State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 22, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Vining)
Division of Regulatory Compliance & Consumer Assistance (Plescow)

RE: Docket No. 040543-EI – Complaint by Michael Hedrick against Florida Power & Light Company regarding backbilling for alleged meter tampering.

AGENDA: 8/3/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040543.RCM.DOC

Case Background

On August 1, 2003, Michael Hedrick filed complaint number 548198E with the Commission's Division of Consumer Affairs (CAF) against Florida Power & Light Company (FPL). The customer stated that FPL cancelled his budget billing and backbilled him for 28 months of consumption that was not recorded because of alleged meter tampering. The customer denied the allegation of current diversion resulting from meter tampering. He also stated that FPL staff removed his old meter and installed a new meter, placing two special locks on the can so the meter could not be removed.

The customer claimed that two years prior to the backbilling, he completed remodeling on his house that resulted in his average monthly consumption falling from approximately 3300 kwh per month to about 750 kwh per month. Mr. Hedrick stated that he had low consumption in his house because there was no one there during the day as he was working nights, something that he no longer does. Also, he stated that his air conditioner has not been in operation since March 2001 and that it cannot be turned on because he put a padlock on the unit breaker and he cannot find the key to the padlock. Mr. Hedrick stated that FPL placed a second meter on the pole leading to his house and he was told by FPL that the consumption read by this second meter differed from the meter in the can. The customer believes that the meter in the can was so old that it perhaps was not registering properly.

In its response to the customer's complaint, FPL's records indicate that on August 3, 1998, electric service was established in the name of Michael Hedrick and the meter of record was 2C70297. FPL states that on the regular read dates of April 30, 2002, through January 30, 2003, FPL's meter reader reported that he resealed the meter on six occasions due to either the seal being missing or the seal being cut. During that same time period, the meter reader reported that he was unable to reseal the meter on two occasions when the seal was gone. On March 3, 2003, the meter reader, after resealing the meter again, requested FPL's Revenue Protection Department to investigate the matter because of multiple reseals.

FPL's records show that on April 1, 2003, the account billed for 727 kwh, for an amount of $63.16, and on April 30, 2003, the account billed for 789 kwh, for an amount of $72.37. On May 7, 2003, an FPL Revenue Protection Investigator inspected the meter and noticed that the meter seal that was installed on March 3, 2003, was cut. He noted that the central air conditioning and pool pump were on. As a result of the inspection, on May 20, 2003, a remote meter was installed on the pole specifically to measure the amount of energy going to the customer's home. The set reading was 003442. FPL reported that the customer observed the setting of the remote meter. FPL's records further indicate that he contacted the company the same day, and he was informed that the device was safe and would eventually be removed.

On May 30, 2003, the meter reading on the customer's regular meter was 4042, billing 910 kwh, for an electric amount of $83.78, and a budget bill amount of $68.99. On the same day, the remote meter reading was 004235, indicating 793 kwh had been recorded in 10 days, which FPL projected would be 2376 kwh in 30 days. Additionally, on June 30, 2003, the meter reading on the customer's regular meter was 5136, billing 1094 kwh, for an electric amount of $101.14, and a budget bill amount of $73.62. On the same day, the remote meter reading was 007255, indicating 3020 kwh had actually been recorded in 31 days.

FPL maintains that the two readings obtained on the remote meter, along with the cut seal conditions occurring over the span of one year, is sufficient evidence of meter tampering. As a result, on July 16, 2003, a Revenue Protection Meter Man removed meter 2C70297 with a reading of 5896 and set new meter 5C19704. Again, it appeared that the meter had been tampered with because the meter man noticed the meter seal had been cut and the meter had shiny blades. The meter man then installed two locks on the new meter. The customer was also removed from budget billing in order to backbill the account. On July 30, 2003, the meter reading on the new meter was 00371, billing 1131 kwh, for an electric amount of $104.96. There was a debit deferred balance of $42.31 that was added back in bringing the total balance to $147.27.

FPL's records show that on July 31, 2003, meter 2C70297 tested with a Weighted Average Registration of 99.69%. The tester noted the inner meter seal was intact, but there was blade wear. The tester noted that the blade wear was extremely heavy, indicative of meter swapping or the meter being turned upside down. A visual examination of the meter confirmed extremely heavy blade wear causing the blades to become a bright copper color. On the same day, Mr. Hedrick contacted the company to question why he had been removed from Budget Billing. He was referred to the Revenue Protection Representative who informed him of the tampering and that he would receive a corrected bill and letter in the mail. The customer was informed that the electric usage at his residence had been monitored by a special meter and it did not agree with the consumption recording on his meter of record. Therefore, the billing for the period March 15, 2001, through July 30, 2003, totaling $2,144.72, was canceled and rebilled for $8,424.56, a difference of $6,279.84. Investigation charges totaling $553.33 were assessed bringing the total backbilled amount to $6,833.17. The total account balance was $6,980.44.

According to FPL, backbilling was started from the billing period ending on March 15, 2001, due to a significant and sustained drop in kwh registration. Mr. Hedrick's previous years of consumption showed typical seasonal fluctuations, but for the period March 2001 through July 2003, these fluctuations were not apparent. The customer's account was rebilled using previous usage, usage on the new meter, and the seasonal average. FPL states that it maintains records that can track the monthly residential kilowatt hour sales within a geographic area. From these records a chart is prepared by dividing the monthly sales by the annual sales to obtain the percentage of usage for each month of the year.

Mr. Hedrick's historical kilowatt hour consumption is as follows:

	2003	2002	2001	2000	1999	1998
January	874	904	3375	1414	1740	
February	912	656	771	1514	1798	
March	727	924	208	1682	1342	
April	789	876	799	2088	2296	
May	910	1155	208	2560	2528	
June	1094	698	690	1901	2700	
July		666	766	2970	3090	1157
August		733	675	2517	3232	3229
September		904	696	2189	2843	2904
October		558	1088	1536	2843	2726
November		572	626	1639	2272	1802
December		1074	729	1850	1922	1914

FPL's records reflect that a corrected bill and letter of explanation was mailed to the customer. On August 1, 2003, a representative of FPL spoke with Mr. Hedrick and explained the condition initially reported by the meter reader, that the remote meter had been installed on the pole for monitoring purposes, and the subsequent backbilling which resulted. The representative explained that the difference in consumption between the customer's regular meter and the remote meter was a clear indication of tampering as were the multiple cuts and missing seals.

The case was closed on October 29, 2003, and a backbilling letter was sent to the customer, indicating that it appeared that FPL was in compliance with Rule 25-6.104, Florida Administrative Code.

On December 1, 2003, the customer's request to participate in the informal conference process was received. The customer's completed Form X was timely received on December 17, 2003. Mr. Hedrick stated on Form X that $6,833.17 is the amount in dispute.

On January 20, 2004, the customer was informed by Commission staff that FPL had reduced the backbilled amount by $1,942.42, making the new backbilled amount $4,889.75. FPL indicated that the initial backbilling was based on the two months of usage recorded on the remote meter and the month of February 2001. The new amount has been calculated using March and November of 2000, as well as the two months of usage from the remote meter. According to the utility, this adjustment was done to provide the most benefit to the customer. FPL was willing to accept a down payment of $500.00 and the remaining balance of $4,389.75 could be paid in installments of $200.00 in addition to the regular bill each month. FPL stated there would be an interest charge each month for the backbilled amount.

Mr. Hedrick rejected the offer from FPL on January 21, 2004. He made a counteroffer and indicated he was willing to pay a new deposit, but was not willing to pay the backbilled amount. He wanted a new backbilled amount calculated only using the period that the remote meter was in place. The customer believed that there had not been a significant drop in usage, and that no current diversion occurred.

On February 3, 2004, FPL contacted Commission staff to make a new settlement offer. FPL was willing to agree to a lump sum payment of $4,500.00. On February 4, 2004, FPL informed Commission staff that a company representative had contacted the customer, but he did not agree to the new offer. FPL also informed Commission staff that it would not agree to Mr. Hedrick's counteroffer of a new backbilling calculated only using the period that the remote meter was in place.

An informal conference was held on February 25, 2004. Mr. Hedrick, FPL staff, and Commission staff attended. The customer made a settlement offer of $500.00, which FPL rejected. Mr. Hedrick indicated that if FPL did not agree to his settlement offer, he would file Chapter 7 bankruptcy. The informal conference ended without reaching a settlement agreement but the customer stated he was still willing to negotiate. To date, no settlement has been reached between the customer and FPL.

This recommendation addresses Mr. Hedrick's complaint against FPL for backbilling for alleged meter tampering. The Commission has jurisdiction pursuant to Sections 366.04 and 366.05, Florida Statutes.

Discussion of Issues

Issue 1: Is there sufficient evidence to demonstrate that meter tampering occurred at the residence of Michael Hedrick at 2011 North 57th Terrace, Hollywood, Florida, to allow FPL to backbill Mr. Hedrick's account for unmetered kilowatt hour consumption?

Recommendation: Yes. Prima facie evidence of meter tampering outlined in FPL's reports demonstrates that meter tampering occurred at Mr. Hedrick's residence. As the customer of record during the entire period in question, Mr. Hedrick should be held responsible for a reasonable amount of backbilling. (Vining, Plescow)

Staff Analysis: Rule 25-6.104, Florida Administrative Code, states that "[i]n the event of unauthorized or fraudulent use, or meter tampering, the utility may bill the customer on a reasonable estimate of the energy used." This rule allows the utility to backbill the customer for a reasonable estimate of the electricity used but not metered due to meter tampering. The utility, in this case FPL, need not demonstrate who tampered with the meter. FPL must only show that the meter was tampered with, and that the customer of record benefited from the electricity.

FPL reported that on six occasions between April 30, 2002, and January 30, 2003, FPL's meter reader resealed the meter due to either the seal being missing or the seal being cut. Then, on March 3, 2003, after resealing the meter again, the meter reader requested FPL's Revenue Protection Department investigate the matter. On May 7, 2003, an FPL Revenue Protection Investigator noticed that the seal installed on March 3, 2003, was cut. As a result, on May 20, 2003, a remote meter was installed on the pole to measure the amount of energy going to Mr. Hedrick's home. The set reading was 003442. On May 30, 2003, the meter reading on the customer's regular meter was 4042, billing 910 kwh, while the reading on the remote meter was 004235, indicating 793 kwh had been recorded in 10 days, which the utility projected would be 2376 kwh in 30 days. On June 30, 2003, the meter reading on the customer's regular meter was 5136, billing 1094 kwh, while the reading on the remote meter was 007255, indicating 3020 kwh had actually been recorded in 31 days.

As a result of the readings from the remote meter and the numerous damaged seals, FPL removed meter 2C70297 and set new meter 5C19704 on July 16, 2003. The meter man noted that the old meter's seal had been cut and the blades were shiny. The meter man then installed two locks on the new meter. On July 30, 2003, the meter reading on the new meter was 00371, billing 1131 kwh for a 14 day period.

FPL's records show that on July 31, 2003, meter 2C70297 tested with a Weighted Average Registration of 99.69%. The tested noted that the inner meter seal was intact, but there was extremely heavy blade wear, indicative of meter swapping or the meter being turned upside down.

Based on the information contained in FPL's reports, staff recommends that the Commission find that FPL has demonstrated that meter tampering occurred at 2011 North 57th Terrace, Hollywood, Florida. In addition, FPL stated that Michael Hedrick has been the customer of record at that address since August 3, 1998. Therefore, pursuant to Rule 25-6.104, Florida Administrative Code, Mr. Hedrick should be held responsible for a reasonable amount of backbilling, as he was the customer of record during the entire period in question.

Issue 2: Is FPL's calculation of the backbilled amount of $4,889.75, which includes investigation charges of $553.33, reasonable?

Recommendation: Yes. (Vining, Plescow)

Staff Analysis: Upon finding evidence of meter tampering as described in Issue 1 of this recommendation, FPL backbilled Mr. Hedrick's account from March 15, 2001, when a significant and sustained drop in kwh registration began, through July 30, 2003, when the new meter was installed. The original billing for this period, totaling $2,144.72, was cancelled and rebilled for $8,424.56, a difference of $6,279.84. Investigation charges of $553.33 were assessed by FPL bringing the total backbilled amount to $6,833.17 ($6,279.84 + $553.33).

Mr. Hedrick's previous years of consumption showed typical seasonal fluctuations, but for the period March 2001 through July 2003 these fluctuations were not apparent. The amount of the backbilling was based upon the two months of actual consumption recorded on the remote meter, the usage for February 2001, which is the month before FPL saw a significant drop in usage, as well as the seasonal average. The backbilled amount was determined by subtracting the billed kwh from the estimated monthly kwh. Instead of using an average kwh for the estimated monthly kwh, FPL multiplied the annual estimate of kwh to the specific monthly percentage usage, which is determined for each month in each year. This calculation compensates for seasonal fluctuations. The specific monthly percentage usage is derived from records which FPL maintains that allow it to track the monthly residential kilowatt hour sales within a specific geographic area. From these records, a chart is prepared by dividing the monthly sales by the annual sales to obtain the percentage of usage for each month in each year. FPL's calculation of the backbilled amount appears to be appropriate.

In January 2004, in an effort to settle Mr. Hedrick's complaint, FPL recalculated the backbilled amount using March and November of 2000, instead of the month of February 2001. The two months of actual usage from the remote meter as well as the seasonal average were also still used in the calculation. The new backbilled amount is $4,889.75, which still includes investigation charges of $553.33. FPL states that the recalculation of the backbilled amount was done as a courtesy to provide the most benefit to the customer. The calculation of the new backbilled amount also appears appropriate.

Pursuant to Rule 25-6.104, Florida Administrative Code, if meter tampering is present, FPL may bill the customer based upon a "reasonable estimate" of the energy consumed. Staff has reviewed the billing history records and other documentation provided by FPL to support its calculation of the backbilled amount. Staff believes that the methodology used by FPL to calculate the amount backbilled to Mr. Hedrick's account is a reasonable estimate of the energy used but not captured by the meter at his residence as a result of meter tampering. Therefore, staff recommends that the Commission find that the backbilled amount of $4,889.75, which includes investigation charges of $553.33, is reasonable.

Issue 3: Should this docket be closed?

Recommendation: Yes, 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. (Vining)

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.