

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Consumer complaint against Florida
Power & Light Company by Leticia Callard.

DOCKET NO. 040208-EI
ORDER NO. PSC-05-0806-FOF-EI
ISSUED: August 5, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

FINAL ORDER DENYING EXCEPTIONS TO THE RECOMMENDED ORDER AND
ADOPTING RECOMMENDED ORDER

BY THE COMMISSION:

Background

On May 13, 2005, an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) submitted his Recommended Order in this formal administrative proceeding. The ALJ determined that it was more likely than not that meter tampering had occurred at the Callard residence, which prevented FPL from fully charging for the actual electricity consumed. Yet, the ALJ also determined that FPL's estimate of the amount of unmetered electricity significantly overstated Mrs. Callard's probable actual usage and was not reasonable, a violation of Rule 25-6.104, Florida Administrative Code.

On May 31, 2005, FPL submitted exceptions to the Recommended Order. Mrs. Callard submitted exceptions to the Recommended Order on June 2, 2005. This order addresses the parties' Exceptions to the Recommended Order and the Recommended Order.

We have jurisdiction pursuant to Sections 366.05, 120.569, and 120.57, Florida Statutes, and administer consumer complaints pursuant to Rule 25-22.032, Florida Administrative Code. By this order, we deny the parties' Exceptions to the Recommended Order. Furthermore, we adopt the Administrative Law Judge's Recommended Order as our Final Order.

Mrs. Callard's Exceptions

On May 10, 2005, Mrs. Callard filed exceptions to the Recommended Order. In her exceptions, Mrs. Callard disagreed with the ALJ's factual findings that concluded meter tampering had occurred at her residence beginning in January 1999. She claimed that "FPL

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failed to provide any evidence of tampering or failed to show any evidence of any back reading of the meter.”¹

Mrs. Callard’s exceptions to the Recommended Order directly contradict the ALJ’s factual findings that FPL had provided credible evidence of meter tampering. The ALJ’s findings of fact on the issue of whether or not meter tampering occurred are susceptible to ordinary methods of proof and are not infused with policy considerations. Thus, we find that Mrs. Callard’s exceptions should not be substituted for the ALJ’s judgment of the facts.

Furthermore, Mrs. Callard’s exceptions were not properly cited to the record, as required by section 120.57(1)(k), Florida Statutes. Nine of the eleven exceptions filed by Mrs. Callard included no citations to the record whatsoever.² Therefore, we are not legally required to rule on these exceptions.

The two exceptions that are cited to the record, however, are improperly taken out of context. In Exceptions 9 and 12, Mrs. Callard cites a portion of the record she claims illustrates that the Recommended Order found no meter tampering to have occurred. However, her assertion is based on an incomplete quote from paragraph 8 of the endnotes of the Recommended Order. The question at issue in paragraph 8 regarded when meter tampering began, not if meter tampering had occurred. While Mrs. Callard cited Exceptions 9 and 12 to a specific part of the record, we disregard the exceptions as being insufficient rejections of the ALJ’s factual findings.

Mrs. Callard has not demonstrated that the ALJ’s findings of fact were not based on competent, substantial evidence, and her version of the facts should not be substituted for the ALJ’s factual findings. Furthermore, the exceptions primarily re-weigh the evidence presented at the administrative hearing and are improperly cited to the record. Thus, we deny Mrs. Callard’s exceptions to the Recommended Order.

FPL’s Exceptions

On May 31, 2005, FPL filed exceptions to the Recommended Order. FPL contested the ALJ’s findings of fact in regards to the methodology used in calculating the backbill for the Callards’ unmetered electricity. FPL also claimed that the ALJ departed from the law when he ruled that it was not legally entitled to recover the costs of investigating the meter tampering at the Callard residence.

We find that FPL has not demonstrated that the ALJ’s findings of fact were not based on competent, substantial evidence. Furthermore, FPL’s exceptions fail to meet the standard for properly rejecting an ALJ’s conclusions of law, since a valid, legal basis for awarding investigative costs was not contained in the record. FPL has not presented any legally justifiable basis for deviating from or modifying any portion of the Recommended Order. Therefore, we deny FPL’s exceptions to the Recommended Order.

¹ Leticia Callard’s Exceptions to the Recommended Order.

² Leticia Callard’s Exceptions to the Recommended Order, No. 1-8, 10.

Recommended Order

At the formal hearing, the ALJ heard testimony from seven witnesses and received seven exhibits into evidence. After considering the weight of the evidence, the ALJ concluded that it was more likely than not that the Callards' meter had been tampered with, preventing FPL from fully charging the accurate amount of electricity consumed.³ However, the ALJ also determined that FPL's estimate of the amount of unmetered electricity significantly overstated the Callards' probable actual usage, and hence, was not reasonable.⁴ In the Recommended Order, the ALJ recommended that the Commission enter a Final Order "authorizing FPL to retroactively bill Mrs. Callard \$3,975.66 for the unmetered energy she used from January 1999 through July 2002."⁵

Upon review of the record, we find that the Administrative Law Judge's findings of fact are based on competent, substantial evidence in the record. The conclusions of law appropriately apply the provisions of the Florida Administrative Code. For these reasons, we adopt the Administrative Law Judge's Recommended Order as our Final Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Mrs. Leticia Callard's Exceptions to the Recommended Order are denied. It is further

ORDERED that Florida Power & Light Company's Exceptions to the Recommended Order are denied. It is further

ORDERED that the Recommended Order is adopted as our Final Order. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 5th day of August, 2005.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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³ Recommended Order, paragraph 12 at 6.

⁴ Recommended Order, paragraph 15 at 7.

⁵ Recommended Order at 24.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.