

Ann Cole

From: Ann Cole
Sent: Monday, June 11, 2007 3:50 PM
To: David Smith
Subject: RE: 1st DCA Opinion

Thank you. I will process this Opinion in the docket file.

040208-E1

From: David Smith
Sent: Monday, June 11, 2007 3:33 PM
To: Commission Suite; GCL - Attorneys; Directors - ALL
Subject:

Attached is the 1st DCA's *per curiam* affirmance of the Commission's order in a meter-tampering/backbilling case involving FPL and individual customers. The Commission had adopted a DOAH ALJ's recommended order finding backbilling appropriate, and the customers appealed.

The case is of some note procedurally, since it provided the Supreme Court with an opportunity to review the extent of its jurisdiction in electric matters. After the case was transferred to the Supreme Court from the 2nd DCA, where it was erroneously filed originally, the Court show-caused the parties as to why the case didn't belong in the 1st DCA. Section 350.128(1), Florida Statutes, gives the Supreme Court jurisdiction to review "any action of the commission relating to rates or service" of electric, gas and telephone companies, while the 1st DCA is charged with jurisdiction to review "any other action of the commission." In the end, the Supreme Court concluded that this case involving as it did an individual customer's electric charges was more in the nature of "other action of the commission" and transferred the case to the 1st DCA, notwithstanding that it had heard precisely this kind of case on at least one occasion in the past. The Court apparently is of the view that its jurisdiction should extend to matters affecting rates and service of a company generally, as in a rate case, but not to matters involving charges to individual customers.

It is not clear how closely the Court will limit its exercise of jurisdiction in electric, and presumably, gas and telephone cases, but it recently transferred another case to the 1st DCA involving refunds to FPL customers for faulty demand meters.

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

LETICIA & JORGE L. CALLARD,

Appellants,

v.

CASE NO. 1D06-3453

FLORIDA POWER AND LIGHT,

040208-E1

Appellee.

_____/

Opinion filed June 11, 2007.

An appeal from a final order of the Florida Public Service Commission.
Braulio L. Baez, Chairman.

Leticia & Jorge L. Callard, pro se, Appellants.

David M. Lee of FPL Law Department, Juno Beach; and Samantha M. Cibula and
David E. Smith of the Florida Public Service Commission, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED.

ALLEN, WEBSTER, and BENTON, JJ., CONCUR.