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Public Service Commission

COMMISSION
CLERK

August 25, 2006

SENT VIA ELECTRONIC MAIL

Cassandra Eubanks
22128 SW 62nd Court
Boca Raton, FL 33428

Re: Undocketed Complaint No. 641645E, Complaint by Cassandra Eubanks against Florida Power and Light Company

Dear Ms. Eubanks:

After the informal conference, staff pointed out to me one misstatement that I made. I wanted to correct my misstatement.

I stated that the Commission was limited by Rule 25-6-106 Administrative Code, to a minimum repayment of 12 months back bill. However, I should have stated that this issue is governed by Rules 25-6-103, 104 and 106, Florida Administrative Code.

If you decline the settlement offer and choose to pursue this matter, staff would prepare a written recommendation to the Commission for consideration at a later Agenda Conference. That recommendation would lay out the information presented by both parties and we would recommend a specific action by the Commission. At this point, staff believes that the compromise tentatively reached at the Informal Conference may be the most viable option.

During the Agenda Conference, the Commission would make a determination based on the facts presented. The Commission may or may not agree with staff's recommendation and is free to adopt any solution that is consistent with the applicable rules and tariffs. Both the customer and the utility may participate in the discussion with the Commission. If you or FPL disagreed with the Commission's vote, you could file a protest pursuant to Rules 25-22.036 and 28-106.111. The protest proceeding would be like a trial before an administrative law judge. I am attaching a copy of all the rules that I referenced above.

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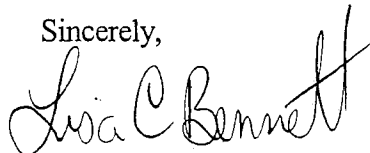
PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

Florida Power & Light Company
First Data Request
Page 2
August 24, 2006

Please accept my apology for the misstatement and chalk it up to a learning curve with a new PSC staff attorney. I encourage both Ms. Eubanks and FPL to continue discussions of settlement within the next 20 days.

Sincerely,

A handwritten signature in black ink that reads "Lisa C. Bennett". The signature is written in a cursive style with a large, stylized "L" and "B".

Lisa C. Bennett
Attorney

LCB:jb

Attachments

cc: Division of Regulatory Compliance & Consumer Assistance (Pena, Plescow)
Division of Economic Regulation (Kummer)
Florida Power & Light Company (Roseanne Lucas, David Lee)

25-6.103 Adjustment of Bills for Meter Error.

(1) For mechanical or lagged demand meters, the error at the customer's average billing demand over the refund period shall be used to determine the amount to refund or backbill the customer. This error shall be determined by testing the meter at both 40 percent and 80 percent of meter full scale value, as read on the standard or reference meter, or as near to these two points as is practicable. The following formula shall be used to estimate the kilowatt error of the meter at the customer's average billing demand:

$$E_{avg} = [E_{80} - E_{40}] / [M_{80} - M_{40}] * [M_{avg} - M_{40}] + E_{40}$$

where:

M_{avg} denotes the customer's average billing demand over the refund period;

M_{40} and M_{80} denote the kilowatt readings on the meter being tested when the reference meter is at 40 percent and 80 percent of

the full-scale value of the meter being tested, respectively;

E_{40} and E_{80} denote the kilowatt errors on the meter being tested corresponding to M_{40} and M_{80} , respectively; and

E_{avg} denotes the estimated kilowatt error at the customer's average billing demand.

The kilowatt error is determined, E_{avg} , shall be expressed as a percentage, P , of the reference meter reading corresponding to

the average billing demand. This percentage shall be used to determine the corrected billing demand for each month of the refund

period. A correction factor, C.F., will be applied to the original billing demand for each month in the refund/backbill period to

determine the corrected billing demand for each month as follows:

$$C.F. * \text{Original Billing Demand} = \text{Corrected Billing Demand}$$

where:

$$C.F. = [1 / (1 + P)]$$

and P is the percentage error of E_{avg} relative to the reference meter reading corresponding to the average billing demand over the refund/backbill period.

(2) For watthour and electronic demand meters, the percentage error to be used for refunds and backbills shall be the same

percentage calculated when tested for watthour registration as set forth in subsection 25-6.058(1) and paragraph 25-6.058(2)(b),

F.A.C., respectively. A correction factor, C.F., will be applied to the original billing demand/energy for each month in the

refund/backbill period to determine the corrected billing demand/energy for each month as follows:

$$C.F. * \text{Original Billing Demand/Energy} = \text{Corrected Billing Demand/Energy}$$

where:

$$C.F. = [1 / (1 + P)]$$

and P is the percentage error calculated according to subsection 25-6.058(1), F.A.C., for watthour meters and paragraph

25-6.058(2)(b), F.A.C., for electronic demand meters.

(3) Over-registering meters. Whenever a meter tested is found to have an error in excess of the plus tolerance allowed in Rule

25-6.052, F.A.C., the utility shall refund to the customer the amount billed in error as determined by subsection (1) or subsection (2)

of this rule for one half the period since the last test, said one half period shall not exceed twelve (12) months; except that if it can

be shown that the error was due to some cause, the date of which can be fixed, the overcharges shall be computed back to but not

beyond such date based upon available records. The refund shall not include any part of any minimum charge.

(4) Under-registering meters.

(a) A utility may backbill in the event that a meter is found to be under-registering. A utility may not backbill for any period greater than twelve (12) months. If it can be ascertained that the meter was under-registering for less than twelve (12) months, then the utility may backbill only for the lesser period of time. In any event, the customer may extend the payments of the backbill over the same amount of time for which the utility issued the backbill.

(b) Nothing in paragraph (4)(a) of this rule shall be construed to limit the application of Rule 25-6.104, F.A.C., or prohibit a utility from backbilling for four years pursuant to subsection (7) of this rule.

(c) Whenever a meter is tested and not subject to Rule 25-6.104 or subsection 25-6.105(5), F.A.C., and is found to have an error in excess of the minus tolerance allowed by Rule 25-6.052, F.A.C., the utility may bill the customer an amount equal to the unbilled error as determined by subsection (1) or subsection (2) of this rule. If the utility has required a deposit for a meter test as permitted under subsection (2) of Rule 25-6.059, F.A.C., the customer may be billed only for that portion of the unbilled error which is in excess of the deposit retained by the utility.

(5) In the event of a non-registering meter or a meter for which the test results are inconclusive, the utility may bill the customer on an estimate based on previous bills for similar usage or on other sources of available data provided.

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(6) Creeping. Whenever a meter, upon proper testing, is found to have a registration error due to "creep" in excess of the tolerance allowed by Rule 25-6.052, F.A.C., the error shall be calculated by timing the rate of "creeping" and assuming that the creeping affected the registration of the meter for 25% of the time, unless a more accurate estimate of the percentage of time the meter should have been inactive can be obtained.

(7) Where a utility determines that a service location has not previously been properly metered through errors of an electrical contractor, the utility may backbill for up to four years from the date of notice to the customer that the error has been discovered.

The customer may extend the payments of the backbill over the same amount of time for which the utility issued the backbill.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.041(1), 366.05(1), (3), (4), 366.06(1) FS. History—New 7-29-69, Amended 4-13-80, 5-3-82, 7-3-06.

25-6.104 Unauthorized Use of Energy.

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.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.05(1) FS. History—New 7-29-69, Amended 4-13-80, 5-3-82, 11-21-

25-6.106 Underbillings and Overbillings of Energy.

(1) A utility may not backbill customers for any period greater than twelve (12) months for any undercharge in billing which is the result of the utility's mistake. The utility shall allow the customer to pay for the unbilled service over the same time period as

the time period during which the underbilling occurred or over some other mutually agreeable time period. Nor may the utility recover in a ratemaking proceeding any lost revenues which inure to the utility's detriment on account of this provision. This rule shall not apply to underbillings provided for in Rule 25-6.103 or 25-6.104, F.A.C.

(2) In the event of other overbillings not provided for in Rule 25-6.103, F.A.C., the utility shall refund the overcharge to the customer for the period during which the overcharge occurred based on available records. If commencement of the overcharging cannot be fixed, then a reasonable estimate of the overcharge shall be made and refunded to the customer. The amount and period of the adjustment shall be based on the available records. The refund shall not include any part of a minimum charge.

(3) In the event of an overbilling, the customer may elect to receive the refund as a credit to future billings or as a one time payment.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.041(1), 366.05(1), 366.06(1) FS. History—New 4-13-80, Amended 5-3-82, 11-21-82.

25-22.036 Initiation of Formal Proceedings.

(1) Application. An application is appropriate when a person seeks authority from the Commission to engage in an activity subject to Commission jurisdiction.

(2) Complaints. A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.

(3) Form and Content.

(a) Application. An application shall be governed by the statute or rules applicable to applications for authority. In the absence of a specific form and content, the application shall conform to this rule.

(b) Complaint. Each complaint, in addition to the requirements of paragraph (a) above shall also contain:

1. The rule, order, or statute that has been violated;
2. The actions that constitute the violation;
3. The name and address of the person against whom the complaint is lodged;
4. The specific relief requested, including any penalty sought.

Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57, 350.123, 364.035, 364.05, 364.057, 364.058, 364.335, 364.337, 366.04, 366.06, 366.071, 366.076(1), 366.8255, 367.031, 367.045, 367.071, 367.081, 367.0814, 367.0817, 367.082, 367.0822, 367.091, 367.101, 367.171 FS. History—New 12-21-81, Formerly 25-22.36, Amended 5-3-99, 7-17-00.

28-106.111 Point of Entry into Proceedings and Mediation.

(1) The notice of agency decision shall contain the information required by Section 120.569(1), F.S. The notice shall also advise whether mediation under Section 120.573, F.S., is available as an alternative remedy, and if available, that pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

(2) Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their

substantial interests shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision.

(3) An agency may, for good cause shown, grant a request for an extension of time for filing an initial pleading. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to said extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters.

(5) The agency may publish, and any person who has timely requested mediation may, at the person's own expense, cause the agency to publish, a notice of the existence of the mediation proceeding in the *Florida Administrative Weekly* or in a newspaper of general circulation in the affected area. The mediation notice can be included in the notice of intended agency action.

(a) The notice of the mediation proceeding shall include:

1. A statement that the mediation could result in a settlement adopted by final agency action;
2. A statement that the final action arising from mediation may be different from the intended action set forth in the notice which resulted in a timely request for mediation;
3. A statement that any person whose substantial interests may be affected by the outcome of the mediation shall within 21 days of the notice of mediation proceeding file a request with the agency to participate in the mediation; and
4. An explanation of the procedures for filing such a request.

(b) The notice shall also advise that in the absence of a timely request to participate in the mediation, any person whose substantial interests are or may be affected by the result of the mediation waives any right to participate in the mediation, and that waiver of participation in the mediation is also a waiver of that person's ability to challenge the mediated final agency action pursuant to Chapter 120, F.S.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57, 120.573 FS. History—New 4-1-97, Amended 3-18-98.