

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: November 23, 2004

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

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

RE: Docket No. 040977-EI – Complaint by John Aseere against Florida Power & Light Company regarding backbilling for alleged meter tampering.

AGENDA: 12/07/04 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040977.RCM.DOC

Case Background

On February 5, 2004, complaint number 582806E was filed against Florida Power and Light Company (FPL) on behalf of John Aseere (customer). The customer stated that FPL notified him of an unauthorized meter condition at his residence that resulted in his electric usage not being properly recorded. As a result, FPL is backbilling Mr. Aseere more than \$4,500.00 for a 3 year period beginning September 2000. The customer denies tampering with his meter.

FPL offered Mr. Aseere a reduction of 25% off the back billed amount and payment arrangements on the remaining balance. The customer declined the offer and counter offered with a payment plan of \$5.00 a month, along with payment of his regular monthly bill.

Staff conducted an informal conference on July 28, 2004. No resolution was reached. On August 4, 2004, the customer contacted Commission staff indicating that he was concerned about receiving high bills. Staff contacted FPL and requested an energy audit of Mr. Aseere's residence. According to FPL, attempts to schedule the audit were unsuccessful. The customer has turned down all offers made by the company.

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This recommendation addresses Mr. Aseere'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 John Aseere at 3939 NW 18th Avenue, Fort Lauderdale, Florida, to allow FPL to backbill Mr. Aseere’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. Aseere’s residence. As the customer of record during the entire period in question, Mr. Aseere should be held responsible for a reasonable amount of backbilling. (Rodan, 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 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.

According to the company’s report, Mr. Aseere established service with FPL at 3939 NW 18th Avenue, Fort Lauderdale, Florida on May 28, 1992. The assigned meter of record was 5C25097. FPL’s records indicate that on February 27, 2003, a meter reader issued a request to FPL’s Revenue Protection Department to investigate an unauthorized meter condition. The meter reader noted that the meter can was damaged and the meter seal was rigged. FPL reported that at various times during its investigation, the company projected Mr. Aseere’s monthly usage based on actual consumption data obtained via a “check” reading and compared it to the customer’s monthly meter reading.

“Check” readings were done on June 4, 2003, July 22, 2003, September 10, 2003, and September 17, 2003. Based on the “check” readings, FPL projected Mr. Aseere’s KWH consumption. In every instance, according to FPL’s report, the KWH consumption determined on the regular meter read date was much less than the projected KWH consumption. FPL also noted that the meter reading on September 17, 2003, was regressive from the reading of September 10, 2003 (regressed 312 KWH). The company provided staff the meter readings taken from Mr. Aseere’s residence prior to the filing of this complaint. They are reflected in the table below.

Meter Reading Date	Reading	KWH Usage	Days in Cycle
January 28, 2003	13968	1147	33
February 27, 2003	15427	1459	30
March 28, 2003	15854	427	28
April 28, 2003	17644	1790	32

Meter Reading Date	Reading	KWH Usage	Days in Cycle
May 28, 2003	18827	1183	30
June 4, 2003*	19485	658	7
June 26, 2003	20272	787 (2820 Projected)	22
July 22, 2003*	21173	901	26
July 28, 2003	21787	1515 (3070 Projected)	6
August 26, 2003	23184	1397	29
September 10, 2003*	24399	1215	15
September 17, 2003*	24087	-312	7
September 25, 2003	24872	1688 (2430 projected)	8
October 24, 2003**	26485	1608	29
November 24, 2003	02059	2059	31

* "Check" reading

** Meter replaced

FPL reported that the meter (#5C25097) at Mr. Aseere's residence was removed on October 24, 2003, and a new meter (#5C26522) was installed. The meter that was replaced (#5C25097), which was tested on October 28, 2003, tested with a Full Load at 83.38%, a Light Load at 0%, and a Weighted Average Registration of 67.07%. In addition to reporting that the meter was not accurately registering usage, the test report also noted that Mr. Aseere's meter reflected blade wear indicative of the meter being turned upside down, a tampered outer seal, an intact inner seal, and a bent canopy ring. While FPL reported that the meter was not found in the upside position and no unauthorized meter was found, it asserts that the projections and regressive reading clearly indicate tampering indicative of these two conditions.

On the regular read date of November 24, 2003, the meter reading on the newly installed meter was 02059. Mr. Aseere was billed for 2059 KWH. The usage was based on 31 days, and it was in line with the projections made by FPL's investigator when he obtained the check readings.

Based on the information contained in FPL's reports, staff recommends that the Commission find that FPL has demonstrated that meter tampering occurred at 3939 NW 18th Avenue, Fort Lauderdale, Florida. In addition, FPL stated that John Aseere has been the customer of record at that address since May 28, 1992. Therefore, pursuant to Rule 25-6.104, Florida Administrative Code, Mr. Aseere 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 \$4,747.50, which includes investigation charges of \$350.61, reasonable?

Recommendation: Yes. (Rodan, Plescow)

Staff Analysis: Upon finding evidence of meter tampering as described in Issue 1 of this recommendation, FPL backbilled Mr. Aseere's account from September 25, 2000, when a significant and sustained drop in KWH registration began, through October 24, 2003, when the new meter was installed. The original billing for this period, totaling \$4,701.99, was cancelled and rebilled for \$9,098.88, a difference of \$4,396.89. Investigation charges of \$350.61 were assessed by FPL bringing the total backbilled amount to \$4,747.50 (\$4,396.89 + \$350.61). The rebilling was based by calculating the actual consumption of the years 1999 and 2000, usage on the new meter, along with the seasonal average. FPL's calculation of the backbilled amount appears to be 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. Aseere'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 \$4,747.50, which includes investigation charges of \$350.61, is reasonable.

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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. (Rodan)

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.