
10 meter on the end of the cycle date; is that correct?

11 A Correct.

12 Q What's the next column that seems to be
13 populated with all zeros, what does that mean?

14 A That is for a different type of meter,
15 namely not a residential meter. It's a demand
16 reading.

17 Q Okay. And we don't use that on
18 residences?

19 A No, unless it's a very large residence.

20 Q And then the next column over, what is
21 that?

22 A That's the original kilowatt hours that
23 was billed on the account.

24 Q Okay. So, in other words that's if you
25 sat and looked at each of the readings, does that

1 tell you how many kilowatts were consumed each
2 month?

3 A That's correct. For example the
4 August 5th, 2002 reading of 1774, if you subtract
5 the previous month's reading you're going to get the
6 4404.

7 Q Okay. And then what's this next column
8 after the blank column again?

9 A That's again a demand billing.

10 Q Which wasn't used in this case?

11 A Correct.

12 Q Now, what's the column labeled PCT usage?
13 What's that mean?

14 A That is the seasonal percentage usage for
15 that particular month. I think Ms. Cochran could
16 explain that a little better.

17 Q Okay. And the formula you used, is that
18 part of the formula you use in order to calculate
19 the amount?

20 A That's correct. It's built into our
21 billing program and it's something that is, I
22 believe it's FP&L keeps track of how much
23 electricity is used during the season and it's a
24 seasonal percentage factor.

25 Q Okay. And for instance during the

1 summertime when people have their air conditioning
2 on there'd be more usage than during the wintertime
3 when it's cooler?

4 A That's correct, yes.

5 Q And then what's the next column over?
6 What's that represent?

7 A That's the recalculated amount. That's
8 the unmetered service, what the bill should have
9 been.

10 Q Okay. And you then used that minus what
11 was actually billed to come up with your difference
12 in usage or adjusted usage, I guess?

13 A That's correct.

14 Q And then used that to determine what to
15 bill the customer for unused or unmetered service?

16 A That is correct.

17 Q Okay. You were starting to explain that
18 you looked at certain months to help formulate or
19 calculate your estimation, what were those months?

20 A We looked at the consumption right after
21 the new meter was installed in August of 2002 or the
22 billing up to August of 2002 and we came up with a
23 daily average usage of 148 kilowatts per day.

24 Q Okay.

25 A And that was in line with what was being

1 used in 1998 during the months of July, September
2 and November.

3 Q Okay. That 148 kilowatt hours per day is
4 that for the whole entire year or is that for a
5 particular time of the year?

6 A That was from the time the meter was set
7 up until the following physical reading from the
8 meter reading department.

9 Q I gotcha, but the meter was set in July in
10 the summertime.

11 A July 24th I believe the meter was set.

12 Q Right. And you said when you went back in
13 1998 and looked at the usage in 1998 that it
14 corresponded with the same amount of kilowatt hours
15 per day.

16 A Correct.

17 Q Okay. I assume then you'd expect to see
18 fluctuations or a lower amount during winter months;
19 is that correct?

20 A That's correct, minor fluctuation, nothing
21 over 1500 or 2000 kilowatts.

22 Q Per month?

23 A Correct.

24 Q Okay. So, then after doing that what else
25 did you do to estimate the usage?

1 A We came up with a yearly total, well,
2 actually the billing program calculates the yearly
3 total and that is multiplied to the percentage usage
4 for the corresponding months and it comes up with a
5 kilowatt hour rebilled amount.

6 Q Okay. So, this factors into the seasons
7 then.

8 A That's correct.

9 Q But the actual daily rate that you came up
10 with, you got that from actual usage on their house?
11 You didn't just pull that number out of the air?

12 A Yes, that's actual usage.

13 Q Okay. I also want you to look at another
14 couple of readings and compare them and tell me if
15 they correspond with that. Do you have on the meter
16 reading history, do you have the reading for
17 July 5th of '01, the day before Mr. Vessels went out
18 there?

19 A Yes, I do.

20 Q And what was that reading on July 5th of
21 '01?

22 A 06305.

23 Q No, I'm not talking about on your
24 adjusted, I'm talking about if you go to the meter
25 history.

1 A On July 5th, 2001 the KWH reading?

2 Q Right.

3 A Are you looking at the field investigation
4 sheet or the spreadsheet?

5 Q The billing history. Do you have the
6 meter reading history sheet, not your spreadsheet,
7 but the meter reading history sheet?

8 A Let me look for it in the package.

9 Q Okay.

10 THE COURT: You're asking about July 5th
11 of 2001?

12 BY MR. LEE:

13 Q Yes, but not on his spreadsheet, on
14 another document.

15 A No, I don't have it.

16 Q Okay. I apologize. If you could explain
17 to us what's on the top portion. **It seems to be**
18 repeated on all four pages of your spreadsheet.
19 What does that show us?

20 A Well, the month of July of 1998, the
21 original billing on the account was 4,160 kilowatts
22 and that was used to calculate a yearly total for
23 the month of July. September of 1998 was 4,048
24 kilowatts that was originally billed and that was
25 used to calculate a yearly total. The same thing

1 for November of 1998. These are actual billings on
2 the account, the original billing.

3 Q Right.

4 A The only month that was a projected amount
5 was the August of 2002 which we didn't have a full
6 billing cycle because the meter was set on July 24th
7 of 2002 and that averaged out to a daily use of 148
8 kilowatts. We totaled up or we came out with a
9 yearly average which totaled, if you look at the far
10 right --

11 Q Right.

12 A 36,824 kilowatts, you see that?

13 Q Yes.

14 A That is multiplied to the percentage usage
15 for each month which gives into the account the
16 season and it automatically calculates the adjusted
17 KWH amount.

18 Q Okay. And then that column there on the
19 middle right or I'm sorry, the far right of the top
20 of each page, the first thing reads as billed, is
21 that what the actual billed kilowatt hours were?

22 A Originally, yes.

23 Q Then rebill is that going to show what you
24 calculated the estimated usage was during that time?

25 A That's correct.

1 Q And then I guess you subtracted those two
2 numbers and that next column gives you the total
3 unbilled estimated usage; is that correct?

4 A That's correct.

5 Q That's how you figured out the estimated
6 unrecovered or unmetered usage?

7 A That's correct.

8 Q And this method, is this method of
9 calculating the seasonal average percent use, is
10 this the method that's approved by the Public
11 Service Commission?

12 A Yes, it is.

13 Q When you then calculated that were you
14 able to come up to a dollar figure of how much
15 was -- did you do that, take the kilowatts unbilled
16 and then convert it into a dollar figure?

17 A Well, our billing program does that, yes.

18 Q What was the amount or the difference
19 between what they actually were billed during that
20 time and recalculating and estimating what they
21 should have been billed during that time, what was
22 the difference?

23 A The additional dollars back billed was
24 \$8,930.97.

25 Q Okay. And then were any other charges

1 included in the back bill?

2 A Yes, there was. There's an investigation
3 charge of \$348.21 which accounts for the field
4 investigation activity, the meterman's activity, the
5 actual cost of the meter test, my time. That totals
6 the 348.21.

7 Q Okay.

8 A If you add both of those together you'll
9 come up with the 9,279 and change.

10 Q Do you know what the change is?

11 A No, I don't have a calculator in front of
12 me.

13 Q I believe it's 18, but we'll let the math
14 speak for itself on that. Thank you, Mr. Cunill.

15 THE COURT: All right. Cross examination,
16 Mrs. Callard.

17 CROSS EXAMINATION

18 BY MRS. CALLARD:

19 Q What was the meter number for the reading
20 that you calculated for the ten days?

21 A For the ten days in July the meter number
22 was 5C35633.

23 Q What date was that read?

24 A That was read July 6th. I have a reading
25 on July 6th and I have a reading on July 16th.

1 Q Is that the same date?
2 A Yes.
3 Q Who read that meter?
4 A On which date?
5 Q On the dates that the meter was read.
6 A On the 6th it was Mr. Vessels.
7 Q Who is Mr. Vessels?
8 A This gentleman.
9 Q What date did he read?
10 A July 6th.
11 Q And the later reading in the month?
12 A On the 16th, you mean? Ten days later
13 that was from our meter reading department.
14 Q How did he enter the house to read the
15 meter?
16 A I have no knowledge.
17 Q How was the meter read? Was it read
18 physically or was it read with a gun?
19 A No, meters are read physically.
20 Q Could that person read the meter
21 incorrectly?
22 A It's always possible, yes.
23 Q The meter that was replaced which is the
24 5C46714 --
25 A Yes.

1 Q Did you say that that was compared with
2 the other meter?

3 A Compared with the other meter?

4 Q With the 35633?

5 A Compared it in what way?

6 Q On the readings.

7 A No. The reading on the new meter --

8 Q Okay. You mentioned that in figuring out
9 your meter readings you read the 53633 meter and
10 that meter compared to the 5C46714 meter?

11 A No, basically the removal reading of the
12 old meter -- a reading is taken when the meter is
13 removed and then when the new meter is set that new
14 meter is set at all zeros. Once we get a reading
15 off of that meter we subtract what's been used and
16 that's how we calculate a daily average.

17 Q Do we have the reading on this meter, the
18 5C46714 which is the meter that you replaced with
19 the other meter in order for to you calculate your
20 findings?

21 A I don't have it in front of me, but it's
22 in our system.

23 Q You don't have the first reading of the
24 meter?

25 A Not in front of me, no.

1 Q So, how can we calculate what we should
2 have used as opposed to what we did use when we
3 don't even have the reading from the second meter
4 that supposedly you replaced with the first meter?

5 A Well, I don't have it in front of me, but
6 it's in our billing system. I only have the
7 information on the meter that's 5C35633.

8 Q But did you not compare that meter to the
9 second meter in order for you to come up with your
10 findings?

11 A Consumption, yes.

12 Q So, why do we not have the readings of
13 that particular meter so that we can reassure
14 ourselves that that's --

15 A I don't have it in front of me, I don't
16 know.

17 Q So, how can we accept what you have
18 submitted as calculation when we have nothing to
19 compare it with? It's incomplete.

20 A It's in our billing program, but I only
21 have the information on the meter that was removed
22 on July 24th.

23 Q I understand that.

24 A I don't have any information after that.

25 Q But are you not comparing the old meter to

1 the what we used and what we should have used with
2 the new meter in order for you to come up with your
3 calculations?

4 A I'm not really comparing. I'm just
5 looking at --

6 Q To calculate.

7 A Right.

8 Q But we don't have that information here?

9 A Correct.

10 MRS. CALLARD: Okay. We don't have
11 anymore questions, your Honor.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. LEE:

15 Q Mr. Cunill, did you get that information
16 from the billing history of the customer?

17 A Yes, correct.

18 Q Okay.

19 MRS. CALLARD: I have another question.

20 THE COURT: Hold on, Mrs. Callard.

21 MR. LEE: She can go ahead if she wants
22 to.

23 THE COURT: Are you finished?

24 MR. LEE: I'll let her go ahead.

25 THE COURT: All right. Go ahead, Mrs.

1 Callard.

2 BY MRS. CALLARD:

3 Q In calculating the usage do you know if
4 the air conditioner is on or off when you calculate
5 the usage?

6 A No.

7 Q Do you know if the air conditioner is
8 being used?

9 A No, I calculate it from the office.

10 Q Would you say that the more you have your
11 air conditioner on the more usage you would use?

12 A Yes.

13 MRS. CALLARD: Your Honor, we sent the
14 copies of the bills on October 26th, 2004, we
15 have a bill for \$47.02. The next month's bill
16 is \$150.25 and it is the same meter. How can
17 we justify the difference in the
18 month-to-month?

19 THE COURT: Mrs. Callard, I don't have the
20 answer to that. Are you asking the witness?

21 BY MRS. CALLARD:

22 Q Yes. Since he has calculated from
23 month-to-month the usage on the home I wanted to
24 know how does this apply to this most current which
25 is the same situation with new meters that they have

1 .nstalled.

2 A Is that a question for me?

3 Q Yes.

4 A What's the question again?

5 Q The same way you're able to determine what
6 the usage is to calculate our bill, we have a
7 current bill with a new meter that's telling me one
8 month is \$47 and the next month is \$150. That is
9 the situation we're working with here, from
10 month-to-month. So, can you honestly say what our
11 usage monthly should be?

12 A Which meter are we talking about, the
13 meter that's out there now or the meter that was
14 there before?

15 Q Whichever meter. We're talking about
16 three meters. You compared the original meter to
17 the second meter, but you don't have the
18 calculations of the second meter.

19 A I didn't compare the meter. I compared
20 the consumption that the meter registered.

21 Q How do you determine the consumption from
22 month-to-month?

23 A I don't understand the question clearly.

24 Q Do you know why the second meter was
25 removed?

1 A From my recollection the second meter was
2 removed just to have it tested, I believe.

3 Q And why was that meter not put back on
4 again?

5 A A new meter was installed.

6 Q So, we got a third meter?

7 A I believe so.

8 Q Do you know how the second meter was
9 removed?

10 A No.

11 Q Do you know who removed that second meter?

12 A No.

13 Q Do you know if they broke anything, our
14 fence, to get into the home to get this meter?

15 A No, I have no knowledge of that.

16 MRS. CALLARD: Okay. Thank you. No more
17 questions.

18 THE COURT: Mrs. Callard, are you all
19 finished?

20 MRS. CALLARD: Yes, sir.

21 THE COURT: Redirect examination.

22 REDIRECT EXAMINATIO

23 BY MR. LEE:

24 Q Mr. Cunill, you've taken part in a number
25 of this investigations; is that correct?

1 A Yes.

2 Q And once the meters have been pulled and
3 the customer becomes aware that there's an
4 investigation going on is it typical in your
5 experience for the consumption to be guarded, for
6 the customer to try to watch how they use their
7 consumption after the investigation?

8 A Yes, I've run into that in the past,
9 controlled consumption.

10 MRS. CALLARD: I think that's assuming
11 that.

12 BY MR. LEE:

13 Q But it's not something that's uncommon.
14 In other words, you've seen it happen before?

15 A Yes.

16 Q Okay. And the purpose is to try and make
17 it seem as those Florida Power & Light is
18 exaggerating its numbers?

19 A Yes, that's correct.

20 MR. LEE: Thank you. That's all the
21 questions I have.

22 THE COURT: Let me just ask a question or
23 two. Mr. Cunill, I just wanted to make I'm
24 clear on a couple of points on your spreadsheet
25 on exhibit one. Looking up at the top left

1 hand corner where you have the information for
2 July, September and November of 1998, as well
3 as August, 2002, for the purpose of computing a
4 yearly average kilowatt hours, could you go
5 back and tell me again how those months were
6 selected, particularly the months in 1998. Why
7 were those three months chosen out of that year
8 for the purpose that they seemed to have been
9 used here?

10 THE WITNESS: If you look at, I believe
11 it's the last sheet on that package, you're
12 going to see July, '98, August of '98 and
13 September of '98, the billing for those three
14 months are consistent and that's original
15 billing on the account.

16 And that billing falls in line with the
17 August, 2002 projection of 148 kilowatts per
18 day. That's why those three months were
19 selected.

20 THE COURT: July, September, November.

21 THE WITNESS: Right. Excuse me, November
22 was selected because it's a winter month. It's
23 original billing and there's obviously going to
24 be less electricity used in a winter month.

25 THE COURT: The numbers that were used for

1 determining the yearly projection for those
2 months, they were the as read numbers, right?

3 THE WITNESS: That's correct, original
4 billing, the as read numbers.

5 THE COURT: So, that's during a period
6 where Florida Power & Light alleges the meter
7 was being tampered with, is the assumption that
8 it wasn't tampered with those months?

9 THE WITNESS: That's correct. The
10 tampering that was being done with this meter
11 is a manual diversion. It's manual tampering.
12 It appears that it was being done at the
13 beginning. Some months it was being done and
14 other months it was not. I believe on that
15 particular -- those particular months it was
16 not tampered with.

17 THE COURT: So, are there some months
18 besides those three where the rebill is the
19 same as or close to the original reading
20 reflecting for a particular month besides those
21 three that there might not have been any
22 tampering?

23 THE WITNESS: That's correct.

24 THE COURT: Okay. Then August of 2002
25 that's in there as a projection because that's

when the new meter was insta.

THE WITNESS: That's corr

3 THE COURT: Am I right?

4 THE WITNESS: And that falls

5 August of 1998.

6 THE COURT: And you came up with
7 usage of 148?

8 THE WITNESS: Yes.

9 THE COURT: And again so I'm clear that's
10 consistent with July, September, November of
11 '98, the same daily?

12 THE WITNESS: That's correct.

13 THE COURT: And just remind me with
14 respect to this percentage of use column on the
15 spreadsheet, did you describe that or defer
16 that to someone else as to what exactly that
17 means? If you did I didn't catch it. I'm
18 going to have you go over it again.

19 THE WITNESS: That percentage usage pretty
20 much calculates -- it holds into account the
21 summer months versus the winter months.

22 THE COURT: So, I'm clear if I look at the
23 very top on there, August of 2002 the percent
24 use is 10.2, what is that telling me exactly?

25 THE WITNESS: To be honest I don't know.

1 That's something that comes from the
2 Commission, I believe.

3 THE COURT: We can leave that for someone
4 else or your attorney can follow-up on that. I
5 think I'm otherwise clear on what the
6 spreadsheet is telling me. So, I appreciate
7 that. Mrs. Callard, did you have any
8 follow-up?

9 MRS. CALLARD: No, your Honor, I don't
10 have any other questions.

11 THE COURT: Okay. Mr. Lee.

12 REDIRECT EXAMINATION

13 BY MR. LEE:

14 Q Mr. Cunill, if you took the 12 months in a
15 year because I'm seeing for instance when you look
16 at August of 2002 the percentage use is 10.2, if you
17 then go down to August of 2001 again, it's giving
18 10.2 and it seems to correspond all the way through,
19 close thereto anyway, if you took that entire year.

20 So, if you took from September of '01
21 and went all the way up to August of '02, is that
22 the percentage of the annual use assigned to that
23 month?

24 A That's correct.

25 Q Okay. So, like for August, '02 where it

1 says 10.2 percentage use, that mea
2 calculated the annual usage that yo
3 that house, if you multiply it by 10
4 of August it would give you that figu

5 A For that particular month, ye

6 Q And then I guess corresponding
7 it's saying in any given year you're going use
8 10.14 of your annual usage in that month?

9 A That's correct. I believe that's the way
10 it works. These percentage, they're already
11 populated into our billing program. **I do not alter**
12 that. I don't populate that percentage into our
13 billing program, it's already there.

14 Q Okay. But then for instance like if you
15 looked at in this particular yearly cycle, if you
16 looked at February we see the lowest number on the
17 chart which is 6.48, so that's telling me in
18 February of '02 you expected 6.48 of their annual
19 kilowatt hour usage to have taken place in that
20 month?

21 A On February, that's correct.

22 Q Okay. So, that's what these percentage
23 correspond to is the percent that month that the
24 customer would have used out of their annual usage?

2 A That's correct.

1 MR. LEE: Okay. Thank you.

2 THE COURT: All right. Thank you,
3 Mr. Cunill. All right.

4 MR. LEE: I only have one more witness and
5 she's probably going to be very brief.

6 THE COURT: And that probably will
7 complete your case?

8 MR. LEE: Yes.

9 THE COURT: Probably make sense to finish
10 your case if we can do it. And is that
11 Mr. Cochran here?

12 MR. LEE: Yes.

13 THE COURT: We've got one more witness up
14 here. Raise your right hand.

15 LINDA COCHRAN

16 (called as a witness, having
17 been first duly sworn, testified
18 as follows:)

19 THE COURT: And the court reporter in
20 Miami is going to take this testimony?

21 THE COURT REPORTER: Yes, sir.

22 THE COURT: Very good. You may proceed,
23 Mr. Lee.

24 MR. LEE: Thank you, your Honor.

25 DIRECT EXAMINATION

1 BY MR. LEE:

2 Q Could you state your name please.

3 A Linda Cochran.

4 Q And Ms. Cochran, what do you do at Florida
5 Power & Light?

6 A I'm in the Revenue Protection Department
7 as a specialist.

8 Q How long have you been with the Revenue
9 Protection Department?

10 A Five years.

11 Q And as part of your job do you oversee
12 revenue protection investigations of customers?

13 A Yes, I do.

14 Q Ms. Cochran, can you tell me do you know
15 based on FP&L's records when meter number 5C35633
16 was placed on Mrs. Callard's home?

17 A Per FP&L records meter 5C35633 was set at
18 the address of 7860 Southwest 18th Terrace on
19 November 1st of 1979.

20 Q Okay. And then had been there until Mr.
21 List went and removed it on July 24th of 2002?

22 A Correct.

23 Q Then I just want to ask you a couple of
24 billing questions. Do you have the billing history
25 for the Callards' residence?

1 A I have the meter reading.

2 Q I'm sorry. Yes. Can you tell me from
3 July 5th 2001 the actual reading made by the meter
4 reader?

5 A July 5th, 2001 the actual meter was 05361.

6 Q And that was on July 5th, '01?

7 A Yes.

8 Q And then the very next day Mr. Vessels
9 told us he read 05497.

10 A Correct.

11 Q Which shows 136 kilowatt hour difference,
12 is that in one day?

13 A Correct.

14 Q Which would mean during one day they used
15 136 kilowatt hours of energy?

16 A Correct.

17 Q And this is in 2001?

18 A That's correct.

19 MR. LEE: That's all the questions I have.

20 THE COURT: Cross examination, Mrs.

21 Callard.

22 CROSS EXAMINATION

23 BY MRS. CALLARD:

24 Q Ms. Cochran, do you remember Mr. Callard?

25 A Yes, I do.

1 Q Do you remember when you sited him with
2 Jorge Zamora?

3 A Yes, I remember.

4 Q Do you remember the meter that is under
5 investigation when you showed it to Mr. Callard
6 there was no glass on it?

7 A There was glass on it. We removed the
8 lass to show him the dials.

9 Q Do you have anything to show that the
10 meter was placed in our home in November of 1979?

11 A Florida Power & Light has records that do
12 indicate the meter was set on November 1st, 1979.
13 The Florida Power & Light records are maintained as
14 per Florida Administrative code requires.

1 Q Do you recall Mr. Callard asking you at
16 the meeting for proof that this meter was placed in
1 our home on such a date?

1 A Yes, I do.

1 Q Do you recall answering Mr. Callard that
20 you did not have that information?

21 A No, I do not. I informed him that when it
22 was set I do have that information.

23 Q Do you recall when my husband spoke to you
24 about Mr. Cunnin?

25 A No, I don't.

1 Q Did you not receive a letter from us where
2 we are filing a complaint about Mr. Cunnin?

3 A I do have a letter from you. I don't
4 recall everything that is in the letter, it was two
5 years ago.

6 Q Do you recall Mr. Cunnin telling us that
7 we were stealing electricity in that letter?

8 A No, ma'am, I do not.

9 Q Do you have anything signed stating that
10 this meter was placed in the home or is this just
11 records from Florida Power & Light that says it was?

12 A It's Florida Power & Light records.

13 MRS. CALLARD: Okay. We don't have
14 anymore questions.

15 THE COURT: Redirect.

16 MR. LEE: No, your Honor.

17 THE COURT: Let me just ask one or two
18 questions. You testified that there was a
19 meter reading taken on July 5, 2001 and the
20 number was 05361.

21 THE WITNESS: Yes, sir.

22 THE COURT: Now, the spreadsheet that's in
23 evidence as Respondent's one shows a reading on
24 that same date of 6305, was the meter read
25 twice on that day?

1 THE WITNESS: July 5th was the regular
2 reading.

3 THE COURT: Right.

4 THE WITNESS: Of 05361. On the meter
5 reading history the actual reading, **it is**
6 recorded as 05361. There's a 06305 reading
7 that was used to bill it because the 05361
8 reading was a regressive read and could not be
9 used to bill for that month.

10 THE COURT: I see. How was the figure of
11 6305 arrived at, if you know?

12 THE WITNESS: Offhand I'm not real sure, a
13 proration.

14 THE COURT: So, that's not an actual read
15 number?

16 THE WITNESS: No, it's not. It was
17 probably a check reading was obtained typically
18 and then based on that they'll average it for
19 the amount of days in the month.

20 THE COURT: The actual then is 5361.

21 THE WITNESS: Correct.

22 THE COURT: And then there was a follow-up
23 reading on the 6th of July of 5497.

24 THE WITNESS: Correct.

25 THE COURT: That's all I had. Any

1 follow-up, Mrs. Callard?

2 MRS. CALLARD: No, your Honor.

3 THE COURT: All right. Mr. Lee?

4 MR. LEE: No, your Honor.

5 THE COURT: Thank you, Ms. Cochran.

6 MR. LEE: That's all the evidence that
7 Florida Power & Light had, your Honor.

8 THE COURT: All right, then Florida Power
9 & Light rests?

10 MR. LEE: Yes.

11 THE COURT: That will complete FP&L's case
12 in chief and we're going to need to wrap up for
13 today because the video facilities are
14 scheduled for use in another case starting at
15 1:00.

16 As I indicated at the outset we're going
17 to reconvene to take Mr. Callard's testimony
18 and at that time we'll hear, as it turns out,
19 the entirety of the Callards' case.

20 I had mentioned the possibility of doing
21 that by telephone, although if we're going to
22 hear all of the Callards case that may not make
23 sense. So, I can either try to reschedule this
24 by video sometime later. Well, probably
25 sometime in December we'll try to pick it up,

1 but next time I'm down in Miami.

2 Let me ask you all obviously we're coming
3 into the holiday season, are there any dates
4 that you can tell me right now you're not
5 available?

6 MR. LEE: Unfortunately I don't have my
7 calendar with me. I know I do have hearings
8 and depositions and other things of that nature
9 scheduled although I'm just not sure what days..

10 The only thing I can do is write a letter
11 to your Honor and give you all the days between
12 now and January that I'm available.

13 THE COURT: Let me ask you, Mrs. Callard,
14 are there any dates you can tell me you're not
15 available over the next several weeks?

16 MRS. CALLARD: Whatever date is chosen
17 I'll make myself available. We'd like it to be
18 as soon as possible while it's fresh in
19 everybody's mind.

20 THE COURT: I know that I'll be in the
21 Miami area for a hearing on the 29th of
22 December. That's about a month off. So, I
23 could pick this up on the 30th of December if
24 that's not too far out.

25 MR. LEE: That's fine.

1 MRS. CALLARD: That's fine, your Honor.

2 THE COURT: Well, let's tentatively plan
3 for that date. I'll be there, so I'll just do
4 it in person and Mr. Lee, are you in Miami?

5 MR. LEE: I can be in Miami. That's not a
6 problem. I'm in West Palm.

7 THE COURT: All right. If we do it on
8 that date that leaves about a month to deal
9 with the translator issue. Hopefully, we'll
10 have a translator when we reconvene.

11 I would suggest that you all contact the
12 Commission and see if you can get them to make
13 arrangements. I can tell you that the person
14 to contact there is their agency clerk. Her
15 name is Blanca Bayo and her phone number is
16 850-413-6330.

17 MRS. CALLARD: Thank you, your Honor.

18 THE COURT: Coordinate with the agency.
19 If that fails and you all can't come to some
20 other arrangements then what I would ask you to
21 do and there's not a whole lot I can do in
22 terms of making that happen. I don't have the
23 authority to hire a translator or make anyone
24 pay for one, but if there's going to be a
25 problem in regard to that I'd like to know well

1 enough in advance of the hearing so that I
2 could at least look into what the options might
3 be and not have the situation where we all
4 convene and run into the same problem we have
5 today.

6 One way or the other we need to know what
7 is going to happen on the 30th and not have to
8 try to deal with it then. So, if you can't get
9 that straightened out with the agency then as
10 soon as possible before the hearing date call
11 my office and we'll set up a telephone
12 conference and get everyone on the line and
13 make a decision as to how best to handle the
14 situation.

15 MRS. CALLARD: Okay, sir.

16 THE COURT: I have the Respondent's one
17 exhibit which is in evidence. That was all the
18 documentary evidence received. Let me ask the
19 Callards my understanding is that you all
20 haven't provided the Respondent with copies of
21 any documents that you plan to offer into
22 evidence. I'm going to ask that you do that
23 before the date we reconvene. So, as soon as
24 you can you've got Mr. Lee's address, send him
25 a copy of any papers you plan to offer into

1 evidence.

2 MRS. CALLARD: Okay. Does Mr. Lee have
3 the copies of the bills that we submitted?

4 MR. LEE: I do. It's just the pictures or
5 anything else you might have besides your
6 bills.

7 MRS. CALLARD: Okay, sir.

8 THE COURT: All right. Anything further
9 before we adjourn, any final issues to take up?
10 Mrs. Callard, anything else you want to raise
11 before we adjourn for the day?

12 MRS. CALLARD: No, your Honor. That'll be
13 all. Thank you for your time.

14 THE COURT: Mr. Lee?

15 MR. LEE: Just one question, will you
16 issue an order in the next couple days telling
17 us the time and date and location?

18 THE COURT: Yes, I will. I'll have an
19 order scheduling the hearing. By default it
20 will be December 30th. If I can get an earlier
21 date we'll try to do it earlier, if everyone's
22 available.

23 MR. LEE: That's fine.

24 THE COURT: All right then, we'll be in
25 recess until we reconvene and I will see you

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all then.

MR. LEE: Thank you.

(Thereupon, the proceedings were
adjourned.)

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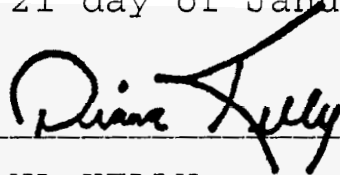
The State of Florida)
County of Broward)

I, Diana Kelly, Professional Reporter, do hereby certify that I was authorized to and did report said proceedings in stenotype; and that the foregoing pages, numbered from 1 to 112, inclusive, are a true and correct transcription of my shorthand notes of said hearing.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel or party connected with the action, nor am I financially interested in the action.

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Dated this 21 day of January, 2005.



DIANA KELLY

Notary Public - State of Florida

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

LETICIA CALLARD,
Petitioner,

vs. CASE NO: 04-2758

FLORIDA POWER & LIGHT COMPANY,
Respondent.

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FINAL HEARING

The above entitled matter came on to be heard
before the Honorable JOHN G. VAN LANINGHAM, Administrative
Law Judge, at the DeSoto Building, 1230 Apalachee Parkway,
Tallahassee, Florida, on November 29, 2004, commencing at
9:00 a.m.

ORIGINAL

Reported by:
SUSAN WILLIS, RPR, RMR, CRR
Court Reporter

1 APPEARANCES OF COUNSEL:
 2 On behalf of the Petitioner:
 3 Leticia Callard, pro se
 4 On behalf of the Respondent:
 5 DAVID M. LEE, ESQ.
 Law Department
 6 Florida Power & Light Company
 700 Universe Boulevard
 7 Juno Beach, FL 33408

FILED

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DIVISION OF
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* * *

P R O C E E D I N G S

1
2 THE COURT: Let's go on the record, then. This is
3 DOAH Case No. 04-2758. It's styled Leticia Callard
4 versus Florida Power and Light Company.

5 My name is John Van Laningham. I am an
6 administrative law judge, and I have been assigned to
7 preside in the final hearing of this matter, which is
8 getting under way for final hearing on November 29th
9 just after nine o'clock in the morning as scheduled.

10 Before we proceed, let me ask that the parties
11 make their appearance for the record. I will start
12 with the Petitioner. And, Mrs. Callard, I know you're
13 down there, if you could introduce yourself for us and
14 for the record, please.

15 MRS. CALLARD: My name is Leticia Callard.

16 THE COURT: All right, good morning. And I
17 understand you have your husband with you as well.

18 MRS. CALLARD: Yes, sir.

19 THE COURT: All right, very good. And do you have
20 anyone else there either representing you or assisting
21 in the preparation of your case?

22 MRS. CALLARD: No.

23 THE COURT: All right, then, very good. Good
24 morning to you both. And for Florida Power and Light.

25 MR. LEE: Good morning, Your Honor. My name is

1 David Lee, L-e-e. I am an attorney for Florida Power
2 and Light. Also with me today is Linda Cochran,
3 Roseanne Lucas. Also present here is a witness, Jim
4 Bartlett, and then present down in Miami from Florida
5 Power and Light are three witnesses and then someone
6 else from our office. Starting nearest us is Chase
7 Vessels, and then next to him is Bert Cunill. Then at
8 the end is Ed List, and the last gentleman in the suit
9 is Paul Bolivar.

10 THE COURT: All right. Good morning to you all.
11 Before we, before we get underway, I guess there are a
12 few matters in the file that we ought to take a look
13 at.

14 I received last week a letter from Mrs. Callard
15 that raised a couple of issues, and I entered some
16 orders on them, but they may not have gotten out last,
17 last Wednesday because our computers were down. So let
18 me go over those briefly.

19 The letter from Mrs. Collared requested, first of
20 all, that I disqualify myself from presiding in the
21 case based on having presided in another matter,
22 unrelated matter involving the Callards sometime
23 earlier this year. I am denying that motion as legally
24 insufficient.

25 There was also a request made with regards to

1 arguing for an interpreter for Mr. Callard. And before
2 I discuss that any further, let me ask, Mrs. Collared,
3 is there an interpreter down there now? Did you
4 arrange for that or not?

5 MRS. CALLARD: No, I didn't know I had to arrange
6 for that. I requested -- I faxed a letter to your
7 secretary for that request.

8 THE COURT: All right.

9 THE COURT REPORTER: You can sit right next to
10 him. I can't hear you.

11 MRS. CALLARD: I will try to speak up a little
12 louder.

13 THE COURT: Let me address that issue just briefly
14 and cover the points that were in the order that hasn't
15 gone out yet.

16 First of all, Mrs. Callard, for the benefit of the
17 parties, the Division of Administrative Hearings does
18 not have a procedure or budget for retaining or hiring
19 interpreters, which is to say that I don't have any
20 authority on my own to make arrangements to hire and
21 pay for an interpreter.

22 What generally happens in these situations is
23 requests for interpreters are presented to the
24 referring agency, which in this case is the Public
25 Service Commission. I believe, Mrs. Callard, when you

1 called earlier last week, my secretary told you or
2 should have told you or tried to tell you to make that
3 request to, to the Public Service Commission directly.

4 But in any event, when your letter came in on
5 the -- last Tuesday, I myself placed a call to a staff
6 attorney over at the agency to find out whether there
7 was any process whereby they might arrange for an
8 interpreter. And she told me that they didn't have
9 such a policy or practice, but that you could make that
10 request directly to the agency clerk, whose name and
11 phone number I have here and can give you, although at
12 this point it is a little late to do that.

13 And, unfortunately, that request did come in
14 fairly close to the final hearing, particularly given
15 that we had a short week last week with the
16 Thanksgiving holidays.

17 But the bottom line is that the decision to, to
18 retain an interpreter in an administrative case really
19 rests with the agency, and oftentimes those matters are
20 handled between the parties and the agency prior to the
21 final hearing, and they don't create controversies,
22 although this case, obviously, is a little bit
23 different in that the agency isn't over here as an
24 active litigant, which is typically the case in our
25 administrative disputes.

1 But let me ask you, Mrs. Callard, what role are
2 you envisioning for your husband? I notice he is not a
3 named party. Did you anticipate having him testify as
4 a witness?

5 MRS. CALLARD: The problem is that my husband is
6 the one that has been dealing with Florida Power &
7 Light and has talked to whoever and has met with
8 whoever. It hasn't been myself. And he doesn't speak
9 any English, and that's the reason why we requested it,
10 because he is informed of all the details.

11 THE COURT: All right. Your plan was to have him,
12 have him testify?

13 MRS. CALLARD: He is the one that's going to be
14 doing the talking because I don't know all the details.
15 I am usually at work, and he is the one that does it
16 all.

17 THE COURT: All right.

18 MRS. CALLARD: So he is -- the case is in my name
19 because I am the one on the bill, but the one that has
20 been handling the whole situation has been my husband.
21 So I am not aware of meetings, or I know what's going
22 on, but he knows the details.

23 THE COURT: All right. So your plan was to have
24 him present the case?

25 MRS. CALLARD: Exactly, uh-huh.

1 THE COURT: All right. Well, let me ask you this,
2 Mrs. Callard: Why wasn't this issue raised earlier?
3 Coming, as it did, so close to the hearing, it made it
4 very difficult for us at the Division and also for the
5 agency to do anything.

6 Can you just give me a little idea of what, what
7 the background is on your request? I want the record
8 to be clear on this, if you would, please.

9 MRS. CALLARD: Okay. I didn't know that I would
10 have to handle the situation of an interpreter. When I
11 spoke to your secretary earlier in the week, I
12 mentioned this to her, but I didn't know that I
13 personally had to take care of this.

14 THE COURT: All right. When was your first
15 request? When was that phone call? Was that last
16 Monday, the week before the hearing?

17 MRS. CALLARD: Yes. Yes, that is when I spoke to
18 her.

19 THE COURT: All right.

20 MRS. CALLARD: But earlier in the year I had sent
21 a letter to the Public Service Commission where I
22 stated that my husband was the one that was handling
23 the case, and I signed it and sent it to them.

24 THE COURT: Did you ask them for an interpreter?

25 MRS. CALLARD: Not at the time. We are talking

1 about early in, early in the year.

2 THE COURT: All right. And, Mrs. Callard, are you
3 able to present the case? What kind of case do you
4 plan to put on?

5 MRS. CALLARD: No, I am not, I am not able to
6 present the case because he is the one that has met
7 with Florida Power & Light. He is the person that has
8 spoken to various people regarding this situation.

9 I have never been present, and I have never -- I
10 am at work. The case is truly his case. It is just
11 that the account is in my name.

12 THE COURT: Uh-huh.

13 MRS. CALLARD: He is the one that's handled the
14 thing.

15 THE COURT: What sort of evidence do you have to
16 put on besides his testimony? Do you have other
17 documents or other witnesses?

18 MRS. CALLARD: I don't have other witnesses. We
19 have the bills that we sent in, that we sent to the
20 Public Service Commission to show that our bills
21 fluctuate. We don't have an attorney or anything like
22 that.

23 THE COURT: You have got copies of bills?

24 MRS. CALLARD: I sent those in, yes.

25 THE COURT: Okay. You sent them in where?

1 MRS. CALLARD: I sent them to your office. I sent
2 them to the Public Service Commission.

3 THE COURT: All right. You plan to offer those
4 into evidence today?

5 MRS. CALLARD: Yes.

6 (Discussion off the record.)

7 MRS. CALLARD: I am sorry, I was trying to explain
8 to my husband.

9 THE COURT: You want to offer the bills into
10 evidence then? That's your intent?

11 MRS. CALLARD: The bills will prove that our
12 accounts fluctuate from month to month, and that
13 that's, that's -- throughout the years there's been no
14 change. It's always been -- our usage is that way.

15 THE COURT: All right. Let me ask Mr. Lee, what's
16 the -- remind me of the time frame here. What is the
17 time frame we are dealing with for the back charges?

18 MR. LEE: We are talking from January 7th of --
19 get the exact year. I am sorry, January 2nd of 1997
20 through August 5th of 2002. So one, two, three, three
21 and a half years, I guess.

22 THE COURT: August 5th of 2002?

23 MR. LEE: Sorry, five and a half years. Bad math.

24 THE COURT: Okay. It's roughly \$10,000?

25 MR. LEE: I can give you the exact -- the adjusted

1 amount was actually -- the additional billing was
2 \$9,279.18. That was the difference between what she
3 was billed and what we calculated.

4 THE COURT: All right. How many witnesses are you
5 planning to put on in your case?

6 MR. LEE: Four, maybe five.

7 THE COURT: Okay. And about how long do you think
8 that will take? Are they short witnesses? Long
9 witnesses?

10 MR. LEE: A couple of them will be pretty short.
11 A couple of them might be a little more in-depth. So I
12 would say two short witnesses, two or three short
13 witnesses, and then two witnesses that will be a little
14 more in depth.

15 I still don't think the hearing should take quite
16 that long. I guess it's all relative and depends on
17 how much questioning they have for them as well.

18 THE COURT: Right. You all have the burden of
19 proof.

20 MR. LEE: That's an issue that I haven't quite
21 solved, but I have been coming into the hearing --
22 although I don't necessarily agree we do, I have been
23 coming into the hearing with the assumption that that's
24 the way the Court was going to rule, that we would have
25 to go forward with the burden, so I was prepared to

1 proceed that way.

2 THE COURT: Is it just a question unsettled, to
3 your knowledge? Do you know?

4 MR. LEE: I couldn't find any case law one way or
5 the other that said who did have the burden of proof,
6 so I presumed that, you know, if the issue came down, I
7 would at least be prepared to go forward if it was.

8 THE COURT: Was your plan then to go first in the
9 order of proof?

10 MR. LEE: If Your Honor rules that we have the
11 burden of proof, then, yes, I would go first. If Your
12 Honor ruled she did, then I would obviously allow her
13 to go first.

14 THE COURT: And you're going to put on evidence --
15 just tell me briefly. The theory of your case is that
16 the meter was tampered with?

17 MR. LEE: Correct. It's basically a two-stage
18 theory of our case. The first stage is the fact that
19 we noticed that there was meter tampering. We pulled
20 the meter, tested the meter, found that, in fact, our
21 people believed there was tampering with the meter.

22 And then we then went back and reviewed their
23 billing history. The second phase would be by looking
24 at the billing history and applying an approved
25 estimation method based on the meter tampering and

1 coming up with the adjusted billing amounts.

2 THE COURT: Is the billing history relevant to
3 the -- not to the question of whether the meter was
4 tampered with, I suppose, but the question of how much
5 was -- you allege was not paid for -- how much the
6 unmetered usage was.

7 MR. LEE: It goes to both, but I would say the
8 billing probably more focuses on the difference between
9 what we calculate the estimate would be. But there are
10 some instances where the billing seems to indicate that
11 there was tampering going on.

12 THE COURT: Are there formulas for that? Is that
13 how you determine the unmetered amount; you apply some
14 formula to the bills?

15 MR. LEE: Correct. Correct. We have used a
16 formula that has been approved by the Public Service
17 Commission, and that's the formula that we used in this
18 case.

19 THE COURT: Does that take into account the
20 customer's prior usage before the point in time when
21 the alleged tampering occurred?

22 MR. LEE: It can do both. It can either apply the
23 prior usage, or if there are ways we verified actual
24 usage, we can use things that went on during the course
25 of the tampering. And in this case I think we used a

1 mixture of both.

2 THE COURT: Essentially, your case involves
3 evidence that focuses on direct proof of meter --
4 tampering with the meter, and then evidence relating to
5 the application of the Commission's formula for
6 determining amounts of unmetered usage based on the
7 customer's bills and other factors that the formula
8 will let you take account of?

9 MR. LEE: Correct.

10 THE COURT: Mrs. Callard, let me ask you to -- you
11 have heard Mr. Lee sort of give me the general outline
12 of the thrust of FP&L's case, and you have told me you
13 plan to look at the, to look at the bills, which goes
14 to one prong or one aspect of the, of the power
15 company's case.

16 On the other point about the direct evidence of
17 the tampering with the meter, do you have evidence that
18 you plan to offer to rebut that?

19 (Discussion between Mr. and Mrs. Callard in
20 Spanish.)

21 MRS. CALLARD: Your Honor, we have -- in '91
22 Florida Power & Light moved a cable from the -- where
23 we had -- our cable was running east, and it was moved
24 to the west side of the house. Okay, and that
25 particular cable was in violation of Florida Power &

1 Light --

2 THE COURT: When was that? You say 1991?

3 MRS. CALLARD: Yes.

4 THE COURT: All right. You're going to testify
5 about that?

6 MRS. CALLARD: Yes. This cable was giving us
7 trouble where it was spurting electricity. Okay. It
8 ran through, through a tree at the house, and that's
9 when we first called Florida Power & Light with the
10 electrical problem.

11 THE COURT: All right.

12 MRS. CALLARD: And so we called them because my
13 husband was doing a job and caught some current from
14 that cable. That is when we first called Florida Power
15 & Light to have this fixed.

16 They came out and they put like a rubber hose
17 around the cable, and they said they would be back to
18 repair that.

19 THE COURT: This was in 1991?

20 MRS. CALLARD: Yes.

21 MR. CALLARD: 1991.

22 MRS. CALLARD: And then that cable just stayed
23 there.

24 THE COURT: All right, hold on. Mrs. Callard, let
25 me ask you this: Are you familiar with those

1 circumstances? Can you testify about them?

2 MRS. CALLARD: Well, I am familiar, but there are
3 some things that I have to ask him, because he was the
4 one that was with that problem. He was the one that
5 reported it initially, and he was the one that handled,
6 with the officers of Florida Power & Light, that
7 situation.

8 Then we started having electrical problems within
9 the house where we started having surges, and we had
10 appliances blow out, and we had all kinds --

11 THE COURT: Mrs. Callard, let me stop you there
12 because you're probably going to want to testify about
13 that, and I don't need to hear all the details right at
14 this moment.

15 MRS. CALLARD: Okay.

16 THE COURT: And just so I am clear, you and your
17 husband are the only witnesses that you plan to call to
18 testify?

19 MRS. CALLARD: Yes, sir.

20 THE COURT: All right. Well, I suppose one thing
21 we could do to, to go ahead and get the hearing
22 accomplished is, Mrs. Callard, if you can present the
23 case, maybe you could translate for your husband. If
24 she did that, would there be any objection?

25 MR. LEE: Well, my main problem is that while I

1 know she could translate to tell him what's going on, I
2 just hate to have her translating his testimony. And
3 then if he -- I don't know which of the two of them
4 plan on cross examining our witnesses. I just -- I
5 don't know how that's going to work where -- I am not
6 sure what's getting translated and whether it's being
7 translated accurately, I just don't know.

8 THE COURT: Well, that is, that's a potential
9 problem. Go ahead, Mrs. Callard.

10 MRS. CALLARD: I am saying that's the same thing
11 for me. I could translate some things. But, you know,
12 I don't know that I am translating every detail also.

13 (Discussion between Mr. and Mrs. Callard in
14 Spanish.)

15 MRS. CALLARD: I am sorry, Your Honor.

16 MR. LEE: And the other issue is I just didn't
17 know which of the two them was going to do the cross
18 examination of our witnesses.

19 THE COURT: Well, it would have to be Mrs.
20 Callard. I mean, it has to be somebody that can
21 communicate in English so that we can make a record and
22 understand what's, what's going on, and we do have a
23 situation where Mrs. Callard is the party.

24 I assume from what she has told me, and I think I
25 saw it in the file, she is the account holder; is that

1 right?

2 MR. LEE: Correct.

3 THE COURT: So she is the one that ultimately is
4 going to be responsible if there is a finding made that
5 there was unmetered usage of electricity.

6 MR. LEE: Correct.

7 THE COURT: And what's the ultimate remedy then?
8 An order that finds that the usage was unmetered in a
9 certain amount, and then what does the order do?
10 Require them to pay the money to FP&L? Is that what
11 the order looks like?

12 MR. LEE: I mean, the way I envisioned it -- of
13 course, I can't tell you how to do your job, but this
14 is the way I envisioned it, is we have already taken an
15 action. We have suspended carrying out that action,
16 which is we have rebilled them for what we felt was the
17 appropriate metering.

18 We have already gone forward and done that. We
19 just have not taken the final step, which is -- because
20 they haven't paid that amount, to cut off their meter.

21 So, essentially, when they filed a complaint with
22 the Public Service Commission, the ultimate remedy, I
23 guess, was to decide whether or not what we did was
24 appropriate. And if they found it was, then we can go
25 forward as usual, which, according to the

1 Administrative Code is unless other arrangements are
2 made, to cut the power off, if the bill is not paid
3 within a certain time.

4 THE COURT: Ultimately, you get an order from the
5 Commission that says if they don't pay the bill, you
6 can terminate service.

7 MR. LEE: Correct. I think the bill -- even if
8 they rule in our favor and when they rule in our favor,
9 the order usually reads that they recommend the
10 customer contact us to make billing arrangements,
11 because we can literally cut the meter off at that
12 moment. But we don't do that. We usually will make an
13 arrangement if the customer is willing to try and make
14 sure that it is paid, as opposed to just going to the
15 house and cutting the meter off.

16 THE COURT: I asked because we don't get these
17 cases very often, as you might imagine. In fact, this
18 is the first one like this that I have seen. All
19 right.

20 MR. LEE: And just so -- I don't know if you're
21 prepared to rule or not. Just so you know, I mean, the
22 biggest factor to us, obviously, we would like to get
23 this resolved, as well as, I am sure, the Callards.
24 But the biggest factor to us with the interpreter issue
25 is just the inconvenience of us coming up here. I

1 mean, the folks in Miami, it really wasn't that large
2 to deal with, but us coming up to, up here to
3 Tallahassee is really the biggest, I guess, expense and
4 inconvenience if that issue creates problem to going
5 forward.

6 THE COURT: Well, I am certainly not inclined to
7 continue the hearing. It's been set for quite a while,
8 and I know we have continued it once or twice for
9 various reasons.

10 And the question of whether or not an interpreter
11 would be needed, it seems to me is not one that just
12 arose last week and, frankly, should have been raised
13 earlier in the process.

14 Had it been raised earlier, the agency would have
15 had more time to deal with the situation. As I
16 indicated earlier, it is ultimately the agency that
17 needs to make a decision about whether or not it wants
18 to expend the money to hire an interpreter. And,
19 obviously, if the agency decides that question
20 incorrectly, there is a possibility that the case would
21 have to be redone at some point.

22 I hope that won't happen, but it seems to me that
23 given the, the circumstances, that we really ought to
24 try to go forward. That's why I made the suggestion
25 about having Mrs. Callard try to translate and at least

1 get that testimony out.

2 I realize that's irregular, and I wouldn't
3 ordinarily do it, but it seems to me, given the nature
4 of the issues, it might work here just to get the
5 evidence out and create -- get all the facts out that
6 the Callards want to present.

7 I don't know that there is any other, any other
8 good alternative unless the parties want to suggest
9 something that we could consider as a way to move
10 forward. But I do want to try to have the hearing
11 today.

12 I can ask, Mrs. Callard, do you have any other
13 suggestion for trying to get through other than perhaps
14 you trying to translate for your husband as he
15 testifies?

16 MR. LEE: I actually have a suggestion. I don't
17 know if Mrs. Callard would have a problem with this.
18 That, actually, the area of my biggest concern with Mr.
19 Callard testifying is when it comes to my chance to
20 cross examine him is I will have no way of knowing if
21 she is accurately translating (a), what I'm asking, and
22 then (b), what he is replying.

23 The suggestion I might make is if we do all the
24 rest of the evidence, I don't have to be up here for
25 that. If we reconvene at another date just to do Mr.

1 Callard with an interpreter, I can appear in Miami,
2 because I am down from South Florida, so that part I
3 don't need to be up here for, and I don't mind that
4 part. That would be the biggest concern I have is that
5 interchange between me and Mrs. Callard and
6 Mr. Callard, that there's an accurate translation of
7 that.

8 THE COURT: You would suggest simply deferring his
9 testimony to some future date?

10 MR. LEE: Correct.

11 THE COURT: Would you have any objection to have
12 having him presented by telephone?

13 MR. LEE: No, as long as I had the opportunity to
14 cross examine him, I don't have a problem with that.

15 THE COURT: Right. It would just be easier to set
16 that up, and we could do a telephone conference call
17 and take his testimony, you know, without much delay, I
18 would think. It's easier to do. I don't need all the
19 video facilities to do that.

20 MR. LEE: I wouldn't have an objection to that as
21 long as they don't.

22 THE COURT: Mrs. Callard, Mr. Lee has made a
23 suggestion that might, might be a way for us to go
24 forward here, and that would be to do the hearing today
25 but to postpone your husband's testimony so that that

1 could be taken with an interpreter at some date in the
2 near future, hopefully near future, where Mr. Lee could
3 be down there, and you all could have a translator
4 present, and that way he would be able to ask your
5 husband questions and have someone, a translator, a
6 neutral translator do the translation so there wouldn't
7 be a concern about whether the questions are being, are
8 being asked the way they are -- to your husband the way
9 they are being asked by Mr. Lee.

10 And I've suggested that if we do that, it might be
11 expeditious to do that testimony by telephone, which we
12 could arrange to do more readily than having another
13 video link-up. What would your thoughts be on doing it
14 that way?

15 MRS. CALLARD: Your Honor, you're saying they
16 would present their case today, and then we would do
17 ours at a later time?

18 THE COURT: Well, you could present your case
19 which would -- your testimony, for example, and any
20 documents that you might have. And then we would
21 simply put off the testimony of your husband for later,
22 so that arrangements could be made to have an
23 interpreter present, and then Mr. Lee could be there in
24 Miami with you and your husband and the interpreter and
25 take his testimony through a translator, through a

1 neutral translator, who could make the record at that
2 time.

3 MRS. CALLARD: I am a little bit confused because
4 everything that is going to be presented, he is going
5 to present it.

6 THE COURT: Well, today I am going to need you to
7 present the case because you're the only one who can
8 speak English, and we need to have an English speaker
9 do that. That's the only way we are going to
10 understand what's happening and the only way we can
11 have a record.

12 MRS. CALLARD: Okay, but I would have to ask him,
13 though. Is that okay?

14 THE COURT: Well, I mean, he can assist you, but
15 you'll have to handle the questioning because, again,
16 it needs to be done in English so that we can, we can
17 understand what's happening.

18 (Discussion off the record.)

19 MRS. CALLARD: Can you give me a minute, Your
20 Honor?

21 THE COURT: All right.

22 (Discussion off the record.)

23 MRS. CALLARD: Your Honor?

24 THE COURT: Yes.

25 MRS. CALLARD: My husband says that that's

1 somewhat confusing because he is not going to be able
2 to understand what is going on or what is being talked
3 about or asked in the -- throughout the whole
4 conference. And the objective is for Florida Power &
5 Light to actually prove that this has been done,
6 whatever they are saying was done. And he is not going
7 to be able to actually understand what, what is being
8 asked for, what is -- you understand?

9 THE COURT: I understand that that's, that that's
10 an issue.

11 MRS. CALLARD: He is the one that --

12 THE COURT: On the other hand, Mrs. Callard,
13 you're actually the named party. I mean, at this
14 point, he is appearing as a witness. And, actually,
15 there wasn't any motion made to qualify him as your
16 representative. So, I mean, technically he is here as
17 a witness. He is not here as a party, and he is not
18 here as a qualified representative.

19 You're here as the Petitioner representing
20 yourself, and so the real issue is whether or not we
21 can have a fair hearing without his testimony in the --
22 you know, because he can't, he can't testify without a
23 translator. We have got a potential solution where we
24 can just take his testimony later.

25 As I have indicated, I don't want to continue the

1 hearing. It was -- this case was filed back in August.
2 And the first time an issue was raised regarding a
3 translator for your husband was last Monday or Tuesday
4 of a three-day week. And, you know, it's an issue
5 that, as I have indicated, really needed to have been
6 raised sooner.

7 We now have parties in both Miami and Tallahassee
8 to, to do this proceeding, and it simply isn't
9 appropriate at this point to put the final hearing off
10 again for, for some extended period of time, so we are
11 just going to have to, to work through it, Mrs.
12 Callard, and you will have to present the case. And if
13 there is no better solution --

14 MRS. CALLARD: May I say something, Your Honor?

15 THE COURT: Go ahead.

16 MRS. CALLARD: Excuse me. Florida Power & Light,
17 throughout this whole ordeal, has never met with me.
18 They have always met with my husband, so they were very
19 much aware that he doesn't speak any English because
20 they've had to put someone to interpret whatever they
21 have talked about. It's not like it's been something
22 that they didn't know about it.

23 And my husband has spoken to Ms. Cochran various
24 times, and she's had an interpreter for him, to
25 interpret the conversations, so it's not like Florida

1 Power & Light was not aware of this. Because, like I
2 said, I have never attended any meeting or any type of
3 conference. They have always dealt with my husband,
4 and they have always brought someone to interpret.

5 THE COURT: Well, Mrs. Callard --

6 MRS. CALLARD: We used one named Jorge one time.

7 THE COURT: Mrs. Callard, I don't want to -- I
8 will take your word for that. But, again, it wasn't,
9 it wasn't FP&L's responsibility, it seems to me, to
10 raise the issue about having an interpreter appointed
11 for the final hearing.

12 I suppose they could have, but that seems to me
13 that responsibility fell on you ultimately, and it
14 wasn't done until, until, until last week. And
15 that's -- puts us in the position we are in, and it is
16 not ideal. But it seems to me based on what you have
17 told me and my general understanding of what the
18 Respondent's case is going to look like that we can
19 still have a good and fair hearing.

20 It may take a little longer to negotiate today,
21 but it seems to me we can do that, and that's
22 preferable to, to postponing the whole hearing.

23 So what I am going to do is -- I think Mr. Lee's
24 suggestion is a good one. What we'll do is we'll sever
25 out Mr. Callard's testimony, and we'll have that taken

1 at a later date, hopefully not too far off in the
2 future. And we can discuss the details of that before
3 we, before we adjourn today as to exactly how we want
4 to do that.

5 But let's proceed that way, and we can, we can
6 take all the other evidence. We'll still have to deal
7 with what arrangements will be made as far as the
8 translator for that follow-up proceeding. But at least
9 we'll have a little more time to deal with that and see
10 if the agency wants to get involved and handle those
11 details.

12 So let's proceed that way and see if we can't,
13 can't get the evidence, the remaining evidence out, and
14 we can certainly get Florida Power & Light's case.

15 Without making any ruling at this point on the --
16 who, who might legally have the burden of proof, since
17 I haven't seen any law on that, I am going to go ahead
18 and have the Respondent to put on its case first, even
19 though they are the named Respondent here, and then
20 we'll hear the Callards' case after that.

21 All right. Before we move into the evidentiary
22 part of the proceeding, I will take brief opening
23 statements from the parties if they would like to make
24 them. Since FP&L will go first, I will start with you,
25 Mr. Lee. Did you want to make any opening statement?

1 MR. LEE: Just very briefly, Your Honor. I think
2 I have already said a lot of the things, just to kind
3 of put them in a logical sequence. Mrs. Callard has
4 been the account holder since 1978. They are the only
5 occupants of the residence. There are no other tenants
6 there.

7 And then in sometime in 2001, one of our meter
8 readers, during their regular meter reading, noticed an
9 irregularity that was reported to our investigative
10 department.

11 They sent an investigator out, Chase Vessels, who
12 in July of 2001 went and actually looked at the meter,
13 checked the reading on the meter, and saw that there is
14 a seal on the outside of the meter canopy that was
15 tampered with, and which would indicate somebody has
16 gone into the meter by taking the canopy off.

17 A second time Mr. Vessels went out to the
18 residence in June of '02, again noticed the same thing,
19 that the meter had a seal which appeared to have been
20 tampered with, allowing somebody to get inside the
21 meter, and also took a meter reading that day.

22 And then the meter was -- a decision was made to
23 actually go out and pull the meter, to actually inspect
24 it back at our office and do a more detailed
25 inspection, and that was done in August -- I am sorry,

1 July of 2002 by Mr. Ed List.

2 That meter was then brought back to our meter
3 testing facility. Mr. List noted some irregularities
4 with the meter. But more a detailed inspection was
5 done by Mr. Bartlett where numerous problems were found
6 with the meter, which indicated somebody had been
7 altering the dial readings and not on just one
8 occasion, but apparently a very repeated pattern of
9 this, which will be evident when we show you the meter.

10 Then once it was determined that there was meter
11 tampering, Mr. Bert Cunill was then referred on the
12 case, and he is a person who, his job is to -- part of
13 his job is to go back and look at meter billing history
14 and try to put the pieces together, so to speak, and
15 figure out where any tampering would have begun and
16 then where a more regular pattern of usage was
17 determined.

18 And it was determined that from about January 7th
19 of 1997, all the way to when we pulled the meter off,
20 that there had been meter tampering. And we,
21 therefore, went and did an estimate based on the
22 approved method and came up with the amount that I
23 earlier told you about, which was the difference in
24 billing of \$9,279.18 above what they previously had
25 been billed. And that's where we are today.

1 THE COURT: All right, thank you, Mr. Lee.

2 Mrs. Callard, would you like to make a brief
3 opening statement at this time?

4 (Discussion between Mr. and Mrs. Callard in
5 Spanish.)

6 MRS. CALLARD: As far as the meter, he is saying
7 that they went out and looked at the meter on whatever
8 various occasions. After they -- to follow up on what
9 Mr. Lee is saying, after they went ahead and took the
10 meter, Ms. Cochran called my husband, and he went to
11 see her. And Mr. Zamora (ph) was present, someone
12 named Zamora (ph). And they showed my husband the
13 meter without any glass -- it was open -- and a new
14 meter.

15 And they asked him if he saw anything different
16 between the two meters. And then they told him this
17 meter is your meter and it has no glass. He said they
18 told him that our meter had fingerprints. And they
19 told us that in five days in the month someone had come
20 out to read the meter, to investigate the meter, and
21 they determined that there was some type of
22 manipulation with the meter.

23 And my husband asked them, "Well, if you thought
24 there was something wrong with the meter, why don't you
25 have a photo or something to indicate that there was

1 something being done wrong? And how is it that the
2 person that reads the meter was not able to see that
3 there was a problem with the meter, with the many times
4 they go out?"

5 And so my husband says that he determines that
6 those prints were put on there afterwards, because how
7 else would they be, because no one saw that beforehand,
8 before the meter was removed.

9 So there was -- he feels that there was no, there
10 was no camera. There was nothing to prove or to show
11 us that this was done before they took the meter with
12 them.

13 THE COURT: Mrs. Callard, let me stop you there,
14 because I assume your husband is going to testify to
15 these matters, and he is not testifying now under oath,
16 so I don't want to have him go through all of his
17 testimony.

18 Let me just ask you, if I can understand sort of
19 the general thrust of your case, I assume that you're
20 going to tell me that did you not tamper with the
21 meter, correct?

22 MRS. CALLARD: That's right, Your Honor.

23 THE COURT: And that whatever happened to the
24 meter was done by Florida Power & Light?

25 MRS. CALLARD: That's the only thing we could

1 assume, Your Honor.

2 THE COURT: And that the bills that -- you have
3 got bills showing your electricity usage during the
4 period in question that you're going to argue
5 demonstrate that you weren't stealing electricity.

6 MRS. CALLARD: That's right, Your Honor.

7 THE COURT: Because the bills -- and I haven't
8 looked at them, but the bills, do they show constant
9 usage or fluctuating usage? What do the bills show,
0 Mrs. Callard?

11 MRS. CALLARD: The bills show, Your Honor -- we do
12 not use the air conditioning. The bills shows the up
13 and down of the usage per month. We don't have a
14 constant usage, that you could say every month I use so
15 much electricity. It varies. And that's the reason
16 why we said -- we have one presently for just last
17 month, that was \$47. The month before it was 100 and
18 something dollars. That's what we show as a pattern
19 throughout the hearing.

20 THE COURT: And you're going to have some
21 testimony about something that occurred in 1991 with
22 the electricity cables or line?

23 MRS. CALLARD: Yes, sir.

24 THE COURT: All right. And how does that fit in
25 to the, to the overall picture? Are you suggesting

1 that that was when the meter was damaged?

2 MRS. CALLARD: Yes, sir.

3 THE COURT: And your contention is it was damaged
4 in 1991 by FP&L?

5 MRS. CALLARD: Yes, sir.

6 THE COURT: Okay. All right, Mrs. Callard, go
7 ahead.

8 MRS. CALLARD: Can I take a minute so I can talk
9 to my husband?

10 (Discussion off the record.)

11 MRS. CALLARD: Okay, Your Honor, I was just
12 explaining to my husband.

13 THE COURT: All right. Thank you, Mrs. Callard.
14 I have, I think, a general understanding of both sides'
15 positions. Let's move now, then, into the evidentiary
16 phase of the final hearing. As I have indicated, I
17 will have Florida Power & Light go first. Mr. Lee, you
18 may call your first witness.

19 MR. LEE: Okay, Your Honor, we'll call Chase
20 Vessels. He is down in Miami.

21 THE COURT: Let me do a couple of things here
22 while we are getting ready for the first witness. I
23 was told before we went on the record, and we'll just
24 confirm that we have court reporters right now at both
25 sites in Miami and here in Tallahassee. And what, what

1 we'll do is we'll have the court reporter in Miami take
2 the testimony of witnesses down on that end, and we'll
3 have the court reporter here in Tallahassee take the
4 witnesses that testify here as well as the balance of
5 the proceedings, and I'll ask that we -- that the court
6 reporters coordinate so that we just get one transcript
7 without any duplication. Is that acceptable to all the
8 parties?

9 MR. LEE: That is fine.

10 THE COURT: Mrs. Callard?

11 MRS. CALLARD: Yes, yes.

12 THE COURT: Okay. All right, very good. Our
13 first witness is down in Miami, and why don't you raise
14 your hand so I know who it is that is going to testify?
15 Can I ask somebody there to pan the camera over so we
16 can have a closer look at the witness?

17 If you could zoom that in just a bit, we can get
18 it a little closer on him, please. All right. That's
19 good. That's fine. Perfect. All right.

20 Let me ask our court reporter in Miami to swear in
21 the witness, please.

22 (Whereupon, the testimony of Chase Vessels was
23 reported by the court reporter in Miami, and is filed
24 under separate cover.)

25 MR. LEE: The next witness, Your Honor, is going

1 to be Ed List.

2 THE COURT: All right, and he is in Miami. The
3 court reporter down there will take this one then.

4 (Whereupon, the testimony of Edward List was
5 reported by the court reporter in Miami, and is filed
6 under separate cover.)

7 MR. LEE: The next, the next witness FP&L would
8 call is Jim Bartlett, Your Honor.

9 THE COURT: All right, Mr. Bartlett is on this
10 end.

11 MR. LEE: Do you know where you would like him to
12 sit? I think he can be seen right here.

13 MRS. CALLARD: I am sorry, Your Honor, is it too
14 late to ask him something else?

15 THE COURT: Hold on -- no, go ahead. Why don't
16 you -- if you have another question for Mr. List, why
17 don't you finish up with that?

18 (Whereupon, the further questioning of Mr. List by
19 Mrs. Callard was reported by the court reporter in
20 Miami, and is filed under separate cover.)

21 MR. LEE: The next witness is Jim Bartlett, Your
22 Honor, who is here in Tallahassee.

23 THE COURT: All right. I am going to move the
24 camera in on -- I think I can control the camera on
25 that end, by the way. I see I have got a remote here

1 that does that, but -- can you, you all see the witness
2 on your end?

3 MRS. CALLARD: Yes, sir.

4 THE COURT: All right. Very good. Mr. Bartlett,
5 if you would raise your right hand for me?

6 Whereupon,

7 JAMES ALBERT BARTLETT

8 was called as a witness, having been first duly sworn to
9 speak the truth, the whole truth, and nothing but the truth,
10 was examined and testified as follows:

11 THE COURT: Would you state and spell your full
12 name for us, please?

13 THE WITNESS: James Bartlett. James Albert
14 Bartlett I work at the Meter Technology Center. I have
15 been there probably about -- I am a Meterman A.

16 THE COURT: All right. The last name is
17 B-a-r-t-l-e-t-t?

18 THE WITNESS: That's correct.

19 THE COURT: All right, sir. Mr. Lee, you may
20 proceed.

21 MR. LEE: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. LEE:

24 Q Mr. Bartlett, you told us a you're a Meterman A
25 with the FP&L that works at the Meter Technology Center?

1 A That's correct.

2 Q As part of your job duties, are you called upon to
3 look at meters that have been taken out of service and
4 brought back to your shop and inspect to see if there has
5 been any type of tampering or other kind of things going on
6 with the meter that are unusual?

7 A Yes.

8 Q And have you been trained in order to look for
9 certain things, and what is normal and what would be out of
10 the normal?

11 A Yes.

12 Q Okay. How long have you been doing that?

13 A About 12 years.

14 Q Okay, and in this particular case involving the
15 Callards and a meter that was pulled off their house that we
16 heard testimony from Mr. List about, did you have an
17 opportunity to inspect that meter after it was pulled from
18 the home?

19 A Yes, I did.

20 Q And I've got here with us in Tallahassee -- and I
21 will hand it to you, but I will ask you to hold it to the
22 camera so that they can see what we are talking about here.
23 I don't know if you're on camera with the meter. You might
24 pull it closer to you.

25 A Right here?

1 Q There you go.

2 THE COURT: I'll try to zoom in on the, on the
3 item there.

4 MR. LEE: If you can hold it steady, I think His
5 Honor is trying to adjust the camera.

6 THE COURT: Let me see if I can get any closer.
7 It looks like that's about as high as I can get. Hold
8 on.

9 MR. LEE: Maybe you could raise it up just a
.0 little bit.

11 THE WITNESS: Okay.

12 THE COURT: I will try to back up a bit. Can you
13 all see that?

14 MRS. CALLARD: We can see the meter, yes.

15 BY MR. LEE:

16 Q You can lower it now. I just wanted to show what
17 we were talking about. Can you read for me -- is there a
18 label on the front of that meter?

19 A I can read the -- it has got a removal reason code
20 21.

21 Q Okay. Does it have a date?

22 A It has a date that -- July 24th, '02.

23 Q And is there an address on the meter?

24 A Yes, there is. 7860 Southwest 18th Terrace.

25 Q And then is there also a meter number on there?

1 A Yes, there is. The meter number is 5C-35633.

2 Q And are those the same numbers that Mr. List
3 testified about?

4 A That's correct.

5 Q Okay. Is this the meter that you inspected in
6 order to look for any tampering as regards to the Callards'
7 residence?

8 THE COURT: Hold on. Hold on. Can you all still
9 hear us? Can you hear us in Miami? Miami, are you
10 there? I think we lost them.

11 (Discussion off the record.)

12 THE COURT: Why don't we take a five-minute break
13 here? They are going to bring in the technical folks
14 and reestablish the connection.

15 (Brief recess.)

16 THE COURT: We are back up in Miami?

17 MR. LEE: Can everybody hear us?

18 THE COURT: Can you hear us in Miami?

19 THE COURT REPORTER: Yes, we can.

20 THE COURT: Sorry for that interruption. I am
21 pleased to see the technical folks have got us
22 restored. We were in the, in the direct examination of
23 Mr. Bartlett when we were interrupted.

24 Mr. Lee, if you want to pick up about where we
25 left off and proceed?

1 MR. LEE: I will try to do that, Your Honor.

2 BY MR. LEE:

3 Q Mr. Bartlett, I just had you read off the meter
4 number, and if you could do that again, I am not sure if
5 they heard that.

6 A 5C-35633.

7 Q Okay, and when did you do your investigation of
8 this meter back at your shop?

9 A Let's see, 8-26-02.

10 Q Okay, and you're getting that off your report?

11 A Yes, I am.

12 Q Okay, and when you did your inspection of the
13 meter, what was it that you initially did?

14 A Well, I first examined the meter by looking at it
15 first. I noticed that the -- the back of the meter has a
16 canopy seal that holds the cover on the meter, and that had
17 been broken. It was -- when it is completely complete, it
18 goes through and bends over. But there was just one piece
19 of seal there, so it was a code 55, they call that.

20 Q Okay, and what else did you notice about the
21 meter?

22 A I removed the cover and found that the -- there
23 were scratches and dial tampering and smudges on the
24 register.

25 Q Okay. Anything else that you noticed? Did you

1 notice anything about the blades on the meter?

2 A The blades looked -- well, they looked worn. They
3 showed some kind of in-and-out or something like that. But
4 this doesn't appear to be that bad, really.

5 Q Okay, but there was some wear on the blades?

6 A Yes, there was.

7 Q And just so we know, if you could point to what
8 the blades are on the meter.

9 A Right here is the blades.

10 Q Okay. If you could also show His Honor what
11 you're talking about as well?

12 A These blades here.

13 Q You called them blades. What are they and what do
14 they do?

15 A They fit into the socket of the can that sits on a
16 home.

17 Q Okay.

18 A They also sit in the socket of the machine that I
19 test the meter on.

20 Q If you noted some blade wear, what does that
21 usually indicate?

22 A **In and out, possibly in and out of the socket**
23 or -- that's mostly what it would mean, in and out of the
24 socket.

25 Q Okay. Were there any other things about the meter

1 that you noticed appeared either tampered with or out of the
2 normal?

3 A Can I take the cover off?

4 Q Yeah, sure. Now, let me stop you there. You took
5 the cover off the meter. If there is a seal on the meter,
6 can somebody open that cover without breaking that seal?

7 A No.

8 Q So the only way to do what you just did is in
9 order to either remove or break the seal?

10 A That's correct.

11 Q Okay, and without -- this canopy here that you
12 pulled off, is it supposed to be intact? In other words,
13 are there supposed to be any holes when it's on the meter?

14 A Yeah, on the cover here there's a hole here,
15 that's right here, that would indicate that that's where --
16 the seal that goes in through the cover onto the meter and
17 seals tightly down.

18 Q Okay.

19 A Same story.

20 Q Unless somebody made a cut or a hole in that
21 actual canopy, though -- I mean in the glass or the plastic,
22 whatever that is -- unless somebody cut that, is it possible
23 for somebody to get to these dials on the meter without
24 taking that canopy cover off?

25 A No.

1 Q Okay. Okay. Go ahead and tell me what it is you
2 wanted to say about inside the meter.

3 A Well, I noticed that there were -- the dials here
4 were off scale, and there were smudges and scratches into
5 the dial area where someone had -- there was another
6 indication, also, that -- the dials were pushed in on the,
7 on the face of this.

8 Usually, they are a little bit away from the face
9 so they have a free movement of turn.

10 Q Okay, and what does that indicate to you when the
11 deals are actually pushed in?

12 A They were tampered with.

13 Q Okay, and how?

14 A How? They could have done it by either a
15 screwdriver, or it could have been done by pushing down and
16 rotating the dash -- the dial.

17 Q Okay, and when somebody pushes down on it and
18 rotates the dial, is there any other sign?

19 A It will leave scratches. It will leave smudges
20 from the dial themselves. There's some smudges on the face
21 plate as well.

22 Q Let me stop you right there. Were there actual --
23 where the dials would spin, were there smudges or scratches
24 from the dials being pushed down?

25 A Yes.

1 Q Is this something in its normal wear and usage
2 that should be visible or present on a meter?

3 A On a regular meter? No, you wouldn't see that.

4 Q Okay. You also mentioned something about the --
5 there were scratches where?

6 A There's a few scratches underneath on the disk
7 here. You can see on the disk here, usually the disk is
8 completely clean-faced, which would indicate a drag,
9 possibly someone pushing down on the disk would cause this
10 to drag on the disk, giving it a lower reading --

11 Q Okay.

12 A -- on one of the, on one of the loads that we
13 check for.

14 Q Now, when a meter reader goes out and reads the
15 meter, they just simply look at the numbers and record the
16 numbers that are on the meter?

17 A That's correct.

18 Q So if somebody were to move those dials around,
19 they could adjust what their reading is before the meter
20 reader got there?

21 A That's correct. Yes, they could.

22 Q Okay, and they could roll it backwards to minimize
23 what usage appeared?

24 A They could do whatever they wanted to do, and I
25 wouldn't -- you know, I wouldn't know what reading they were

1 looking for, but they could do whatever they had to do.

2 Q Okay. I want to ask you to compare that to a
3 newer looking meter and tell me -- if you could show the
4 camera, also.

5 A Right. This is a newer meter. It's a sagamow
6 (ph) meter, and as you can see, the face is very clean, and
7 there are no indications that there were marks on the meter
8 on the register itself.

9 Q Can you also show His Honor also?

10 A And if anything is -- has any kind of a mark that
11 we see, before the meter goes out of the test center, if
12 there's any scratches on the register or anything on the
13 meter, this meter will not be sent out.

14 Q So when they are set, they have to be clean?

15 A That's correct.

16 Q And then the only way to get into that is to take
17 the canopy cover off?

18 A That's correct.

19 Q So you should not see the conditions that you're
20 seeing here?

21 A You should not see the conditions, what this --
22 smudges and scratches on the dial or even anything like that
23 at all.

24 Q Unless somebody has taken that canopy cover off?

25 A That's correct.

1

2 MS. COCHRAN: Would you like to see those a little
3 closer?

4 THE COURT: Yeah.

5 MR. LEE: Be careful of your hands. I just
6 realized --

7 THE WITNESS: If you turn that disk a little bit,
8 you will see some scratches.

9 THE COURT: This disk here?

10 THE WITNESS: Yeah, on the bottom, yeah. Check
11 the other disk, you won't have a scratch at all on it.

12 MS. COCHRAN: That meter is primarily to
13 demonstrate the dials, that they should be clean.
14 Because there was tampering on this meter but not the
15 same type of tampering.

16 THE WITNESS: And if you look at the -- can I
17 explain that?

18 BY MR. LEE:

19 Q Yeah, go ahead.

20 A If you look at the register and look at the other
21 register --

22 Q What is the register?

23 A Look at the dials, for the dials, and see that
24 they are a little bit away from the face of the meter.

25 Q You mean on the good one?

1 A On the good one.

2 Q On the sample one, I guess. Whereas, on the other
3 one they are pushed down?

4 A Yeah, pushed down.

5 THE COURT: Okay, thanks.

6 BY MR. LEE:

7 Q Was that the end of your inspection of these
8 meters?

9 A After that I tested it on the board, take an
10 actual test of it, and found that it -- the readings were
11 good on the full-load test. But on the light-load, it was
12 below our, our registered ratio.

13 Q So it was reading low?

14 A It was reading-- we allowed 2 percent on each side
15 for a full-load and light-load, 98 percent to 102 percent.
16 It ran -- on the full-load it ran 99.6 percent, which was
17 within our test standards. But on the light-load it ran
18 97.80, so it indicated there was some kind of tampering,
19 internal tampering, besides the dial testing.

20 Q In other words, so the meter would not -- if it
21 was not -- even if you didn't go into there and spin these
22 little dials, after that point, it would still register low
23 when there was light usage?

24 A Right.

25 Q Okay. After doing that, did you do any further

1 testing to these meters -- or this meter?

2 A No, I did not. I made out a report and took a
3 seal that was with cover, put it in an envelope, marked down
4 the address and everything on it, and made out the report,
5 put the report around the meter, and it went over to the
6 veri-board to have a veri-board test. It indicates the
7 revolutions of the disk to the dials on the register. And
8 if they match up, ten to ten or whatever it ran -- I don't
9 know what it ran at the veri-board test.

10 Q Okay, and that was the end of your inspection on
11 the meter, though?

12 A That was correct.

13 Q Okay.

14 MR. LEE: One moment, Your Honor.

15 THE COURT: All right.

16 MR. LEE: I believe that's it.

17 THE COURT: All right. Thank you, Mr. Lee. Cross
18 examination, Mrs. Callard?

19 THE COURT REPORTER: Judge, can I interrupt for a
20 moment? This is the court reporter down here. Just so
21 we have clarification, now we are doing cross
22 examination, I assume Susan, your court reporter up
23 there, is going to take this, correct?

24 THE COURT: Yes.

25 THE COURT REPORTER: Okay. Just so I know, thank

1 you.

2 THE COURT: All right.

3 CROSS EXAMINATION

4 BY MRS. CALLARD:

5 Q I'm sorry, for what department does the gentleman
6 work for? Is it here in Miami?

7 A Yes, it is. It's Miami Technology Center.

8 Q Okay. I have a question for the gentleman that
9 says -- on the meter, are there any special tools to remove
10 this meter from the wall?

11 A I am sorry, but I did not remove it from the wall.

12 Q No. Are there any special tools that are used to
13 remove a meter from the wall?

14 A That isn't my job there for that time. I mean, I
15 could -- if I was out there in the field, I could remove the
16 meter from the wall, the socket. Possibly, to remove the
17 seal and take a screwdriver and take the ring off the meter
18 and then with the proper rubber gloves and glasses and hard
19 hat, I would remove that meter safely, yes. If I were out
20 there in the field, to remove that meter, which I was not.
21 I was in the Meter Technology Center testing your meter.

22 Q Did you receive the meter intact? Without
23 anything being removed from the meter from my house to your,
24 to your office?

25 A I received the meter in a can that was -- had a

1 current diversion sticker on the meter, indicating that
2 there was something that was -- that they wanted to
3 investigate to find out what was wrong with this meter.

4 Q When you received the meter, was the glass on the
5 meter?

6 A The cover was on the meter, but the seal was
7 broken that holds the cover to the meter.

8 Q Okay. Had you received a report indicating that
9 that meter had been dropped before you received it?

10 A No, I had not received any report like that at
11 all.

12 Q Okay. I don't know what the gentleman's name is,
13 the one that removed the meter. Did he remove the meter and
14 hand this meter on to you?

15 A No, he doesn't hand it to me it. It does come to
16 me. It is sent from his area or district, wherever he is
17 from. And it comes to our, it comes to our building where
18 there are several hundreds of these meters that come.

19 Q Okay. What guarantee do we have that this meter
20 was not touched or done anything to before you received it?
21 Do you have any knowledge that it came from somewhere else?

22 A Yes, it will have a -- it will have a district on
23 the -- on here, on the sticker that is put on the meter,
24 prior to coming to me, and it was in District 81 that -- it
25 was sent to us from District 81, which would be Miami.

1 Q Is your office in Miami, sir?

2 A Yes, it is. It's in -- yes, it is in Miami.

3 Q Why does the meter read coming from Miami if
4 you're in Miami?

5 A I don't seem to understand that. You mean was the
6 reading from the meter --

7 Q No. The label on the clock says from Miami. Is
8 your office not in Miami?

9 A Yes, it is in Miami.

10 Q Did you maintain the meter in your office until
11 you performed whatever you had to perform with the meter?

12 A There are hundreds of these meters that come to
13 our office, and they come in cans that are set up in a
14 different area, that are locked up every single night so
15 that they don't become tampered about with.

16 They are in lock-up rooms. Then there is about
17 five of us that work on these meters, that individually take
18 about 20 of these day to day and test these meters.

19 Q Okay. How can someone remove a seal on the back
20 of the meter which you initially sealed?

21 A Well, actually, if you can see the back of this
22 meter here, if I put it right there, there is a point right
23 here -- I don't know if you can see maybe on from this angle
24 or whatever. The seal goes in between this plastic here and
25 maybe -- and it bends over to hold this cover on this meter.

1 Well, that seal went through here on the cover, but it
2 didn't have the little bending part that bends over to hold
3 the cover on. It was just the seal itself. So the seal was
4 broken.

5 Q Could that meter have -- could the seal on that
6 meter have broken when the meter dropped six feet from the
7 wall?

8 A I don't know. If the meter had fallen from the
9 wall, the cover probably would have been broken because it
10 is glass.

11 Q So you're saying that meter couldn't have fallen?

12 A If the meter had fallen, the seal probably would
13 not have been broken because it would still hold the cover
14 or whatever was left of it.

15 Q So what you're saying is that if the meter had
16 fallen and rolled on the ground, it wouldn't have broke the
17 seal, is what you're saying?

18 A I am saying that's correct.

19 Q Can you tell how old this meter was?

20 A No. I could tell you it's a Westinghouse meter.
21 But, no, I could not tell you when it was set in your house.

22 Q Is it possible that all of the alterations that
23 you say the meter have could have been done by a field
24 official upon your investigation?

25 A No, I would not know of that, no.

1 Q Or prior to your investigation?

2 A No.

3 Q Okay. You say in prior reporting that this was
4 visible; that there were smudges and breaking of the seal
5 visibly by looking at the clock?

6 A That's correct.

7 Q Okay. Then my question is: If the seal was
8 broken on the back of the clock -- or meter, how could a
9 meter reader know that there was something visibly wrong
10 with this meter without having to remove the meter from the
11 wall, if the seal we're talking about, you're saying is on
12 the back of the meter?

13 A Well, the cover is held to the meter by a seal.
14 This holds the cover on, and it has nothing to do with when
15 a meter reader came out, and he looked at the meter, and he
16 looked at the face, and he saw the dials, and he saw the
17 smudges, and he saw whatever he saw there, that has nothing
18 to do with the cover on the meter. That cover on the meter,
19 you'll not see that until you remove the meter, that the
20 cover was broken. That's all I can tell you.

21 Q Upon removing the meter from the home, how was
22 this meter delivered to you or to your office?

23 A Well, the meter -- the meter man took it back in
24 his truck and brought it back to his office where he works.
25 And it was sent in to a -- probably a playpen, where several

1 current diversion meters are only put in this special
2 playpen. And this playpen comes by truck, delivered
3 directly to the meter test center. And then --

4 Q Are these meters sealed?

5 A The playpen is sealed. It is not --

6 Q No. Are the meters sealed once they are removed
7 from the home to where they are going, are they sealed?

8 A No, the meters are not sealed. The meters are not
9 sealed because they come as what -- they come here as found,
10 as found. Whatever they the meter man had done -- they are
11 placed in a can, which is placed in a playpen, which, the
12 playpen is sealed and marked for current diversion.

13 The current diversion playpen will come to our
14 center and be delivered to us. We'll check it in and check
15 the meters on them, and they will be tested individually.

16 Q What is the date or the year that this meter was
17 fabricated? What is the date of that meter? How old is
18 that meter, or the year or whatever?

19 A I would not know unless they went back in the
20 records and found out how -- these meters could be, I don't
21 know, maybe 20 years old. I don't know. I wouldn't be able
22 to tell you that. They are -- we buy these meters, though.
23 You know, there are several million of them out there. What
24 do I do --

25 Q Is there anything on the meter to show more or

1 less when the meter was --

2 A No, they won't have any indication of the year or
3 date it was. No.

4 Q It has no year or nothing of where --

5 A No.

6 Q The --

7 A There are several, there are several.

8 Q Or the company that made the --

9 A Westinghouse made them is all I can tell you.
0 There are several million meters out there. There are
1 millions of meters out there.

2 Q Is there any way of knowing when this meter was
3 created or --

4 A You could call Westinghouse and talk to the
5 manufacturer.

6 Q -- or a number on the meter?

7 A If you called Westinghouse, you could talk to the
8 manufacturer and find out when they issued that meter out.

9 Q But, I mean, we don't know how old the meter is?

10 A Not, not that I can recollect, no.

11 Q Right on the dial itself, right above the little
12 meter readings, there is a black strip on top of the meter.
13 What does that number up there represent, if anything?

14 A You mean the RR, register ratio, the 13 --

15 Q It is right above the black little strip, right

1 above the black strip.

2 A I don't see a black slip. I don't know what they
3 are talking about.

4 MR. LEE: Just tell them that.

5 THE WITNESS: I don't even know what you are
6 indicating on this meter. Would you explain --

7 BY MRS. CALLARD:

8 Q Can you put the --

9 A I see the meter. Right here?

10 Q Can he go out and point out what it is?

11 UNIDENTIFIED SPEAKER: I think what the problem
12 is, is that you've got two different types of meters,
13 so they both don't look the same.

14 THE WITNESS: Well, this is their meter, the
15 Westinghouse meter that was in their socket.

16 UNIDENTIFIED SPEAKER: Right, but the picture they
17 are looking at is the one that is on their house.

18 THE WITNESS: Oh, right now. Oh. Would it be
19 this -- no, well, that meter we don't have --

20 UNIDENTIFIED SPEAKER: The meter that he has there
21 isn't the same type of meter. They look different, so
22 when you asked him to look at a black stripe, at that
23 meter, that meter over there, it doesn't have one.

24 BY MRS. CALLARD:

25 Q Can we see the meter again?

A Here is the other meter again.

2 MR. LEE: Hold on. I am going to try to bring it
3 up closer to the camera. Is that okay, Your Honor?

4 THE COURT: Yes.

5 MR. LEE: I am just trying to --

6 MRS. CALLARD: The number that is right above that
7 strip there.

8 UNIDENTIFIED SPEAKER: Can you back it out a
9 little bit, see it would focus? Right above
10 Westinghouse. The register ratio.

11 MR. LEE: This right here?

12 UNIDENTIFIED SPEAKER: Yeah, right there.

13 MR. LEE: Okay, let me go so that -- I guess they
14 are asking you to tell them what that is right there.

15 THE WITNESS: This is, this is the register ratio
16 of the meter, meaning that the disk rotation, the
17 revolutions, the revolutions that the disk turns around
18 goes 13 and 8/9ths turns around for one kilowatt. For
19 one little bit of the dial, it has to go around 13 and
20 8/9ths revolutions of the disk.

21 BY MRS. CALLARD:

22 Q We are talking about a painted number on top of
23 that. We are not talking about the black strip. We are
24 talking about the number that's above that.

25 A I don't have a number above that. I only have 13

1 and 8/9ths. Is that what you're seeing?

2 UNIDENTIFIED SPEAKER: It is not the same type of
3 meter.

4 BY MRS. CALLARD:

5 Q Okay. If this is not the same type of meter, then
6 how are we comparing our meter to another meter?

7 THE COURT: Mrs. Callard, let me jump in here so
8 maybe we can move along on this. What exactly are you
9 looking at? You're looking at a photograph?

10 MRS. CALLARD: I am looking at photograph of the
11 meter that this gentleman put in the house.

12 THE COURT: And you took the picture?

13 MRS. CALLARD: When he took the original one.

14 THE COURT: Did you take the picture?

15 MRS. CALLARD: Yes.

16 THE COURT: When did you take the picture?

17 MRS. CALLARD: When they put the meter on, Your
18 Honor.

19 THE COURT: So that's the new meter, correct?

20 MRS. CALLARD: Yes. This is a new meter, but they
21 also took this meter with them. We have another meter.
22 And this meter, we had evidence with this meter, and
23 they took this meter.

24 THE COURT: They took -- are you saying that they
25 took the new meter, so that you've had two new meters

1 since the one that allegedly was tampered with?

2 MRS. CALLARD: That's correct, Your Honor.

3 THE COURT: That's a picture of which one? The
4 first new meter on the second new meter?

5 MRS. CALLARD: This is the first new meter. Yeah,
6 this is the one that the gentleman removed our meter
7 and put this meter on.

8 THE COURT: Right.

9 MRS. CALLARD: Then they took this meter also and
10 put another meter on.

11 THE COURT: All right. Does -- let me ask Mr.
12 Lee: Does anyone here have a copy of the photo that
13 she is referring to.?

14 MR. LEE: I do not.

15 THE COURT: All right. You only have one copy of
16 those pictures, Mrs. Callard?

17 MRS. CALLARD: Yes, Your Honor, but I will be glad
18 to forward them to you.

19 THE COURT: All right.

20 MR. LEE: In fact, on that issue, I know prior to
21 the hearing we were all supposed to exchange witnesses
22 and exhibits. To date I have never received anything
23 from Mrs. Callard, although I did give her a list of
24 what we were presenting, and in that letter made
25 reference to the fact that I was looking forward to

1 receiving whatever exhibits she had planned on using.

2 THE COURT: All right. We'll take that up --

3 MRS. CALLARD: He doesn't have a list of all the
4 meters. I supplied him a list of the three meters with
5 all of the bills pertaining to each meter, so he would
6 see that there were various meters.

7 THE COURT: All right. Well, Mrs. Callard, I
8 think what's happened here is -- someone down there
9 suggested is that you're asking this witness,
10 Mr. Bartlett, a question about a different meter than
11 the one that he has in front of him. And that's why he
12 is not able to answer the question, because whatever it
13 is you're seeing on the photograph isn't also present
14 on the meter that's here.

15 So unless we have the picture here -- which
16 evidently we do not -- this witness can't answer that
17 question.

18 He can answer questions about the meters that he
19 has here. And if you can describe what's in the
20 picture, perhaps he can tell you what he knows about
21 it. But, otherwise, I think you'll need to, to move on
22 to a different question.

23 BY MRS. CALLARD:

24 Q Okay. Then he received the meter 5C-46714 for his
25 inspection also?

1 A No. No, I have not. I only have the meter that
2 was in question.

3 Q So is it safe to say that all the meters that were
4 removed, you only received the one?

5 A One that was indicated to be a current diversion
6 meter, yes, correct. It was indicated -- put a label on
7 there, indicated as possibly could be a current diversion
8 meter. These other meters could be removed and not be
9 current diversion, just be removed.

10 Q Would this, would this meter be part of the
11 investigation as well?

12 A The other meter that you have in there now?

13 Q The meters that were removed from the home.

14 A Only the one meter that was removed from the home
15 is under the current diversion investigation, not any of the
16 others.

17 Q So then why was this meter removed, the second
18 meter removed?

19 A I have no idea why it was removed. It might have
20 been removed for another reason and we do not know.

21 Q Do we know what happened to our second meter?

22 A I don't -- I wouldn't be able to tell you that.

23 MRS. CALLARD: Okay. Thank you, thank you, Your
24 Honor.

25 THE COURT: All right. Thank you, Mrs. Callard.

1 Redirect?

2 MR. LEE: Just a couple of questions.

3 (Discussion off the record.)

4 MRS. CALLARD: I am sorry, Your Honor. Okay.

5 REDIRECT EXAMINATION

6 BY MR. LEE:

7 Q Mr. Bartlett, reference has been made to dropping
8 of the meter. If this meter had been dropped, would that
9 cause the different things that you have talked about here
10 today being present, such as the scratches and smudges on
11 the meter, on the actual face of the meter?

12 A No. It would not have caused the smudges or
13 scratches at all.

14 Q Okay, or the dials being pushed down or any of
15 those other things you testified about?

16 A No, I don't believe so.

17 Q Okay. Especially if the canopy cover was on there
18 when it was dropped?

19 A Yeah. If it was on there, if it broke, of course,
20 it could have bent, possibly, the case, but it would not
21 have made any smudges or scratches or anything like that.

22 Q Okay.

23 A Or else they would have been visible.

24 MR. LEE: That's all the questions I have.

25 THE COURT: All right. Thank you, Mr. Bartlett.

1 MR. LEE: Your Honor, I do have one issue, and
2 unfortunately, this has gone a little bit longer and
3 slower than I had anticipated. Two of us have a hotel
4 room that we're supposed to be checked out of, and we
5 we've got until 12:30, I think, to allow us to get back
6 out of the room.

7 The only other witness -- well, I have two, but
8 the only other witnesses don't necessarily have to be
9 in front of Your Honor. I don't know -- I know the
10 court reporter, this courter has to leave by noon. I
11 am just not sure how you want to proceed. I was under
12 the impression the hearing was an hour.

13 MRS. CALLARD: Excuse me, Your Honor, can I ask
14 the gentleman a question still?

15 MR. LEE: Sure.

16 THE COURT: All right, go ahead.

17 REXCROSS EXAMINATION

18 BY MRS. CALLARD:

19 Q From the time that the meter was removed from the
20 home to when you received the meter, could anybody else have
21 had the meter in his possession and reviewed the meter?

22 A No, that's not possible. It comes to us in a
23 playpen, and it's --

24 Q What is that?

25 A Huh? All the meters from that district area will

1 be transported by truck, but they will be in a playpen or on
2 a pallet, and they will all be plastic covered when they
3 come to us.

4 Q Did you not say you received it in a bag? How did
5 you receive our meter?

6 A Well, there are several meters, current diversion
7 meters that will come from that district area that will be
8 on a pallet, and there may be -- I don't know how many
9 meters there, but they come to us from that district by
10 truck. They come to us --

11 Q How was the meter received?

12 A They will come in, and we will check them in, and
13 they will go to a certain area.

14 Q Was it in a package? Was it in a plastic? Was it
15 sealed? Was it open?

16 A It will be in a can. It will be in a meter can.
17 It will come in a meter can.

18 Q And who would have placed that meter in a meter
19 can?

20 A The meter man.

21 Q The meter man?

22 A The meter man that took your meter.

23 Q Which would have been this gentleman here; is that
24 correct?

25 A That's correct.

1 MRS. CALLARD: Okay, Your Honor, the confusion is
2 that my husband was there when the meter was removed,
3 and this meter was not placed anything. It was
preferred Airline:
ed the door for the
--
ink your husband can
from the meter man
And as I
here, but your
the difficulty in
understand what's
go ahead and ask
to relate to what's happening
15 here today.

16 THE COURT: All right. Mrs. Callard, you will
17 have to explain it to him as best you can. And as I
18 have indicated at the beginning of the hearing today,
19 we are going to reconvene to take your husband's
20 testimony. Depending on when that occurs, it may be
21 that you will have an opportunity to look at the
22 transcript to, to see what exactly has occurred today.
23 But you'll have to advise your husband as best you can
24 regarding what's, what's occurred.

25 Do you have any more questions for Mr. Bartlett so

1 we can complete his examination?

2 MRS. CALLARD: No, Your Honor.

3 THE COURT: Mr. Lee, did you have anything more
4 from Mr. Bartlett?

5 MR. LEE: No, Your Honor.

6 THE COURT: All right. You have an issue
7 regarding scheduling.

8 MR. LEE: I know the court reporter here has told
9 us off the record she need to be gone by noon.
10 Mr. Cunill is the only witness left in Miami. But,
11 unfortunately, he is the most lengthy of all of the
12 witnesses, probably. He is the one that did all the
13 analysis and came up with the back billing.

14 I may or may not have an issue with the hotel. We
15 just anticipated that we would be done by 11:30 or
16 12:00 at the latest, and we were told we could get out
17 of there by 12:30, so I haven't packed up my room. I
18 just left things as they were, so to speak.

19 That is basically my two issues, and I don't know,
20 I just didn't anticipate it taking quite this long. I
21 know it was set aside for an hour, but I planned an
22 extra hour in case.

23 THE COURT: I think we have the video until one
24 o'clock. There may be another case coming in at one
25 o'clock. Is Mr. Cunill your last witness?

1 MR. LEE: Ms. Cochran may or may not testify. It
2 just depends on if there is an issue Mr. Cunill can't
3 testify to, she may fill in a gap or two.

4 THE COURT: We have the court reporter in Miami,
5 so that wouldn't be a problem. She could take that, if
6 she needed to, she could take the witness here, which
7 leaves the hotel issue.

8 I don't know, so that may be a question of whether
9 you want to finish the witness or take care of that.
10 We are going to come back anyway. It is a question of
11 whether we could probably finish your case if we keep
12 going.

13 MR. LEE: Can we just take a five-minute break?
14 She could leave because she is not going to be
15 presenting anything else, and maybe I could have her go
16 to the hotel and take care of our rooms for us, and
17 that way that won't be an issue, and we can just
18 proceed here.

19 THE COURT: All right. What we are going to do,
20 Miami, is we are going to take a five-minute break so
21 that the FP&L folks can take care of some issues they
22 have regarding their hotels here, and we'll reconvene
23 at 11:40 and take up the next witness, which will be
24 Mr. Cunill. Is that right?

25 MR. LEE: Yes.

1 THE COURT: All right, so we'll be in recess until
2 11:40.

3 (Brief recess.)

4 (The remainder of the hearing was reported by the
5 court reporter in Miami and filed under separate
6 cover.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF LEON)

I, SUSAN WILLIS, RPR, CMR, CRR, Court Reporter at Tallahassee, Florida, do hereby certify as follows:

THAT I correctly reported in shorthand the foregoing proceedings at the time and place stated in the caption hereof;

THAT I later reduced the shorthand notes to typewriting, or under my supervision, and that the foregoing pages 4 through 70 represent a true, correct, and complete transcript of said proceedings;

And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anyway interested in the result of said case.

Dated this 23rd day of February, 2005.



Susan Willis
MY COMMISSION # DD136786 EXPIRES
August 16, 2006
BONDED THRU TROY FAIR INSURANCE INC

SUSAN WILLIS
Court Reporter and Notary Public
State of Florida at Large

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

Case No. 04-2758

JVL

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2005 MAR -9 A 11:35
DIVISION OF
ADMINISTRATIVE
HEARINGS

1
2
3
4 LETICIA CALLARD,
5 Petitioner,
6 vs.
7 FLORIDA POWER & LIGHT COMPANY,
8 Respondent.
9 _____/

10
11 December 30, 2004
12 73 West Flagler Street
13 Miami, Florida

14 - - -
15 Hearing held before
16 Administrative Law Judge John G. Van Laningham
17 - - -

18
19 Taken before DIANA KELLY, Professional
20 Reporter and Notary Public, in and for the State of
21 Florida at Large, pursuant to Notice of Taking
22 Deposition filed in the above cause.

23
24 **ORIGINAL**
25

FILED

2005 MAR -9 A 11:35

DIVISION OF
ADMINISTRATIVE
HEARINGS

APPEARANCES

ON BEHALF OF THE PETITIONER
LETICIA CALLARD

ON BEHALF OF THE RESPONDENT

DAVID M. LEE, ESQUIRE
Florida Power & Light Company
Law Department
700 Universe Boulevard
Juno Beach, Florida 33408

Also present: Rosanne Lucas
Linda Cochran

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	Witness	Direct	Cross
JORGE CALLARD			28

P R O C E E D I N G S

1
2 Thereupon,

3 THE COURT: Good morning everyone. My
4 name is John Van Laningham. I'm the
5 administrative law judge presiding in this
6 matter, case number 04-2758, styled Leticia
7 Callard, Petitioner, Florida Power & Light,
8 Respondent.

9 The final hearing in this case commenced
10 on November 29th, 2004. We are reconvening
11 today for the second day of the final hearing.
12 It's December 30th, 2004. We're getting
13 underway a little ahead of schedule, about 8:15
14 in the morning.

15 It appears that everyone is present that
16 needs to be present to get started.

17 Before we get any further in the
18 proceedings let me ask the parties to
19 reintroduce themselves for the record. And
20 we'll start with the Petitioner. If you would
21 please introduce yourselves again.

22 MR. CALLARD: My name is Jorge Callard.

23 MRS. CALLARD: I'm Leticia Callard.

24 THE COURT: Good morning to you. We'll
25 hear from the Respondent.

1 MR. LEE: Good morning, your Honor. My
2 name is David Lee, attorney for Florida Power &
3 Light.

4 MS. COCHRAN: Linda Cochran, Florida Power
5 & Light, Revenue Protection.

6 MS. LUCAS: Rosanne Lucas, Florida Power &
7 Light, Regulatory Affairs.

8 THE COURT: Good morning to you all.
9 Since we last met I received a couple days ago
10 a letter from the Callards that was also
11 addressed or copied to Mr. Lee and the Public
12 Service Commission containing some pictures and
13 other documents. Have you received that
14 package, Mr. Lee?

15 MR. LEE: Yes, your Honor.

16 THE COURT: And also there's an indication
17 in that letter that the Callards were not able
18 to obtain an interpreter. So, I assume we
19 don't have an interpreter coming in?

20 MRS. CALLARD: That's correct, sir.

21 THE COURT: Okay. Are there any other
22 preliminary matters that we should attend to
23 before we proceed with the case? Anything the
24 Petitioner would like to raise?

25 MRS. CALLARD: We tried to speak to the

1 person that you referred us to for an
2 interpreter and they told us the Public Service
3 Commission did not provide that service.

4 THE COURT: Okay. Anything from the
5 Respondent?

6 MR. LEE: No, your Honor.

7 THE COURT: Well, then what we'll do in
8 regard to the interpreter is have Mrs. Callard
9 interpret for her husband. That is a little
10 bit irregular, but at this point since the
11 agency has declined to provide an interpreter
12 and since I don't have the funds or the
13 authority to appoint one we'll just proceed in
14 that fashion and take the testimony as best
15 that we can and if that creates an issue down
16 the line someone at the appellate level will
17 direct us how to deal with it.

18 We completed the Respondent's case in
19 chief at the last meeting, going in that order,
20 and we're prepared to go into the evidentiary
21 phase of the hearing dealing with the Callards'
22 case. Are you ready to go forward, Mrs.
23 Callard?

24 MRS. CALLARD: Yes, sir.

25 THE COURT: All right. Why don't you

1 proceed. Mrs. Callard, do you plan to have
2 your husband testify?

3 MRS. CALLARD: It's his testimony that
4 we're suppose to go over today.

5 THE COURT: Let's put him on the witness
6 stand. I guess you're going to translate?

7 MRS. CALLARD: Yes, sir.

8 THE COURT: Why don't you step forward and
9 I'll swear you both in.

10 JORGE LETICIA

11 (called as a witness, having
12 been first duly sworn, testified
13 as follows:)

14 (Thereupon LETICIA CALLARD
15 was sworn to act as interpreter
16 during the taking of the
17 hearing.)

18 MRS. CALLARD: This is the list that I
19 provided to you on what the exhibits indicate,
20 that list there, is in the order of the
21 exhibits.

22 THE COURT: All right. Do you need to
23 read from that for some reason?

24 MRS. CALLARD: Yes, he wants to go over
25 exactly what this packet is.

1 THE COURT: Is that how you plan to
2 present his testimony?

3 MRS. CALLARD: I would imagine he's going
4 to go into a briefing first and then he's going
5 to go into this here.

6 THE COURT: Are you going to ask him
7 questions in order to elicit that testimony?

8 MRS. CALLARD: Not really, I'm going to
9 translate as he speaks.

10 THE COURT: I need you to ask him
11 questions so that we can know what he's going
12 to be saying.

13 MRS. CALLARD: I don't really know what
14 questions I'm going to be asking him. It was
15 going to be his testimony and I'm going to
16 interpret it to you. I'm not going to ask him
17 any questions. He's going to give you the
18 events as they occurred.

19 THE COURT: When is he going to start?
20 What point in time? Is he going to go
21 chronologically?

22 MRS. CALLARD: At the other hearing he
23 didn't give his version of anything. It was
24 held off for today.

25 THE COURT: That's right, presenting your

1 case today.

2 MRS. CALLARD: His testimony today.

3 THE COURT: Let's do this because it'll
4 probably be the most expeditious way to do it,
5 I'll let him testify in a narrative fashion,
6 but let's go in little pieces that you can
7 translate.

8 MRS. CALLARD: Okay.

9 THE COURT: Okay. Go ahead.

10 MR. CALLARD: We have gone to ask for an
11 attorney to represent us because he knows that
12 we are not fully capable of handling the
13 hearing itself, although we have a lot of
14 evidence to show. And the attorney asked us to
15 bring in all the documents that we have so he
16 can evaluate the case.

17 He told us to come to the hearing and give
18 our testimony and then later on we will give
19 him the case to interview and legally represent
20 us.

21 He feels that of course Florida Power &
22 Light is a large corporation with a lot of
23 power and it's like being impotent against
24 them.

25 THE COURT: All right. Let's talk about

1 the incident in question.

2 MR. CALLARD: Okay. From the beginning
3 Florida Power & Light did some work at the
4 house which caused us problems.

5 Initially we had the unit on the east side
6 of the house.

7 MR. LEE: Your Honor, at this point, I
8 think I take an objection to the relevance. It
9 sounds like they're going into the issue as to
10 which side of the house the meter was on, the
11 wires on top of the house which has no
12 relevance to this.

13 THE COURT: Summarize for me a little bit
14 what we're getting into, we're going back to
15 what point in time?

16 MRS. CALLARD: Okay. We're going back
17 into where initially, this is where the problem
18 stems from, where the location of the meter was
19 and where it was moved from one side of the
20 house to another side of the house, but the job
21 was not completed, for them to return at a
22 later date to complete the job which they never
23 did.

24 THE COURT: When was this?

25 MRS. CALLARD: This was in 1990.

1 THE COURT: The period in question here is
2 January, 1997 through August of 2002.

3 MRS. CALLARD: Yes, but initially there's
4 where it started from which they never came to
5 do the job. Initially it started in 1990, they
6 were going to send someone to remove it,
7 relocate it and then never did.

8 THE COURT: What is it that you're going
9 to say that the evidence shows?

10 MRS. CALLARD: The problems that stem from
11 their incompleteness of the job which created
12 ongoing problems until we get to the point of
13 1997.

14 THE COURT: So, you're going to suggest
15 that the meter wasn't functioning properly for
16 a period running from sometime in 1990 all the
17 way to 2002?

18 MRS. CALLARD: Exactly, yes. At least
19 that's what we think because we know of nothing
20 else that could have possibly happened.

21 THE COURT: What is your evidence of that,
22 that there was some service on the meter in
23 1990?

24 MRS. CALLARD: He says when the meter was
25 located on the east side and moved over to

1 another location is when we started having
2 electrical problems within the house.

3 THE COURT: I'll overrule the relevancy
4 objection. I'll let you tell me that story.
5 You need to translate. Is he testifying here?

6 MRS. CALLARD: He's saying that this photo
7 here is the old meter where you can see the
8 number on here. I don't know if that is the
9 same meter that the gentleman has. He took
10 that picture the day FPL came to the home to
11 review the problems that we had, like
12 electrical problems within the house.

13 THE COURT: What year was this?

14 THE WITNESS: In 1992.

15 THE COURT: The photograph that your
16 referring to was made in 1992?

17 THE WITNESS: That was in 1991 when they
18 came out to review the electrical problems in
19 the home.

20 THE COURT: Let's do this because I'm not
21 really following. Why don't you back up and
22 tell me what were the problems and what did you
23 do about them. You need to give me some
24 context.

25 THE WITNESS: In 1991 we took this picture

1 of Florida Power & Light when they came out to
2 see what problems we were having in the home
3 and that meter, when they removed the meter
4 from the wall the meter fell on the floor
5 against the concrete. And to avoid the meter
6 he stopped the meter with his foot.

7 They said that since they had the dropped
8 the meter they would return the next day to
9 replace the meter and we took a picture of that
10 meter. This meter shows some of the electrical
11 problems that we've had through the house where
12 we have some shortage throughout the house.

13 THE COURT: When was that?

14 MRS. CALLARD: Shortly after this. All of
15 these are shortages that we had in the home.
16 We also had some appliances that blew up.

17 THE COURT: And how does that relate to
18 the issue --

19 MRS. CALLARD: We started having
20 electrical problems after this happened.

21 THE COURT: Let me understand, Florida
22 Power & Light came out to do some work to the
23 meter because you called because you were
24 having problems?

25 THE WITNESS: Yes. We called them because

1 we were having problems of like surges. We
2 were getting electrical shocks with the light
3 switches. Our TV went out. We had like to two
4 losses of TVs. We had a VCR that went out.
5 Things were just blowing up, so we called
6 Florida Power & Light so they could come out
7 and see if there was a problem.

8 So, we called an electrician and they came
9 and looked at the problem and said that we had
10 an electrical problem in the house.

11 In 1991 when we were going to install our
12 swimming pool they had already relocated the
13 cable on top of our roof.

14 THE COURT: Who?

15 THE WITNESS: Florida Power & Light.

16 THE COURT: What cable?

17 THE WITNESS: The main cable that runs
18 through our house that provides electricity.
19 Because we were going to make a pool, they
20 relocated that cable from one end of the house
21 to the other end of the house. When they did
22 that installation they ran the cable on top of
23 our roof of the house.

24 THE COURT: When was that?

25 THE WITNESS: It was in 1991. And in the

1 process of constructing the pool we didn't pass
2 inspection which is what that exhibit there is,
3 that says that the cable and the permit
4 indicates that we didn't pass it.

5 THE COURT: You couldn't get a permit for
6 your pool in 1991 because there was a cable on
7 the roof.

8 MRS. CALLARD: Because of the cable, yes.

9 THE COURT: Then what happened?

10 THE WITNESS: In 1992 after Hurricane
11 Andrew with the winds and everything we started
12 having sparks from the cable which the neighbor
13 let us know that we were having some sparks
14 coming from that cable.

15 We called Florida Power & Light again and
16 they came out and they put like a rubber seal
17 around the cable that was hanging on top of the
18 roof. That's the photo that we showed you.

19 THE COURT: When was that?

20 THE WITNESS: In 1992.

21 THE COURT: Then what happened?

22 THE WITNESS: As time went on it remained
23 in that fashion where they put the rubber hose
24 on the cable. We tried to get ahold of them
25 various times to come out and repair that. As

1 time went on it remained that way. I went to
2 Florida Power & Light one day and I was in
3 their office about three hours trying to get
4 the problem resolved.

5 I waited about three hours before I was
6 able to talk to someone and on that day I was
7 leaving on a trip. I feel that when I went I
8 did not get attended to and I wasn't able to
9 resolve anything at that point. And I was
10 leaving on a trip and therefore I didn't get
11 anything done on that particular day.

12 So, it remained that way. We put claims
13 in for some of the losses and we never were
14 reimbursed for any of those.

15 MR. LEE: I want to object again at this
16 point. I understand you want to give them a
17 little leeway, but this whole matter was the
18 subject of another Public Service Commission
19 complaint resolved between Florida Power &
20 Light and the Callards. The matter has been
21 closed. And going into all of these side
22 issues is taking us away from what we're here
23 for today.

24 THE COURT: I tend to agree. I guess I've
25 been trying to understand what the connection

1 with all this is. Is Mr. Lee correct, sir,
2 that at some point a claim that went through
3 the Public Commission resolved in some sort of
4 settlement?

5 THE WITNESS: The reason for going over
6 this is because they are basing their
7 calculations on a meter which had a problem.

8 THE COURT: I understand that you want to
9 make that position. I'm trying to understand
10 first, was there some sort of claim made
11 against Florida Power & Light that was brought
12 to the Public Service Commission?

13 THE WITNESS: We put in a complaint
14 against Florida Power & Light which is when
15 Public Service Commission sent out an inspector
16 to look at the problem.

17 THE COURT: When was that?

18 THE WITNESS: In the year 2003 we asked
19 for an inspector to come out and inspect the
20 problem of the electrical problem that we had
21 in the home. Apparently there was an inspector
22 that came out that represented Florida Power &
23 Light.

24 THE COURT: Hold on, hold on, Mr. Lee,
25 what was the other Public Service Commission

1 proceeding? I'm trying to understand what
2 happened in that regard.

3 MR. LEE: Your Honor, there's two separate
4 issues and I understand Mr. Callard is trying
5 to tie one into the other. And if he wants to
6 argue that the meter was dropped and that's the
7 reason for the problem, fine, I can understand
8 he wants to make that argument, but the other
9 issue was that the Callards had their meter
10 come to one side of their house. It came off
11 the pole right directly to the side of the
12 house.

13 Apparently sometime in the early '90s they
14 wanted to put a pool in which required the
15 meter to go to the other side of the house and
16 at the time FP&L ran the service --

17 MRS. CALLARD: Excuse me but it wasn't the
18 meter, it was the cable.

19 THE COURT: Hold on.

20 THE WITNESS: Florida Power & Light came
21 out on one of those days that a storm was
22 coming up and we had a huge plant that ran
23 through their cables. And so at that point
24 that cable was sparking and at that point is
25 when they went ahead and they moved the cable,

1 not the meter. They moved that cable from one
2 end to on top of the house.

3 THE COURT: Hold on, hold on. You're
4 saying that some point in the early 1990s the
5 cable was moved and ultimately the meter was
6 moved?

7 MR. LEE: Regardless of the years,
8 sometime in the early 90s the location of the
9 cable coming from the roof, we're not sure
10 whether it was -- because the meter was
11 removed, et cetera, but the cable now ran over
12 the top of the house and they had complaints
13 about that. FP&L came out and put a sleeve --
14 first of all the cable was insulated to start
15 with, but then a sleeve was put over the top of
16 the cable.

17 They obviously continued to complain about
18 that and eventually the Public Service
19 Commission was brought in, it was resolved and
20 the cable was removed and also they were paid
21 some money as a result of their claim for
22 damages as a result of the cable being on the
23 house.

24 That has nothing to do with the current
25 diversion. They has to do with them not

1 wanting the cable on top of their house.

2 THE COURT: When was that matter resolved?

3 MR. LEE: 2003 is when it was finally
4 resolved, but it all started back in the early
5 90s.

6 THE COURT: Was there a hearing on that?

7 MR. LEE: I don't know that it got to a
8 full and formal agenda hearing, your Honor. I
9 know they filed a complaint and I think it was
10 resolved with the parties with PSC assistance.

11 THE COURT: All right. Let me see if we
12 can just do this because it may take a long
13 time to go through this whole sequence of
14 events.

15 What I want to do is focus in on the
16 issues at hand as it relates to the allegations
17 that there was unmetered electrical use for a
18 five and a half roughly year period from '97 to
19 2002.

20 And I understand you're going to testify
21 that the problem stems from some work that
22 Florida Power & Light did in the early 90s and
23 that's fair enough, but this issue that relates
24 to the cable on the roof which apparently
25 resolved in a settlement, can you just tell me

1 is that -- was there a settlement with FP&L,
2 did they pay you for damages?

3 THE WITNESS: Florida Power & Light told
4 us that it was our responsibility to correct
5 the error, that that was not their problem and
6 that's when we filed our complaint.

7 When they insisted that we pay for the
8 services we filed a complaint with Public
9 Service Commission and we spoke to someone, Ms.
10 Pena.

11 THE COURT: Hold on, I want to separate,
12 if I can, the complaints that were filed. Were
13 there two separate complaints? Was there a
14 complaint with the Public Service Commission
15 relating solely to the issues arising out of
16 the cable being on your roof?

17 THE WITNESS: It was one complaint to the
18 Public Service Commission, that we told them
19 that they were in some type of violation.

20 THE COURT: Did FP&L pay some money to you
21 to resolve that?

22 THE WITNESS: After it was determined by
23 the inspector of Public Service Commission
24 which is exhibit D where they said that they
25 were in violation Florida Power & Light sent

1 someone from the County to inspect the problem,
2 someone named Ozorio.

3 THE COURT: Hold on, just answer my
4 question. Was there money paid to settle the
5 cable on the roof problem?

6 THE WITNESS: They paid for the fixing --
7 the whole electrical installation. They didn't
8 pay to us. They brought in an electrician and
9 they did the job.

10 THE COURT: What was the job, they moved
11 the cable off the roof?

12 MRS. CALLARD: They had to tear down the
13 whole -- in the route that the pole was, they
14 had to run it a different route, they ran it
15 all across the house and they had to open up
16 holes and we had to knock down a wall.

17 THE COURT: How does that relate to the
18 allegation that there's unmetered electrical
19 use?

20 THE WITNESS: Because the meter dropped
21 and they never came back to give us a new
22 meter. If there was anything wrong with the
23 meter we didn't know.

24 THE COURT: The meter dropped in 1990?

25 THE WITNESS: And they never came back.

1 THE COURT: All right.

2 THE WITNESS: They sent someone from Metro
3 Dade and they said it was our home and we got
4 the violation for that problem. Then we
5 complained to the Public Service Commission
6 again because we were sited for that violation
7 which is exhibit B, this is the violation.
8 They sited us for that problem.

9 THE COURT: This all relates to the cable
10 on the roof?

11 THE WITNESS: Yes. When we got the
12 violation then they sent out the inspector and
13 the inspector sent us after his findings to
14 show that they were in violation and he's an
15 electrician.

16 The inspector says it was their violation
17 and that he couldn't understand how they left
18 that cable there on top of the house for 11
19 years. It was rotted, the cable was rotted and
20 the shortages that we had throughout the house.

21 It didn't have the rubber, it was a live
22 wire, but it laid on top of the house.

23 In 1992 when they came out to put the
24 rubber hose they stated that because of the
25 hurricane they had a lot of work and they would

1 put it the way that it should be and that maybe
2 they would put it underground. As the years
3 went by it just remained there and they never
4 came back.

5 When we received the letter from the
6 inspector, the Public Service Commission, we
7 called Florida Power & Light and at that point
8 was when we spoke to Mr. Cumen who said that we
9 were tampering with the meter and we were
10 stealing electricity and all that stuff.

11 At that point we wrote a letter to
12 Mr. Zamora and Ms. Cochran and we wrote a
13 letter telling her exactly what Mr. Cumen had
14 stated in reference to the electricity. And we
15 never saw or heard from Mr. Cumen again. And
16 they put another representative who was then
17 Mr. Zamora.

18 Then Mr. Zamora called us and made an
19 appointment with me to go review the meter at
20 their office.

21 When I go to that appointment they showed
22 me a meter, it was not in a box. It was just
23 when they removed the meter they put it in
24 their truck and it was not placed into any kind
25 of container or anything.

1 And when they showed me the meter it had
2 no glass. And they showed me a new meter and
3 supposedly our meter and that was at Ms.
4 Cochran's office. And I said I speak the truth
5 and she was there.

6 In that meeting they asked me what did I
7 see in the meters. He showed me five little
8 meters and they showed me were like scratches
9 on the different hands. You could see it
10 visibly just by looking at it without even
11 getting close to it. You could see it from a
12 distant.

13 And they explained to me of how they came
14 to the original calculation of over \$17,000.
15 They offered me to pay half of it if we
16 accepted. And it's very difficult to pay for
17 something that you know you didn't have use
18 for. That's why we're here today.

19 We never tampered with the meter. They
20 made an offer and we said no because it was not
21 just to go ahead and accept that offer.

22 When they changed the meter the meter was
23 moving very fast, the meter that they replaced.
24 And I turned off all the lights in the house
25 and that meter was moving very fast. And I

1 went to the neighbor's house and the neighbor
2 did the same thing and the same thing didn't
3 happened. Our meter was functioning a lot
4 faster.

5 And we made another letter to Mr. Pina,
6 complaining about that meter that was going too
7 fast which is this one. We wrote a letter to
8 the Florida Commission. We spoke to Ms. Pina.
9 We were not in agreement with what the meter
10 was reading. It was about \$400 for the one
11 month, but we still filed a complaint and we
12 took pictures of that meter because we tried to
13 get someone to represent us, but financially we
14 were not able to.

15 After I filed the complaint Jorge Zamora
16 got in touch with me. He told us that they
17 were going to go and check and make sure that
18 everything was okay at the home.

19 For the prior job that they had done he
20 didn't reference the meter. He said they were
21 going to inspect that the job was properly
22 done.

23 So, he told Mr. Zamora when you come over
24 to review this we would like for you to come
25 with a letter stating what it is that you are

1 going to do at the home.

2 We gave him a time when to come to do this
3 because we have two children that are in school
4 and I'm the one who picks them up.

5 So, when the electrician showed up after
6 2 o'clock in the afternoon he didn't bring a
7 letter. So, we told him if you don't have that
8 letter that we requested from Mr. Zamora you're
9 not going to come on the premises because I
10 wanted to protect that meter because that was
11 evidence that we had that there was something
12 wrong with that meter that they replaced.

13 They called someone and someone told them
14 they had to enter at the house and we told them
15 well, we have to go to the school and we're not
16 going to be here and I have to leave now, you
17 have to come back at another time. If you want
18 wait for us until we get back and we'll open
19 for you so you can go back there.

20 When I came back we didn't notice that
21 anything was wrong and when I was in the
22 backyard I saw the mud tracks through the
23 backyard for the prints because it had rained
24 that day.

25 Then I realized and I followed the tracks

1 and I got to the meter and when I got to the
2 meter the meter had been changed.

3 So, we have like a 6-foot fence and it
4 seems like the gentleman went over the fence
5 and even broke the panel as he climbed down the
6 fence and that's how we know someone went
7 through the backyard and changed the meter.

8 So, we called the police. We filed a
9 complaint. We called Florida Power & Light.
10 I spoke to Ms. Cochran because we feel that
11 they did not have to go on the premises in that
12 manner.

13 We called the commission office and
14 informed them and then we were told that they
15 have a right to come into our house and we told
16 them that we don't feel that is correct because
17 we feel that was unconstitutional, invade your
18 privacy, because I would have preferred them to
19 turn the lights out and not take the meter and
20 he did not respect my word when I asked him to
21 wait until I returned.

22 We have been trying for many years to try
23 to resolve this problem and it is to no avail.

24 THE COURT: That's it?

25 MRS. CALLARD: That's it.

1 THE COURT: Nothing further to add?

2 MRS. CALLARD: He feels that the meter,
3 that's all been manipulated and that that meter
4 was sent to a lab, it was sent to their lab,
5 they showed it to him without any glass and
6 that what they showed him was very visible
7 through the glass. You could very well see
8 through the glass.

9 In the last meeting we had, Ms. Cochran
10 said that they removed the glass from the meter
11 and when they showed him the glass it was an
12 open meter.

13 We cannot obviously deal with the power
14 that Florida Power & Light does have and we
15 thank you, your Honor. That's his testimony.

16 THE COURT: Thank you. I'll need you to
17 translate for cross examination.

18 CROSS EXAMINATION

19 BY MR. LEE:

20 Q Thank you, your Honor. Mr. Callard, good
21 morning. You said that the meter fell sometime
22 between 1990 and 1991?

23 A In 1990, more or less.

24 Q And at that time it was you and your wife
25 living in that residence, correct?

1 A In the residence, yes.

2 Q Did anybody else live in that residence
3 from that time until now?

4 A Our children.

5 Q But no other families, just your family
6 living there?

7 A No other family, no.

8 Q In 1990 or sometime around that time is
9 when you had your pool installed in your house?

10 A It began in 1991.

11 Q When you came to Florida Power & Light and
12 they showed you the meter you said you could see the
13 scratches on the meter, right?

14 A Yes.

15 MR. LEE: That's all the questions I have.

16 THE COURT: All right. Thank you,
17 Mr. Lee. Is there anything that you would like
18 to add to any of the testimony that was just
19 elicited on cross examination?

20 THE WITNESS: If Florida Power & Light has
21 the ability to have a meter in a sealed box,
22 when they took our meter they have all the
23 resources like in a sealed box, protected, that
24 if the meter had something wrong upon removal,
25 a picture was not taken prior to when they took

1 the meter because you can see visibly the meter
2 was fine.

3 If they wanted to prove there was
4 something wrong with the meter they had other
5 means to go ahead before they removed the meter
6 and came back with this meter showing that it
7 had scratches on it, because they're saying
8 that on a couple of occasions the meter was in
9 regression, yet why not show us at the time
10 with a picture that there was a meter in
11 regression. This is what they are saying. We
12 have no proof of that.

13 When they go the first time where they are
14 saying that it was in regression they didn't
15 take a picture of anything of the problem
16 before they removed that meter and took it.

17 Another thing, where they're saying that
18 they went out to the home on five or six times,
19 various times, how did the gentleman come into
20 the house. They opened the door and there is
21 no one in the home but me.

22 My children wouldn't open the door for
23 anyone because they leave us notes that they
24 can't get into the backyard. We want to know
25 how are they able to supposedly come into the

1 home and view the meters, as they so state.

2 So, we obviously located Public Service
3 Commission to say that they were entering our
4 property whenever they wanted according to them
5 without our permission which we never denied
6 them entrance into the property.

7 Those are the damages that when they did
8 the first job they did it so incomplete that
9 our area was corroded, our roof was corroded,
10 the walls started falling down because of the
11 weight of the installation. And they wouldn't
12 pay damages.

13 And they are of course the only electrical
14 company, so you have to deal with that. And
15 that's it, your Honor.

16 THE COURT: Okay. Thank you, Mr. Callard.
17 All right. Mrs. Callard, do you have any other
18 evidence to present at this time?

19 MRS. CALLARD: No, your Honor, that's all.

20 THE COURT: You don't plan to testify
21 yourself?

22 MRS. CALLARD: I'm here because the
23 account is in my name, but he is the one that's
24 done all the dealings.

25 THE COURT: Now, you presented various

1 documents. Were any of these documents that
2 you wanted to offer as evidence in the case?

3 MRS. CALLARD: Okay, your Honor, I wanted
4 to place all of these as evidence because this
5 goes back to how the problems started, and the
6 problems we've had throughout the years with
7 not passing inspection and the intrusion of
8 them coming into our property and that we have
9 police reports and photos.

10 THE COURT: Why don't we go through them
11 one at a time and see what you've got. This is
12 exhibit A. This is the permit.

13 MRS. CALLARD: This was the permit that we
14 requested from the County in order for our pool
15 back in '91 and as you see on the bottom it
16 says service over the roof.

17 THE COURT: Putting aside the issue of
18 relevance, there's no factual dispute, is
19 there, that there was a cable on the roof in
20 1991?

21 MR. LEE: I don't think we're in dispute.

22 THE COURT: You want to offer this A into
23 evidence?

24 MRS. CALLARD: Yes.

25 THE COURT: Is there any objection?

1 MR. LEE: Other than my prior relevance
2 objection, no.

3 THE COURT: I'll overrule. This will be
4 Petitioner's A into evidence at this time.
5 Petitioner B is the issue involving the code
6 violation, is that what this is?

7 MRS. CALLARD: Yes, this is the violation
8 that they cited us for saying that we were
9 responsible for the violation.

10 THE COURT: What was the violation?

11 MRS. CALLARD: Electrical is checked off.

12 THE COURT: I don't see on here what the
13 nature of the violation was.

14 MRS. CALLARD: It doesn't go into detail
15 of the violation.

16 THE COURT: Is there any way to know that
17 relates to the issue of the cable on the roof?

18 MRS. CALLARD: No, we would had to go to
19 that case number and see what the actual
20 complaint was.

21 THE COURT: Any objection to Petitioner's
22 B?

23 MR. LEE: Other than the relevance, no.

24 THE COURT: I'll receive it into evidence
25 at this time. Exhibit C is an unsigned

1 release.

2 MRS. CALLARD: This is a release of claim
3 that Florida Power & Light presented to us to
4 be signed in order for them to -- they gave us
5 this claim telling us if they went ahead and
6 made the repair that we would not proceed any
7 further in relationship to what we were
8 complaining about. So, we didn't sign it.

9 THE COURT: So, you never did sign a
10 release.

11 MRS. CALLARD: No, we didn't sign this
12 particular release.

13 THE COURT: Was there another release
14 signed?

15 MRS. CALLARD: They wanted to give us the
16 2150 for us to fix the problem with the cable
17 and we said no.

18 THE COURT: Why is this relevant to this
19 case?

20 MRS. CALLARD: This is to show that they
21 wanted us to do it and they wanted to release
22 themselves from any further claim which we
23 didn't feel that we should accept that. So, we
24 didn't sign it.

25 THE COURT: This one I'm going to reject.

1 It doesn't seem to be relevant. Exhibit D,
2 this is an e-mail, who is this from?

3 MRS. CALLARD: Exhibit D is the letter
4 that we got from the electrical engineer from
5 the Public Service Commission where here he
6 sited the violation -- the code that Florida
7 Power & Light was not meeting, that was in
8 violation of. These are his findings after he
9 came out to inspect the problem and next to the
10 last paragraph he talks about the electrical
11 code that Florida Power & Light is in violation
12 of.

13 THE COURT: This is January 20th, 2003, at
14 some time after that date, in fact, the problem
15 was fixed?

16 MRS. CALLARD: Yes.

17 THE COURT: Any objection to Petitioner's
18 D?

19 MR. LEE: Again, relevance and then I'm
20 not even sure who any of these people are and I
21 think Mr. Callard has testified through live
22 witness testimony what he's complained of here.

23 MRS. CALLARD: This is a back-up
24 documentation, your Honor, where we dealt with
25 an engineer from the Public Service Commission

1 who had to come out and establish that there
2 was an electrical problem, that it was the
3 responsibility of Florida Power & Light because
4 they would not fix it on their own. This is
5 the reason why the engineer comes out to
6 inspect the problem because we were not
7 getting --

8 THE COURT: You made a complaint with the
9 Public Service Commission.

10 MRS. CALLARD: Yes, sir.

11 THE COURT: And ultimately the complaint
12 was resolved through Florida Power & Light
13 either paying for the work or doing the work
14 and moving the cable from the roof?

15 MRS. CALLARD: Yes, eventually, yes. This
16 proves that they were in violation throughout
17 the years. They were in violation of that
18 electrical problem. It took almost ten years
19 to get this resolved.

20 THE COURT: I'll admit exhibit D to the
21 extent it corroborates or explains Mr.
22 Callard's testimony. Now, exhibits E and F are
23 letters that are written in Spanish.

24 MRS. CALLARD: Exhibit E is in Spanish
25 because my husband was that one, like I said

1 that was dealing. That letter is complaining
2 to the Public Service Commission on the reading
3 of meter 46714 which is the meter that was
4 reading very fast. This is the complaint that
5 we filed with them.

6 THE COURT: There's no translation of
7 these letters. I can't read it, so I'm not
8 sure what it all says. These are both dealing
9 with your complaint about the replacement meter
10 malfunctioning?

11 MRS. CALLARD: Yes, sir.

12 THE COURT: Well, you've testified about
13 that. So, I don't think these letters would
14 really add to it. I think E and F would be
15 cumulative of your testimony. You've already
16 testified about these facts. I'll reject E and
17 F.

18 Now, G-1 and G-2 appear to be documents
19 relating to the complaints you made with the
20 police in March and May of 2003?

21 MRS. CALLARD: Yes.

22 THE COURT: And Mr. Callard testified
23 somewhat about that.

24 MRS. CALLARD: This would be our back-up
25 that, yes, we did, but we may not have gotten

1 into really detail with our testimony, but this
2 will show that it is in detail.

3 THE COURT: G-1 and G-2?

4 MRS. CALLARD: Yes, G-1 and G-2 and the
5 same goes for E and F which are the letters
6 where we complained to the Public Service
7 Commission about the actual meter. So, I think
8 that's very important.

9 THE COURT: How do those complaints relate
10 to the issues at hand?

11 MRS. CALLARD: Because we're telling them
12 exactly what the problems with -- with exhibit
13 E in this letter we're telling the Public
14 Service Commission the problems that we're
15 having with that particular meter.

16 THE COURT: Didn't Mr. Callard testify
17 about that?

18 MRS. CALLARD: Yes. Before they could
19 come out and look at the meter Florida Power &
20 Light removed the meter. This is showing them
21 that we filed a complaint against that
22 particular meter because it was reading too
23 fast and before Public Service Commission could
24 come out and look at that they removed the
25 meter from the home which to this day no one

1 knows where the meter is.

2 So, why did they take the meter and why do
3 we not know where is the meter since this is
4 the meter that supposedly was used to calculate
5 what they say we are owing them which is very
6 important to know where that meter is. We have
7 never been told why they removed that meter.

8 THE COURT: Well, is there any detail that
9 the letters add to the testimony that was
10 given?

11 MR. LEE: Your Honor, maybe I can short
12 circuit this, while I'm not agreeing to the
13 contents of the letters, if they want them in
14 to just to say hey, we made a complaint to the
15 Public Service Commission and we sent a letter,
16 that's fine. I mean, that's public record and
17 we're not going to object to that.

18 If they want to admit them because they
19 want what's in those letters to be considered
20 true, well, that's the purpose of his
21 testimony, and I would object to that. But if
22 he wants the letters in to say hey, I sent the
23 letters to Public Service Commission
24 complaining about this meter, I'll agree to
25 that.

1 THE COURT: I agree with that. I'm going
2 to stand by the rejection of those letters. I
3 think it's cumulative of the testimony and also
4 there's an issue regarding the transaction of
5 them.

6 MRS. CALLARD: He's saying in the letter
7 that he's not in agreement with the reading of
8 the meter and what we have to pay.

9 THE COURT: Let's talk about G-1 and G-2,
10 the documents relating to the calls to the
11 police. Are those relevant to the issues in
12 this case and if so how?

13 MRS. CALLARD: They show the many times
14 that they came out and just I guess went about
15 their business and we reported it. They never
16 notified us, gave us prior notice that they
17 needed to come in to do whatever. They just
18 did whatever they had to do. And so we went
19 ahead and made these reports to show that they
20 were actually on the property whenever they
21 felt like it.

22 THE COURT: How does that relate to the
23 issues in the case?

24 MRS. CALLARD: Well, this shows all the
25 inconveniences that we had to go through with

1 Florida Power & Light to try to resolve this
2 issue.

3 THE COURT: Any objection to G-1 and G-2?

4 MR. LEE: I don't know what the relevance
5 is.

6 MRS. CALLARD: Because they entered the
7 property, your Honor, whenever they wanted to.

8 THE COURT: I have some doubts about the
9 relevance, but I'll go ahead and receive them
10 in evidence. H is another letter to the Public
11 Service Commission. What does this relate to?

12 MRS. CALLARD: This is the letter where he
13 let's them know that they demonstrated an open
14 meter, Florida Power & Light. This letter
15 indicates where he went to that meeting with
16 Ms. Cochran and they showed him the open meter
17 with no glass.

18 THE COURT: You testified about that.

19 MR. LEE: In fact, your Honor, if you
20 recall from our prior hearing Ms. Cochran
21 testified to that same thing.

22 THE COURT: So, with that testimony from
23 both sides about that meeting there's no
24 dispute that it took place, right?

25 MR. LEE: No.

1 THE COURT: The letter would just be
2 cumulative and it's in Spanish and there's no
3 translation. So, I'll reject this one. It
4 doesn't add anything to the evidence in the
5 record.

6 And the last item, I don't have it here,
7 you had a set of photographs. Did you want to
8 offer those into evidence?

9 MRS. CALLARD: Yes.

10 MR. LEE: And other than the relevance
11 objection that I previously stated there's no
12 objection to the photographs.

13 THE COURT: Well, I have some doubts about
14 the relevance, but if you want to assemble the
15 seven photographs I'll receive those as a
16 composite exhibit.

17 MRS. CALLARD: Your Honor, there are two
18 other exhibits. You have two pictures attached
19 that we gave you.

20 THE COURT: What I have in evidence
21 including Mr. Callard's testimony are
22 Petitioner's exhibits A, B, C, D, G-1, G-2 and
23 composite exhibit I, consisting of seven
24 photographs. Do you have any other evidence to
25 present before you rest your case?

1 MRS. CALLARD: No, sir.

2 THE COURT: Mr. Lee, does Florida Power &
3 Light have any rebuttal case?

4 MR. LEE: No, your Honor. We'll rest on
5 the evidence we previously put on.

6 THE COURT: And in addition to the
7 testimony presented I show the Respondent with
8 one four page exhibit in evidence.

9 MR. LEE: That might have been the only
10 document we put in evidence.

11 THE COURT: That's all I'm showing. So,
12 if there's any other documentary evidence you
13 want to put in you can do it by way of
14 rebuttal.

15 MR. LEE: The only other document, your
16 Honor, then is -- I've given the Callards a
17 copy previously, so they'll know what I'm
18 talking about, it just shows -- again it's the
19 same billing history, but it's spread out from
20 1996 to 2002. It just goes back a couple years
21 prior to.

22 THE COURT: Has this already been provided
23 to the Callards?

24 MR. LEE: Yes, I previously sent it to
25 them a while ago.

1 THE COURT: You have any objection to
2 that?

3 MRS. CALLARD: He says is that testimony
4 that Florida Power & Light gave?

5 MR. LEE: It's the kilowatt usage.

6 MRS. CALLARD: That's what we have used
7 throughout those years?

8 THE COURT: This shows a couple years
9 prior in time to the spreadsheet that's in
10 evidence as Respondent's one?

11 MR. LEE: Right, it's the meter usage.

12 THE COURT: It's the as billed?

13 MR. LEE: Right.

14 MRS. CALLARD: We're not in agreement with
15 that because we don't know what meter this
16 applies to. This is just saying that we had
17 certain usage within the house, but he's not
18 telling us what meter was during that period.
19 Is that the bad meter?

20 MR. LEE: Well, obviously it's from 1996
21 until it was removed, that would be the meter
22 that's in question.

23 THE COURT: Right, just refresh my
24 recollection about the timeframes.

25 MR. LEE: The billing history that is in

1 dispute is in January of '97 through August of
2 2002.

3 THE COURT: Was it in August that the
4 meter was removed?

5 MR. LEE: July 24th, 2002 the meter was
6 changed.

7 THE COURT: So, from all of 1996 through
8 July of 2002 it would always have been the same
9 meter.

10 MR. LEE: Right.

11 THE COURT: Mr. Callard, you don't dispute
12 that, right? From all of 1996 to July of 2002
13 you had one meter at your house.

14 THE WITNESS: In August, 2002 and the
15 calculations --

16 THE COURT: I just want to know is it
17 undisputed that there was only one meter at
18 your house from 1996 to July of 2002.

19 THE WITNESS: No, there was not one meter,
20 they changed the meter. During the time period
21 of 1997 to 2003, what date did they remove this
22 meter?

23 MR. LEE: Our people previously testified
24 that they removed that meter on July 24th,
25 2002.

1 THE COURT: And all I want to know I
2 thought it was undisputed the same meter was at
3 the house.

4 THE WITNESS: In July they changed it.

5 THE COURT: Right, in July, 2002 they
6 changed the meter.

7 THE WITNESS: In July they took that
8 meter.

9 THE COURT: Hold on, hold on, for all of
10 1996 to July of 2002 there was just one meter
11 at the house.

12 THE WITNESS: Yes, that's right.

13 THE COURT: And just remind me, the meter
14 was changed in July, 2002, did FP&L change it
15 again? What was testified on your side?

16 MR. LEE: Yes, I believe we testified to
17 that fact and Mr. Callard --

18 THE COURT: He's testified?

19 MR. LEE: Right, and we're not disputing
20 that sometime after that the meter that was
21 placed in July of 2002 was replaced with
22 another meter.

23 THE COURT: It was changed yet again.

24 MR. LEE: Right.

25 THE COURT: So, they have a second

1 replacement meter.

2 MRS. CALLARD: Yes.

3 THE COURT: You don't dispute that.

4 MR. LEE: No, I don't dispute that that
5 was done. In 2003 the meter was replaced.

6 MRS. CALLARD: We've had three meters,
7 your Honor.

8 THE COURT: All right. And Respondent's
9 exhibit 2 relates to the period of time --

10 MR. LEE: The only time that I'm really
11 concerned about and I know he's raising an
12 issue about August of 2004, if you want to
13 black out August and September on that sheet
14 because he's raising an issue with it, that's
15 fine.

16 THE COURT: All right. So, Mrs. Callard,
17 with that are there any other objections to
18 Respondent's exhibit two?

19 MRS. CALLARD: No.

20 THE COURT: Then we'll receive
21 Respondent's exhibit two into evidence at this
22 time.

23 MR. LEE: Other than that no more
24 evidence, your Honor.

25 THE COURT: Respondent rests and that will

1 close the evidentiary phase of the hearing. Do
2 the parties anticipate a transcript being
3 prepared in this case?

4 MRS. CALLARD: I would need one, your
5 Honor.

6 MR. LEE: I can't say at this point. I
7 tend to transcribe it, but I can't say for
8 sure.

9 THE COURT: You're saying you're sure you
10 want one?

11 MRS. CALLARD: Yes.

12 THE COURT: You know you may have to pay
13 for it. Here's what we'll do then, the parties
14 have the right to submit in writing proposed
15 findings of facts and proposed conclusions of
16 law where you can make your closing arguments
17 in writing to me and suggest to me the facts
18 that you think I ought to find based on the
19 evidence presented and suggest to me the result
20 that ought to be recommended based on the facts
21 and the law.

22 If there's going to be a transcript I will
23 set the deadline for filing that paper based on
24 the date that the transcript is filed. If
25 there isn't going to be a transcript then I

1 will set a date that will be earlier than that,
2 obviously.

3 If I knew there wasn't going to be a
4 transcript I'd probably set that deadline ten
5 days from today, but there seems to be some
6 questions as to whether the transcript's going
7 to be ordered.

8 So, what I'll do is --

9 MR. LEE: Actually judge, I didn't realize
10 that's the way you were going to do it and in
11 that case I probably will have to order the
12 transcript. I thought we were going to do
13 closing today, but if we're going to do it in
14 writing then I will need the transcript.

15 THE COURT: Well, if you all want to do
16 closing today I will let you do that, but you
17 do have the opportunity to submit it in writing
18 and you can do it with or without the
19 transcript.

20 MRS. CALLARD: I would prefer mine in
21 writing because I can think things out.

22 MR. LEE: That's fine. I'll go ahead and
23 order the transcript. I'll deal with the court
24 reporter on that.

25 THE COURT: Well, that being the case then

1 typically we set the deadline for the written
2 submissions at ten days after the date the
3 transcript is filed with the Division of
4 Administrative Hearings.

5 Does either party think that that
6 timeframe wouldn't be sufficient in this
7 particular case either because of the issues
8 involved or scheduling conflicts?

9 MR. LEE: I'm fine with the ten days.

10 MRS. CALLARD: I could use a little more,
11 your Honor.

12 THE COURT: How much time would you like?

13 MRS. CALLARD: Maybe another week.

14 THE COURT: If I extend that deadline 20
15 days after the transcript is filed would that
16 be sufficient?

17 MRS. CALLARD: That's fine, your Honor.

18 THE COURT: Does FP&L have any objection
19 to that?

20 MR. LEE: No, your Honor. And there is
21 one issue that I do want to put on the record
22 before we finish, I know you asked prior to the
23 first hearing if there was any issue -- I did
24 find a case, unfortunately I didn't bring it
25 with me. I think it was either a Public

1 Service Commission opinion or a -- I can't
2 remember which, that essentially said they felt
3 Florida Power & Light was a utility burden.
4 So, I couldn't find anything to say otherwise.

5 THE COURT: All right. If you would cite
6 that case in your submission.

7 MR. LEE: I believe I can get it.

8 THE COURT: So, the deadline for your
9 recommended orders, your written submissions,
10 will be 20 days after the transcript is filed.

11 I, as a practice, tend to send out a
12 notice letting you know when the transcript is
13 coming in, but it is your obligation to keep an
14 eye on the docket as well and you can do that
15 on line through the Internet or by calling our
16 clerk's office. They will let you know that it
17 has been received.

18 I know you indicated Mrs. Callard you
19 wanted to wait and make your argument in
20 writing and Mr. Lee, you'll do that as well?

21 MR. LEE: Yes.

22 THE COURT: Okay. Are there any final
23 matters before we adjourn the proceedings?

24 MR. LEE: No, your Honor.

25 MRS. CALLARD: No, your Honor.

1 THE COURT: All right. Thank you for your
2 presentations. We are adjourned.

3 (Thereupon, the proceedings were
4 concluded.)

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CERTIFICATE

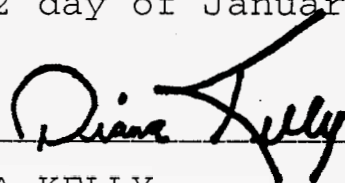
The State of Florida)
County of Broward)

I, Diana Kelly, Professional Reporter, do hereby certify that I was authorized to and did report said proceedings in stenotype; and that the foregoing pages, numbered from 1 to 52, inclusive, are a true and correct transcription of my shorthand notes of said hearing.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel or party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

Dated this 22 day of January, 2005.



DIANA KELLY

Notary Public - State of Florida.