

ORIGINAL

August 15, 2005

Docket # 040208-EI  
Order# PSC-050806-FOF-EI

Commissioners Participants

Braulio L. Baez, Chairman  
J.Terry Deason  
Rudolph " Rudy" Bradley  
Lisa Polak Edgar

FPL have presented allegations and have not provided evidence to prove that we have committed such acts. We are asking that such evidence be submitted to the Commission. In turn we have proven that FPL violated the electrical code as such to endanger my families lives by ignoring our complaints about electrical problems in the past.

During Mr. Callard's testimony FPL's representative clearly stated they had removed the protective glass off the meter# 5C35633 and it was presented as such to Mr Callard . The so called visible scratches were never seen by their meter reader's during their monthly readings because they were not there to begin with.

Mr Al Cunill's testimony when asked " Is is possible to have read the meter incorrectly? "yes".

Fpl falsely stated they were allowed access to the property. The property has a 6 ft. fence with locks on the gates and no one available to permit them entrance without prior notice. Therefore, FPL accessed and broke my fence upon entering the premises.

When asked the dates the meter was read FPL fail to provide but 1 incident in July in which they never presented a log of dates, times etc

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- ECL \_\_\_\_\_
- OPC \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SGA \_\_\_\_\_
- SEC   1
- OTH \_\_\_\_\_

Upon reporting the meter# 5646714 to the PSC where we mention the meter running at excess speed as to reflect large consumption of kilowatts used FPL entered the premises and removed the meter and replaced it with the current one. This meter which was not presented and will show the false information on behalf of FPL.

We have proven to be innocent of the allegations and FPL has failed to prove otherwise. We have also established the witness's contradictions in their testimonies. We are therefore asking the reconsideration and hope that justice is served. FPL have committed various untrue facts with no true evidence.

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Proven Facts:

Fpl witness contradict testimony of meter findings ( meter specialist stated scatches were visible and later stated meter had to be removed from the wall to detect scratches.

Specialist stated seal was broken on the side of the meter and later stated the seal ran on the back of the meter. If seal was visible why was the meter removed to check for the so called broken seal. Also not reported by monthly reader of meter.

Fpl provides PSC with over stated meter usage. As to charge 5 years of monies.

Fpl never established normal amount of kilowatts used after 27 years as customer.

Fpl was never fined for violationof electrical code

All allegations were not proven with evidnce to show such acts as accused.

Fpl fail to complete work order of electrical problems in which upon inspection employee dropped meter to later return and never did. ( negligence)

Fpl installed meter#5C46714 which fraudulently provided large # of kilowatts used (ALJ proved otherwise.) Clearly shows false information and bad intent.

It is with this that we ask for reconsideration and review of such contradiction that has worked in favor of Fpl only because they are a very large Company able to provide lawyers to misconscruce such allegations in their favor.

We contine to say that we are inncent of any allegations.

Cc: Judge John VanLaningham  
Blanca S. Bayo

Letica Callard  
7860 S.W. 18 Th Terrace  
Miami, Fl. 33155

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

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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

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

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.<sup>2</sup> 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.

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<sup>1</sup> Leticia Callard’s Exceptions to the Recommended Order.

<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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."<sup>5</sup>

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.

/s/ Blanca S. Bayó

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

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

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<sup>3</sup> Recommended Order, paragraph 12 at 6.

<sup>4</sup> Recommended Order, paragraph 15 at 7.

<sup>5</sup> 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.