

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 21, 2017

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Page) *PHP SMC RH*
Office of Consumer Assistance and Outreach (Hicks, Plescow)
Division of Economics (Ollila) *A.O. ED PPS* *John Plescow*

RE: Docket No. 20170098-EI – Complaint by Richard Ralph Malcolm against Florida Power & Light Company.

AGENDA: 10/03/17 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Section 366.03, Florida Statutes (F.S.), states that each public utility shall furnish to each person applying for service, reasonably sufficient, adequate, and efficient service. The Commission has jurisdiction as set forth in Section 366.04, F.S., to regulate and supervise each public utility with respect to its rates and service.

Rule 25-22.032, Florida Administrative Code (F.A.C.), implements Chapter 366, F.S., and establishes informal customer complaint procedures that are designed to address disputes, subject to the Commission's jurisdiction, that occur between regulated companies and individual customers. Pursuant to this rule, any customer of a Commission regulated company may file a complaint with the Commission's Office of Consumer Assistance and Outreach whenever the

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customer has an unresolved dispute with the company regarding electric, gas, telephone, water, or wastewater service.

On September 21, 2016, Richard Malcolm filed an informal complaint with the Commission against Florida Power & Light Company (FPL). In his complaint, Mr. Malcolm stated that FPL had wrongfully accused him of meter tampering and improperly backbilled his account for unrecorded electric usage.

On April 28, 2017, staff advised Mr. Malcolm that his informal complaint and FPL's backbilling calculations had been reviewed and that staff had determined that Mr. Malcolm's account was fairly and reasonably backbilled. Staff also advised Mr. Malcolm that FPL did not violate any statute, rule, its company tariff, or orders in the investigation of meter tampering or in the backbilling of electricity used by Mr. Malcolm for which he did not pay due to unauthorized conditions. Staff advised Mr. Malcolm that he had an opportunity to file a petition for formal proceedings.

On May 1, 2017, Mr. Malcolm filed a petition for initiation of formal proceedings. In the formal complaint, Mr. Malcolm claims that FPL has been "unjustly" awarded for allegedly "stolen" electric services. Mr. Malcolm also states that he is not responsible for the services because he has never opened an account with FPL or conducted business with FPL on his own behalf.

This recommendation addresses the appropriate disposition of Mr. Malcolm's complaint against FPL. The Commission has jurisdiction over this matter pursuant to Section 366.04, F.S.

Discussion of Issues

Issue 1: What is the appropriate disposition of Mr. Malcolm's formal complaint?

Recommendation: The appropriate disposition of Mr. Malcolm's formal complaint is to deny the complaint. Mr. Malcolm's account was properly billed in accordance with Commission statutes and rules and FPL's tariffs. FPL did not violate any applicable statute, rule, company tariff or order of the Commission in the processing of Mr. Malcolm's account. (Page)

Staff Analysis: Mr. Malcolm alleges that FPL unjustly backbilled him for meter tampering. He also alleges that the amount of the backbilling is unreasonable. These allegations are discussed below.

Meter Tampering

Meter ACD5293 was located on Mr. Malcolm's premises. On August 18, 2016, FPL determined that meter ACD5293 should be replaced because it had stopped providing meter readings. On August 19, 2016, an FPL meter electrician was dispatched to the location and meter ACD5293 was found in the meter socket with no display and the outer seal missing. An unauthorized metal jumper was found in the right side meter blocks. Meter ACD5293 was removed and a new smart meter, ACD1656, was installed with a locking device on the metal enclosure.

On September 8, 2016, the meter that was removed from Mr. Malcolm's premises, meter ACD5293, was tested by FPL in the field with the unauthorized metal jumper present. The test results reflected that the meter was not registering within the acceptable tolerance prescribed in Rule 25-6.052, F.A.C.¹ The meter was found to have a Weighted Average Registration of 73.98 percent.

On September 19, 2016, FPL reviewed the kWh history for ACD5293 and its smart meter communications and found a sustained drop in kWh from the billing period ending July 11, 2014 to that ending August 11, 2016. There was a substantial increase in kWh usage since the new smart meter, ACD1656, was installed.

On December 8, 2016, a refereed meter test was conducted on the meter removed from Mr. Malcolm's premises, meter ACD5293. The meter test results were below the acceptable tolerance with the jumper and within the acceptable tolerance without the jumper. FPL's test showed a Weighted Average Registration of 83.33 percent with the jumper and 99.62 percent without the metal jumper present. Commission staff also tested the removed meter, with results showing a Weighted Average Registration of 99.54 percent without the metal jumper.

Mr. Malcolm requested that the removed meter, ACD5293, be tested at his premises. On December 19, 2016, meter ACD5293 was tested by FPL and Commission staff at Mr. Malcolm's premises. The test found that when the meter was tested without the metal jumper, the meter recorded consumption accurately.

¹ Rule 25-6.052, F.A.C., states that the performance of watt hour meters shall be acceptable when the average registration error does not exceed plus or minus two percent (98 percent and 102 percent).

Evidence from the FPL field investigation showed the meter removed from Mr. Malcolm's premises, meter ACD5293, had been tampered with. The meter test without the unauthorized conditions reflected that the meter was operating within acceptable tolerances. Staff believes that the unauthorized conditions found on August 19, 2016, at meter ACD5293 and information obtained as a result of the FPL's meter testing show that meter tampering occurred with meter ACD5293.

Backbilling

Section 366.03, F.S., states that all rates and charges made or received by any public utility for service rendered by it and each rule and regulation of such public utility shall be fair and reasonable. Rule 25-6.104, F.A.C., authorizes electric utilities to backbill the customer for a reasonable estimate of the electricity consumed but not metered due to meter tampering or fraudulent use.

FPL's tariff sets forth its fees, services and policies as approved by the Commission. FPL's Fourth Revised Tariff Sheet No. 6.061, Section 8.3, Tampering with Meters, states:

Unauthorized connections to, or tampering with the Company's meter or meters, or meter seals, or indications or evidence thereof, subjects the Customer to immediate discontinuance of service, prosecution under the laws of Florida, adjustment of prior bills for services rendered, and reimbursement to the Company for all extra expenses incurred on this account.

A review of the kWh usage and communication history for the meter removed from Mr. Malcolm's premises, meter ACD5293, revealed a sustained drop in usage from the billing period ending July 11, 2014 through the billing period ending August 11, 2016. Based on the Weighted Average Registration of 73.98 percent, FPL backbilled Mr. Malcolm for the billing period ending July 11, 2014, through the billing period ending August 11, 2016. Upon notification by staff that the more appropriate Weighted Average Registration was 83.33 percent, FPL adjusted the amount backbilled.

The adjusted amount backbilled includes \$1,319.15 for electric service and an additional \$547.28 in investigative charges for an adjusted total amount backbilled of \$1,866.43. The total amount Mr. Malcolm owes to FPL as of September 10, 2017, is \$2,927.82. This amount includes the \$1,866.43 in backbilling and investigative charges, and an additional \$642.63 for two unpaid previous billing periods in 2016 (which originally was \$710.05 and was partially offset by a payment made by Mr. Malcolm for \$67.42) and current charges of \$418.76 for the September 10, 2017 billing period.

Staff believes that Mr. Malcolm's consumption history shows that he benefited from unauthorized conditions at his meter by paying less for electricity than he would have with a properly working meter without a jumper. Staff believes that Mr. Malcolm is responsible for

payment of a reasonable estimate of the electricity used but not originally billed and that FPL may also recover the costs of its investigation of the meter tampering.

Staff reviewed FPL's back billing calculations and determined that Mr. Malcolm's account was fairly and reasonably back billed. Staff believes that FPL has violated no statute, rule, company tariff, or orders in the investigation of meter tampering or in the backbilling of electricity used by Mr. Malcolm for which he did not pay due to unauthorized conditions.

Conclusion

The appropriate disposition of Mr. Malcolm's formal complaint is to deny the complaint. Mr. Malcolm's account was properly billed in accordance with Commission statutes, rules, orders, and FPL's tariffs. FPL did not violate any applicable statute, rule, company tariff or order of the Commission in the handling of Mr. Malcolm's account.

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Page)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Page)