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: May 28, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Lherisson) BYL, JSC
Office of Consumer Assistance and Outreach (Hicks, Plescow) CLM
Division of Economics (Coston) JGH

RE: Docket No. 20200030-EI – Complaint by Juana L. Del Rosario against Florida Power & Light Company regarding backbilling for alleged meter tampering.

AGENDA: 06/09/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On June 13, 2019, Ms. Juana Del Rosario filed an informal complaint with the Florida Public Service Commission (Commission) against Florida Power & Light Company (FPL or Utility).[1] In her informal complaint, Ms. Del Rosario alleged that she was improperly backbilled for up to 48 months of usage, for a total of $2,351.23. Although FPL had found that her meter had been tampered with, Ms. Del Rosario alleged that she did not tamper with the meter.

By letter dated December 17, 2019, staff advised Ms. Del Rosario that her informal complaint had been reviewed by the Commission's Process Review Team, in accordance with Rule 25-22.032, Florida Administrative Code (F.A.C.), and it appeared that FPL had not violated any applicable statutes, rules, company tariffs, or Commission orders. Staff advised Ms. Del Rosario

[1] Complaint Number 1310438E.

that if she disagreed with staff's complaint conclusion, she could file a petition for initiation of formal proceedings for relief against FPL.

Ms. Del Rosario filed a formal complaint against FPL on January 17, 2020, pursuant to Rule 25-22.036, F.A.C. In her complaint Ms. Del Rosario stated that she did not tamper with her meter. However, on May 16, 2019, FPL found that Ms. Del Rosario's smart meter was missing the outer and inner seals, which were an indication that someone other than utility staff accessed the meter enclosure and internal meter workings. On June 12, 2019, FPL provided notice to Ms. Del Rosario that her service would be disconnected due to meter tampering. FPL restored Ms. Del Rosario's service pending the resolution of her complaint.

On March 20, 2020, staff sent a letter to Ms. Del Rosario requesting any additional information or documentation that might assist the Commission in addressing her complaint. Staff did not receive a response from Ms. Del Rosario.

Ms. Del Rosario requests for the Commission to find that FPL incorrectly backbilled her account and to require FPL to give Ms. Del Rosario a credit adjustment of $2,351.23. This recommendation addresses the appropriate disposition of Ms. Del Rosario's complaint against FPL. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: What is the appropriate disposition of Ms. Del Rosario's formal complaint?

Recommendation: Staff recommends that Ms. Del Rosario's formal complaint be denied. Ms. Del Rosario's account was properly backbilled in accordance with Florida 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 Ms. Del Rosario's account. (Lherisson)

Staff Analysis: Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction that affects the complainant's substantial interests and that is in violation of a statute enforced by the Commission, or of any Commission rule or order. Ms. Del Rosario's petition fails to show that FPL's backbilling of her account violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C. Therefore, the Commission should deny Ms. Del Rosario's petition for relief.

On April 18, 2003, Ms. Del Rosario established an account for electric service with FPL at her residence. In 2004, FPL identified a switched meter condition at Ms. Del Rosario's apartment building due to a meter can labeling mistake in part by the builders, the builders' electricians, and FPL when the meter was initially installed. The meters of the apartment building were mislabeled by the builders, the builders' electricians, and FPL at the time the meters were installed causing every residence in the apartment building to be improperly billed. In 2004, FPL corrected the mixed meter condition associated with Ms. Del Rosario's residence.

On September 14, 2010, FPL installed smart meter ACD0735 at Ms. Del Rosario's residence. On February 25, 2019, FPL reviewed the communication from smart meter ACD0735 and found a drop in consumption occurred on May 22, 2014.[2] On May 5, 2019, FPL visited Ms. Del Rosario's residence and found that the outer enclosure seal of smart meter ACD0735 was missing. FPL removed smart meter ACD0735 and installed new smart meter ACD1338 with a locking device and an outer seal on the meter enclosure. FPL sent smart meter ACD0735 to its meter testing center. An inspection of meter ACD0735, on May 16, 2019, revealed that the meter's inner seal was missing; the meter had been internally tampered with by manipulating the current transformer (CT) wires (one of the two CT wires had been cut); and the meter test results showed Full Load (FL) at 49.91%, Light Load (LL) at 49.97%, and Weighted Average (WA) at 49.95%. FPL reported that the meter's missing outer and inner seals were an indication that someone other than utility staff accessed the meter enclosure and internal meter workings for the purpose of meter tampering.

[2] In a supplemental response provided to staff on May 21, 2020, FPL clarified that smart meters do not have a specific event notification that identifies theft. Instead, FPL's revenue protection department correlates data from the meter and several other FPL systems to target leads that will have an acceptable effectiveness rate. Furthermore, analytic tests are not 100% accurate and sometimes theft goes undetected for an extended period of time. FPL stated that it actively creates new analytic tests and improves existing analytic tests using new techniques and smart meter data to identify previously undetected theft conditions. These new analytic tests are applied to the entire population of FPL meters in circulation to help identify any previously undetected theft conditions. FPL states that the case involving Ms. Del Rosarios's service address was identified by a recently developed new analytic test.

On June 3, 2019, FPL assessed Ms. Del Rosario's account a total bill of $209.96. The bill included a $13 reconnection charge; the unpaid balance of the March billing statement of $36.13; the unpaid balance of the April billing statement of $57.59 and a $5 late payment charge; and the unpaid balance of the May billing statement of $93.24 and a $5 late payment charge. On June 4, 2019, FPL received a payment of $99, yielding a total bill of $110.96.

On June 7, 2019, FPL reviewed Ms. Del Rosario's account and determined that a drop in consumption occurred on May 22, 2014, and an increase in consumption occurred after the new meter was installed on May 5, 2019. FPL backbilled Ms. Del Rosario for 48 months of under-recorded usage based on the results of the meter test.[3] FPL billed Ms. Del Rosario for the 50.05% kilowatt hour (kWh) difference that did not register on the meter due to the unauthorized condition.

Ms. Del Rosario's cumulative bill for the period May 21, 2015 through April 22, 2019 was $2,066.99. FPL canceled that bill and rebilled the account $3,658.43, a difference of $1,591.44. Pursuant to Section 8.3 of its tariff, FPL also billed Ms. Del Rosario a tampering penalty of $200.00 and investigative charges of $540.66, bringing the total backbilled amount to $2,332.10.

On June 12, 2019, FPL went to Ms. Del Rosario's residence to disconnect her service due to meter tampering. FPL provided a notice explaining the disconnection of service and the payment required to obtain restoration of service. That same day FPL spoke with Ms. Del Rosario and explained the meter condition, and the payment required to have her service restored. Ms. Del Rosario argued that her service was disconnected because FPL mixed up her meter with another unrelated customer's meter similar to the switch that occurred in 2004. According to FPL, if a mixed meter condition existed, another unrelated customer's service would have been interrupted that day. FPL asserted that Ms. Del Rosario's electric service would have remained operational if the mixed meter condition had continued to exist. Additionally, FPL reported that because the mixed meter condition was corrected in 2004, the meter backbilling Ms. Del Rosario received in 2019 was in no way related to the previous meter condition.

FPL advised Ms. Del Rosario that as the account holder, she is held responsible for the backbill for unmetered consumption since she benefitted from the unauthorized condition. Additionally, FPL offered to reconnect the service with a payment of 50% of the backbill and a payment arrangement for the remaining balance, which Ms. Del Rosario declined.

On June 26, 2019, due to no payment received, FPL closed Ms. Del Rosario's account, effective June 12, 2019. FPL sent Ms. Del Rosario a final bill for $2,425.09, including the final bill charges of $73.86 for service used from May 21, 2019 to June 12, 2019, a $97.96 past due balance, a $13.00 reconnection charge, the backbill charges of $2,332.10, a $90.00 deposit refund, and a $1.83 deposit interest credit.

On July 2, 2019, FPL cancelled the bill charges of $73.86 consumed from May 21, 2019 to June 12, 2019, bringing the remaining balance to $2,351.23. That same day, FPL contacted Ms. Del Rosario and advised that, as a courtesy, her account would be reopened and the service would be

[3] Rule 25-6.104, F.A.C., provides that 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.

reconnected, pending the resolution of her complaint with the Commission. Ms. Del Rosario accepted the offer to reconnect the service pending the Commission's review of her complaint. The account was reopened, and a request to reconnect service at the residence was issued. The service was reconnected and a $13 reconnection charge was issued, which yielded a new balance of $2,364.23. FPL told Ms. Del Rosario that the backbill charges of $2,332.10 would be protected[4] from collection action pending the resolution and closure of her complaint filed with the Commission; however, she would need to remain current on her bills because the unauthorized condition (tampered meter) was corrected.

On August 6, 2019, Commission staff discussed with FPL whether the Utility would be willing to modify the payment arrangements for the disputed balance. FPL stated that if Ms. Del Rosario could make an initial payment of $300, then the remaining unpaid balance of $2,032.10 could be paid in 48 payments, including the applicable late payment charges. Commission staff relayed FPL's offer of payment arrangement to Ms. Del Rosario, which she rejected.

Based on staff's review of the billing and payment documentation provided by FPL, it appears that Ms. Del Rosario has a poor payment history. She has made several late payments and partial payments. As a result of her late payments, her service has been interrupted previously. Upon review of information provided to staff and discussions with both the Utility and Ms. Del Rosario, there is no evidence that FPL backbilled Ms. Del Rosario incorrectly. Meter tests performed by FPL on smart meter ACD0735 revealed a registration below the allowable tolerances due to the tampered CT wires. Ms. Del Rosario was backbilled for 48 months based on the data collected by FPL, which indicated that consumption dropped on May 22, 2014, one of the two CT wires in smart meter ACD0735 had been cut, and consumption increased after the new meter was installed on May 5, 2019. Ms. Del Rosario was backbilled the 50.05% kWh difference that did not register on the meter due to the meter tampering. Thus, staff recommends that the Commission deny Ms. Del Rosario's complaint as it does not demonstrate that FPL's backbilling of her account violates any statutes, rules, or orders, or that FPL's backbilling of 48 months is unreasonable.

[4] Pursuant to Rule 25-22.032(3), F.A.C., a customer is afforded protection from disconnection during the informal complaint process; therefore, "a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by Commission staff."

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. (Lherisson)

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.