

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: February 17, 2005

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

FROM: Office of the General Counsel (Gervasi)
Division of Economic Regulation (Kummer)

RE: Docket No. 040558-EI – Complaint by José Antonio Rodriguez against Florida Power & Light Company regarding backbilling for alleged meter tampering.

AGENDA: 03/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040558.RCM.DOC

Case Background

On January 30, 2004, Mr. Michael Cummings, Esq., filed an informal complaint with the Commission's Division of Regulatory Compliance and Consumer Assistance (RCCA) on behalf of his client, Mr. José Rodriguez, customer of Florida Power & Light Company (FPL or utility), against FPL. According to Mr. Cummings, FPL inappropriately backbilled Mr. Rodriguez in the amount of \$8,376.61, including investigative costs, for alleged unmetered energy when only 57.5% of that amount is supportable based on the occupancy levels of the dwelling indicated by metered water usage. Mr. Cummings requested that the total amount that FPL has rebilled Mr. Rodriguez be reduced by 42.5%, as well as a payment plan for Mr. Rodriguez that would allow for the immediate reconnection of electricity to his premises.

In response to the complaint, FPL stated that upon finding physical evidence of meter tampering, it backbilled Mr. Rodriguez's account from July 27, 1998, when a noticeable and sustained drop in consumption began, until January 28, 2003, when a new meter was installed. On June 10, 2003, Mr. Rodriguez's account was disconnected after proper final notice due to

nonpayment of \$8,375.65. In an effort to settle this dispute, FPL offered to reduce the total backbilling by \$1,360 and to reconnect the service for a payment of \$3,500, with a payment arrangement to be established for the balance of \$3,516.61. Since no payment was received, the account was closed.

Upon review of the complaint and FPL's documentation and calculations provided in response thereto, by letter dated January 5, 2004, RCCA advised Mr. Cummings that it appeared that FPL had backbilled Mr. Rodriguez's account in compliance with Commission rules, and that no adjustment was appropriate. A request for an informal conference was received on January 30, 2004, after which time the complaint was forwarded to a process review team in accordance with Rule 25-22.032(7), Florida Administrative Code.¹ Upon review of the complaint file and the utility's methodology for estimating the amount of usage in question, the process review team determined that it did not appear that a violation of applicable statutes, rules, company tariffs, or orders of the Commission occurred. By letter dated April 5, 2004, to the customer, the complaint file was closed. On April 21, 2004, Mr. Cummings contacted staff counsel to advise that he was dissatisfied with the outcome of the complaint process and that he would file a formal complaint against FPL.

On June 16, 2004, Mr. Cummings filed a formal complaint against FPL on behalf of Mr. Rodriguez, seeking a determination of a reasonable estimate of the energy used, a payment plan set up to cover the same period over which the liability accrued, and the immediate restoration of the supply of electricity to Mr. Rodriguez's dwelling. This docket was opened to process the formal complaint.

On July 13, 2004, staff offered to conduct an informal conference to facilitate settlement of the dispute. Staff counsel was informed by counsel for FPL that the parties were very close to resolution of the dispute and that it did not appear that an informal conference would be necessary. On July 27, 2004, counsel for FPL informed staff counsel that the parties had reached an agreement settling the dispute and that the agreement had been put to writing. The parties were only waiting to obtain the customer's signature on the agreement, after which time Mr. Cummings was to file a voluntary withdrawal of the complaint. Since that time, counsel for FPL has indicated on several occasions that Mr. Cummings has had continuing difficulty in contacting his client to obtain his signature on the agreement.

On November 15, 2004, counsel for FPL advised that he remained in contact with Mr. Cummings, that the agreement had to be adjusted to account for elapsed time, and that the second deadline for signing the revised agreement was approaching. On January 26, 2005, Mr. Cummings advised staff counsel that he has effectively lost contact with his client, but that he would continue to attempt contact as he would prefer that the matter be resolved by way of the settlement agreement. Mr. Rodriguez, along with his wife and two children, apparently ceased to inhabit the premises after the disconnection took place and the home telephone number has also been disconnected. Mr. Cummings' prior contact with the customer has been through the

¹ Rule 25-22.032(7), Florida Administrative Code, was amended January 29, 2004, to require that a process review team consisting of staff from the Office of the General Counsel, RCCA, and the appropriate technical division review the complaint file to determine further handling if the customer or the company is not in agreement with Commission staff's proposed resolution.

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customer's wife, as Mr. Rodriguez speaks only Spanish. Mr. Cummings had left messages on the Rodriguez's cell phone, but the messages had not been returned.

On February 3, 2005, Mr. Cummings advised that he had spoken with the customer's wife on that same date to advise her that the settlement needed to be signed as soon as possible, and before February 17, 2005 (the due date for the filing of this recommendation). However, to date, the customer has not signed the agreement. The electricity has remained disconnected due to nonpayment, as the dispute remains unresolved. Staff has postponed filing a recommendation on the matter until now, with the understanding that the dispute has been all but resolved with only the customer's signature on the agreement lacking. However, it appears questionable at this time whether the customer will sign the agreement. Therefore, this recommendation addresses the formal complaint filed by Mr. Cummings on behalf of Mr. Rodriguez.

The Commission has jurisdiction pursuant to Section 366.05, Florida Statutes, administers consumer complaints pursuant to Rule 25-22.032, Florida Administrative Code, and administers formal complaints pursuant to Rule 25-22.036, Florida Administrative Code.

Discussion of Issues

Issue 1: Is there sufficient cause to determine whether meter tampering occurred at the Rodriguez residence at 12884 SW 10th Street, Miami, FL 33184, to allow FPL to backbill the Rodriguez account for unmetered kilowatt hours?

Recommendation: Yes. Prima facie evidence of meter tampering noted in FPL's reports demonstrates that meter tampering occurred. Therefore, the customer of record, Mr. Rodriguez, should be held responsible for a reasonable amount of backbilling.

Staff Analysis: In support of its conclusion that meter tampering occurred at 12884 SW 10th Street, FPL documented that on December 12, 2002, a request to investigate an unauthorized meter condition was issued to FPL's Revenue Protection Department. The request indicated that there was a hole in the meter canopy with an object. The object was a wire and the wire was removed and sent to the Revenue Protection Department to be held as evidence. According to FPL, this type of tampering involves a hole being drilled or made in the meter canopy so that an object can be inserted through the hole to either reduce or stop the meter disk rotation, preventing proper recording of the electrical consumption. Moreover, FPL noted that a customer's regular monthly bill provides the meter reading date for the following month. Anyone using a wire in a hole in the meter canopy would remove the wire prior to the meter reading date and insert the wire once the meter reading date had passed. A meter reader would not be able to see a hole in the meter canopy. This condition was discovered when an early reading was obtained in December 2002 and the wire was found inserted in the hole.

FPL advises that meter number 5C90524 was originally set at 12884 SW 10th Street on May 1, 1986. Based on the regular read date of December 26, 2002, the customer was billed for 673 kwh of usage, for an electric amount of \$55.19. On January 28, 2003, the meter was removed and sent for testing. The meter reader noted a hole in the meter canopy at that time. This was also the regular read date and the meter reading showed 588 kwh of usage, for an electric amount of \$49.05. Meter number 5C90524 was replaced by new meter number 5C49983. On February 18, 2003, Meter number 5C90524 was tested and revealed a weighted average registration of 99.17% without the wire inserted. The tester noted the inner meter seal was intact, a hole in the meter canopy, scratches on the canopy and scratches on the disk. According to FPL, a manual diversion such as a hole in the canopy with a wire requires that someone remove the wire from the hole and put it back in periodically. It cannot be determined exactly how often this occurred. However, the meter condition and kwh comparison indicates tampering had been occurring for a long time. Finally, the complaint does not dispute that meter tampering allegedly occurred; but states that the alleged meter tampering was inherited by Mr. Rodriguez.

After establishing direct benefit of the unbilled energy, the utility may bill the customer based on a reasonable estimate of usage. Rule 25-6.105, Florida Administrative Code, provides 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." FPL has clearly demonstrated that the meter at 12884 SW 10th Street was altered in order to prevent an accurate recording of the energy used. Moreover, FPL reported that electric service was established in the name of José Rodriguez effective May 1, 1986. Because the account was in Mr. Rodriguez's name during the entire period in question, he should be held responsible for a reasonable amount of backbilling.

Issue 2: Is FPL's calculation of the backbilled amount of \$8,376.61, which includes investigative charges of \$261.03, reasonable?

Recommendation: Yes, the backbilled amount of \$8,376.61 is a reasonable approximation of the unbilled energy plus investigative costs. The customer should be encouraged to contact FPL immediately to make payment arrangements for this amount in order to have his service restored.

Staff Analysis: The complaint alleges that the backbill is not a reasonable estimate of the energy used for the following reasons:

- The selection of the start date of July 1998, using criteria – a significant drop in recorded monthly usage of electricity – that would equally apply to a start date in any of the following four years, October 1999, July 2000, April 2001, and September 2002 per FPL's own record of usage attached to the complaint as Exhibit A (and to this recommendation as Attachment A);
- The use of a single month's reading on which to estimate and re-bill five years' usage of electricity of the single month's reading which was taken when the property was at its highest ever occupancy of three adults and two children, while during the five-year period the level of occupancy of the dwelling had fluctuated, and at times had been unoccupied; and
- FPL's refusal to consider a recalculation of electricity usage indicating the backbills were excessive by 42.5% during the re-billed five-year period when the level of occupancy of the dwelling fluctuated based on actual metered water usage records that FPL itself had proposed would approximate occupancy, as shown on Exhibit B to the complaint (and attached to this recommendation as Attachment B).²

In the complaint, Mr. Cummings further states that pursuant to Rule 25-6.103, Florida Administrative Code, Adjustment of Bill for Meter Error, a "customer may extend the payments of the backbill over the same amount of time for which the utility issued the backbill." He argues that this is a practical solution that allows the customer the same time period to pay off a backbilled liability as the time period over which it accrued. However, FPL refused to allow Mr. Rodriguez to pay off the backbilled amount over the coming five years to mirror the period over which it accrued because it claimed that the rule does not apply to unauthorized use. FPL instead demanded an initial payment of 50% of the backbilled amount, and when that was not paid in a timely fashion, disconnected the supply of electricity to the dwelling. According to the complaint, FPL relies on the instruction in the rule that states "Nothing in this subsection shall be construed to limit the application of Rule 25-6.104, F.A.C." Mr. Cummings argues that since Rule 25-6.104 deals solely with the calculation of a "reasonable estimate of the energy used," it is unclear as to how this negates the customer's right to extended payment terms. Finally, Mr. Cummings argues that FPL's hard-line demand for payment seems used to merely deflect criticism of FPL for its slowness in taking five years to investigate the alleged meter tampering inherited by Mr. Rodriguez. Mr. Rodriguez seeks a determination of a reasonable estimate of the

² These arguments were also made during the course of the informal complaint process.

energy used, a payment plan set up to cover the same period over which the liability accrued, and the immediate restoration of the supply of electricity to his dwelling.

FPL's documentation provides that the billing from December 2002 through May 2003 is as follows:

<u>Service Date</u>	<u>KWH</u>	<u>Amount</u>
December 26, 2002	673	\$55.19
January 28, 2003	588	\$49.05
February 27, 2003	1380	\$116.82
March 28, 2003	2248	\$193.04
April 28, 2003	1878	\$165.22
May 28, 2003	2587	\$229.74

Meter number 5C90524 was removed on January 28, 2003, and new meter number 5C49983 was set. The February, March, and April 2003 bills were on the new meter. According to FPL, these bills demonstrate the customer's usage capability. FPL states that the customer did not contact FPL concerning the higher February and March 2003 bills, and those bills were paid.

Upon finding physical evidence of meter tampering as described in Issue 1 of this recommendation, on April 11, 2003, FPL backbilled Mr. Rodriguez's account from the billing period ending July 27, 1998 when a noticeable and sustained drop in consumption began, through January 28, 2003, when the new meter was installed. While the customer is correct that other drops in usage can be noted in the billing history, none appear as drastic as the June 1997 to July 1997 drop, especially given that one would expect usage to maintain or increase from June to July. The customer provided no documentation on the alleged vacancy or variability of residents during the time period. The original billing for this period, totaling \$3,648.16, was canceled and rebilled at \$11,763.74, showing a difference of \$8,115.58, plus investigation charges of \$261.03. The total backbill balance in dispute is \$8,375.65 ($\$8,115.58 + \$261.03 - \$.96$ from an account credit due to an overpayment). This amount was calculated by using actual usage from February and March 2003, after the new meter was set. The seasonal average percentage of usage was also taken into account in calculating the backbilled amount. Another possible indicator of actual usage is water consumption. However, the customer's water consumption was not taken into account in calculating the backbilled amount because upon review of the water consumption, FPL determined that it did not provide a correlation to the electric consumption upon which a basis could be made for an adjustment. There were times when the water usage was up significantly and the electric usage was down. In addition, water usage can depend on a number of variables unrelated to the number of residents in the home.

The corrected bill and a letter of explanation were mailed to the customer providing the investigator's name and telephone number. On May 5, 2003, Mr. Rodriguez contacted the investigator and the meter condition and backbilling was explained. No payment arrangement was established. On May 3, 2003, FPL received a payment of \$165.22, leaving a balance of \$8,375.65. On May 9, 2003, a final notice was issued for \$8,210.43 with a final pay by date of May 19, 2003. On May 19, 2003, a final notice was issued for \$8,375.65. The notice indicated that \$8,210.43 must be received no later than May 19, 2003 and the new noticed amount of \$165.22 needed to be received no later than May 28, 2003 to prevent disconnection of electric service. On June 4, 2003, a deposit was billed for \$415.00, bringing the account balance to \$9,146.02.³ On June 5, 2003, with no further contact having been received from Mr. Rodriguez and after proper final notice, the account was disconnected due to nonpayment of \$8,375.65. On June 10, 2003, a payment was received for \$229.74, reducing the balance on the account to \$8,916.28.

Regarding Mr. Cummings's opinion that the customer should be given an amount of time to pay off the backbill equal to the period being backbilled, FPL responds that when there is unauthorized use of service or meter tampering, Commission rules do not require a utility to give a customer time to pay. In fact, Rule 25-6.105(5), Florida Administrative Code, authorizes a utility to disconnect service without notice in those instances. Furthermore, Rule 25-6.105(5)(j) provides that FPL may require full payment prior to reconnecting service in the event of unauthorized or fraudulent use. In the case of meter tampering, Rule 25-6.105(5)(i) authorizes immediate disconnection of service. FPL is permitted to bill the customer for the reasonable estimate of the energy used pursuant to Rule 25-6.104. According to FPL, it logically follows that until the customer has paid the reasonable estimate of energy used, the utility may refuse service unless the customer and utility agree to a payment arrangement. FPL states that Mr. Cummings apparently has attempted to extend the provisions of Rule 25-6.103(2) ("Slow meters"), to this case. However, this is not a case involving meter error due to a slow meter. Rather, this is a case of meter tampering. Moreover, FPL notes that despite the fact that the company is not required to do so, it has made numerous offers for Mr. Rodriguez to pay over time. To date, Mr. Rodriguez has not accepted these offers.

Staff has reviewed the billing history records and other documentation provided by FPL to support its calculation of the backbilled amount. In order to arrive at the total backbilled amount, FPL employed the Average Percentage Use Method approved by Order No. PSC-96-1216-FOF-EI.⁴ The backbilled amount was determined by subtracting the billed kwh from the estimated monthly kwh. Instead of using a level 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 step reconciles seasonal usage. FPL's calculation of the average consumption per month appears appropriate. Moreover, staff agrees that Rule 25-

³ The deposit was automatically billed by FPL's system due to the status of the amounts owed. Previously, the customer had no deposit on record.

⁴ Issued September 24, 1996, in Docket No. 960903-EI (In Re: Complaint of Mrs. Blanca Rodriguez against Florida Power & Light Company regarding alleged current diversion/meter tampering rebilling for estimated usage of electricity).

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6.103(2) (“Slow meters”) does not apply in this case because this is not a case involving meter error due to a slow meter.

For the foregoing reasons, staff recommends that the Commission find that the total backbilled amount of \$8,375.65 for unbilled consumption from July 27, 1998, to January 28, 2003, including \$261.03 for investigative charges, was calculated in a reasonable manner as required by Rule 25-6.104, Florida Administrative Code. FPL has indicated a willingness to allow the customer to pay this amount over time. The customer should be encouraged to contact FPL immediately to make payment arrangements for this amount in order to have his electric service restored.

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Issue 3: Should this docket be closed?

Recommendation: Yes, if no timely protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order.

Staff Analysis: If no timely protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order.