

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-

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**DATE:** February 23, 2006

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

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

**RE:** Docket No. 060010-EI – Complaint by Roderick and Judi Thompson against Florida Power & Light Company regarding backbilling for alleged meter tampering.

**AGENDA:** 03/07/06 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\060010.RCM.DOC

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### Case Background

On October 25, 2004, complaint number 627118E was filed against Florida Power and Light Company (FPL) on behalf of Roderick and Judi Thompson (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. Thompson \$7,916.19 for an approximate 5 year period beginning June 15, 1999. The customer denies tampering with his meter.

Staff conducted an informal conference on August 24, 2005. FPL offered Mr. Thompson a reduction of 10% off the back billed amount and offered a payment arrangement to allow the customer 36 months to pay the outstanding balance. The customer declined the offer and did not provide a counter offer. Therefore, no resolution was reached.

After the informal conference, RCA staff and FPL continued to communicate with the customer in attempts to obtain a settlement on the matter, albeit unsuccessfully. RCA staff has had numerous conversations with Mr. Thompson. RCA has attempted to explain how the backbill was calculated, that the customer was not being accused of theft, and that the Thompsons had apparently benefited from the usage of electric services that had not been billed due to meter tampering.

This recommendation addresses Mr. Thompson's complaint against FPL for backbilling for alleged meter tampering. The Commission has jurisdiction pursuant to Section 366.05, Florida Statutes, and administers consumer complaints pursuant to Rule 25-22.032, Florida Administrative Code.

### **Discussion of Issues**

**Issue 1:** Is there sufficient evidence to demonstrate that meter tampering occurred at the residence of Roderick and Judi Thompson at 5670 NW 38<sup>th</sup> Terrace, Coconut Creek, Florida, to allow FPL to backbill Mr. Thompson'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. Thompson's residence. As the customer of record during the entire period in question, Mr. Thompson should be held responsible for a reasonable amount of backbilling. (Rodan, Kummer, 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. Thompson established service with FPL at 5670 NW 38<sup>th</sup> Terrace, Coconut Creek, Florida on April 1, 1992. The assigned meter of record was 5C32759. On February 8, 1998, meter 5C32759 was removed and meter 5C44770 was set. FPL's records indicate that on May 15, 2004, a meter reader issued a request to FPL's Revenue Protection Department to investigate an unauthorized meter condition. The meter reader noted that an unauthorized meter, 5C53272, was found and the meter of record, 5C44770, was missing. On May 28, 2004, FPL's Revenue Protection Department found the meter of record, 5C44770, back in the meter socket but the meter had a broken inner seal and loose blocks. FPL indicated that such an inner seal condition occurs when the meter is removed from the socket and the meter canopy is also removed. On July 27, 2004, FPL's Revenue Protection Department obtained photographs of a second unauthorized meter, 5C83837, and found that the paint on the meter did not match the paint on the meter can. The second unauthorized meter was removed and sent for testing on July 30, 2004. The meter test results indicated that meter 5C83837 was registering at a 99.82% weighted average registration. Since the meter of record, 5C44770, was missing, FPL installed a new meter, 5C72779.

FPL's records indicate that the customer contacted the company on September 17, 2004, regarding a high bill. FPL reported that an energy efficiency expert tried to reach the customer without success. FPL's records further indicate that it mailed the customer a letter on September 21, 2004, which provided tips on how to conserve energy and suggesting that the customer contact its energy expert. On December 17, 2004, the customer acknowledged to staff that tampering had occurred by an unknown party, but expressed concern that FPL picked months of excessively high usage to calculate the backbilled amount "to beat him down."

FPL reported that since the current diversion was manually controlled by someone removing the meter and replacing it with an unauthorized meter, the kilowatt usage fluctuated. FPL reported that the customer's bills were being reduced anywhere from 500-3000 kwh per month. Attachment A to this recommendation outlines the customer's meter readings and meter history.

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Based on the information contained in FPL's reports, staff recommends that the Commission find that FPL has demonstrated that meter tampering occurred at 5670 NW 38<sup>th</sup> Terrace, Coconut Creek, Florida. In addition, FPL stated that Mr. Thompson has been the customer of record at that address since April 1, 1992. Therefore, pursuant to Rule 25-6.104, Florida Administrative Code, Mr. Thompson 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 \$7,916.19, which includes investigation charges of \$465.46, reasonable?

**Recommendation:** No. While FPL's calculation of the average consumption per month appears appropriate, staff believes that a sustained drop in KWH registration began in 2001, rather than 1999. Excluding the 1999 and 2000 backbilled amounts from the total backbilled amount would be a \$2,311.01 adjustment, for a total backbilled amount of \$5,605.18 (Rodan, Kummer, Plescow)

**Staff Analysis:** Upon finding evidence of meter tampering as described in Issue 1 of this recommendation, FPL backbilled Mr. Thompson's account from June 15, 1999, when FPL believes that a sustained drop in KWH registration began, through August 16, 2004. The original billing for this period, totaling \$17,001.92, was cancelled and rebilled for \$24,452.65, a difference of \$7,450.73. Investigation charges of \$465.46 were assessed by FPL bringing the total backbilled amount to \$7,916.19 (\$7,450.73 + \$465.46).

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, 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). FPL first estimated the appropriate annual consumption by dividing the appropriate monthly seasonal factors into the billed kWh for what it believed were representative months of February 1998, September 2003 and December 2003 to arrive at a corrected annual kWh total. The average of these three annualized readings was 50,323 kWh. The seasonally adjusted monthly factors for the period during which meter tampering was alleged were then multiplied times the new annual kWh estimate to arrive at corrected monthly billing determinants. This step reconciles seasonal usage. The backbilled amount was then calculated by subtracting the billed kWh from the estimated monthly kWh. FPL's calculation of the average consumption per month appears appropriate. Staff further recommends that FPL should be permitted to recover its investigative costs of \$465.46.<sup>1</sup>

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. While FPL's calculation of the average consumption per month appears appropriate, staff believes that a sustained drop in KWH registration began in 2001, rather than 1999, as shown in Attachment B to this recommendation. From that graph, it appears most of the usage for 1999, all of 2000 and the portion of 2004 data available (after the meter was changed) were comparable. In contrast,

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<sup>1</sup> Staff notes that DOAH recommended denying FPL recovery of its investigative charges in Leticia Callard vs. FPL, DOAH Case No. 04-2758. In its Recommended Order, dated May 13, 2005, the Administrative Law Judge found that Rule 25-6.104, Florida Administrative Code, does not explicitly permit recovery of investigative costs and that FPL had not met its burden of showing that its investigative costs were reasonable. However, FPL's tariff sheet 6.061 (specifically paragraph 8.3 entitled "Tampering with Meters") permits recovery of investigative costs from customers where meter tampering has occurred. FPL's tariff sheet 6.061 was not part of the record in the DOAH proceeding and thus was not considered evidence upon which the recommendation could be made. Staff believes that investigative costs are a lawful charge based on FPL's tariff sheet 6.061.

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there appears to be a sustained drop in usage beginning in the mid-2001 time period. Thereafter, usage was significantly below the 1999, 2000 and 2004 levels through the early part of 2004. Therefore, staff believes that the tampering began sometime in 2001. Excluding the 1999 and 2000 backbilled amounts from the total backbilled amount would be a \$2,311.01 adjustment, for a total backbilled amount of \$5,605.18 (\$7,916.19 - \$2,311.01). Based on the foregoing, staff recommends that the total backbilled amount should be \$5,605.18. Since the customer paid \$3,000.00 on October 14, 2004, for reconnection of electric service, the remaining balance would be \$2,605.18.

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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.

METER READING AND BACKBILLING, 1999-2004

1999						
Month	Service To	Days	Meter Reading	Kwh as billed	% Usage <sup>1</sup>	Kwh Rebilled
January	01/16/99	30		2638		
February	02/16/99	30		2700		
March	03/16/99	30		1914		
April	04/16/99	30		2670		
May	05/16/99	30		2808		
June *	06/15/99	30	45181	1451	9.00	4529
July	07/15/99	30	47179	1998	9.68	4871
August	08/16/99	30	48499	1320	11.25	5661
September	09/15/99	30	52777	4278	10.63	5349
October	10/14/99	30	56582	3805	9.58	4821
November	11/12/99	30	59913	3331	7.63	3840
December	12/14/99	30	62755	2842	7.02	3533
As Billed Kwh	185245					
Rebilled Kwh	266848					
Additional Kwh	81603					

\* Account rebilled from June 15, 1999 to July 30, 2004

<sup>1</sup> Seasonal monthly average use percentage applied to total annual estimated usage to derive monthly billing determinants



2000						
Month	Service To	Days	Meter Reading	Kwh as billed	% Usage <sup>1</sup>	Kwh Rebilled
January	01/14/00	30	65319	2564	6.76	3402
February	02/15/00	30	67691	2372	6.26	3150
March	03/16/00	30	69992	2301	6.25	3145
April	04/14/00	30	72712	2720	6.73	3387
May	05/15/00	30	76055	3343	9.41	4735
June	06/14/00	30	79745	3690	10.12	5093
July	07/14/00	30	83626	3881	10.31	5188
August	08/15/00	30	88243	4617	10.31	5188
September	09/14/00	30	92174	3931	10.56	5314
October	10/13/00	30	95888	3714	9.23	4645
November	11/13/00	30	98538	2650	7.05	3548
December	12/14/00	30	956	2418	7.02	3533

2001						
Month	Service To	Days	Meter Reading	Kwh as billed	% Usage <sup>1</sup>	Kwh Rebilled
January	01/17/01	30	3484	2528	8.17	4111
February	02/15/01	30	5741	2257	6.98	3513
March	03/16/01	30	8188	2447	6.89	3467
April	04/16/01	30	11317	3129	7.00	3523
May	05/15/01	30	13975	2658	7.10	3573
June	06/14/01	30	17968	3993	9.20	4630
July	07/16/01	30	22133	4165	9.90	4982
August	08/14/01	30	25524	3391	10.05	5058
September	09/13/01	30	28868	3344	10.83	5450
October	10/12/01	30	31736	2868	9.05	4554
November	11/12/01	30	34357	2621	7.47	3759
December	12/13/01	30	36999	2642	7.36	3704

<sup>1</sup> Seasonal monthly average use percentage applied to total annual estimated usage to derive monthly billing determinants

2002						
Month	Service To	Days	Meter Reading	Kwh as billed	% Usage <sup>1</sup>	Kwh Rebilled
January	01/16/02	30	39593	2594	7.50	3774
February	02/15/02	30	40852	1259	5.57	2803
March	03/18/02	30	42546	1694	6.17	3105
April	04/16/02	30	45021	2475	7.45	3749
May	05/15/02	30	47687	2666	8.74	4398
June	06/14/02	30	50603	2916	9.19	4625
July	07/16/02	30	53937	3334	9.00	4529
August	08/14/02	30	57322	3385	10.42	5244
September	09/13/02	30	60627	3305	10.35	5208
October	10/14/02	31	64244	3617	10.06	5063
November	11/12/02	29	67414	3170	8.64	4348
December	12/13/02	31	68668	1254	6.90	3472

2003						
Month	Service To	Days	Meter Reading	Kwh as billed	% Usage <sup>1</sup>	Kwh Rebilled
January	01/15/03	33	70783	2115	7.07	3558
February	02/17/03	33	73159	2376	6.76	3402
March	03/18/03	29	74854	1695	7.39	3719
April	04/16/03	29	77329	2475	7.32	3684
May	05/15/03	29	79229	1900	8.18	4116
June	06/16/03	32	82724	3495	9.32	4690
July	07/16/03	30	85271	2547	10.11	5088
August	08/14/03	29	88824	3553	9.76	4912
September	09/15/03	32	92793	3969	9.87	4967
October	10/14/03	29	96421	3628	9.23	4645
November	11/12/03	29	199	3778	8.11	4081
December	12/15/03	33	3868	3669	6.87	3669

<sup>1</sup> Seasonal monthly average use percentage applied to total annual estimated usage to derive monthly billing determinants

2004						
Month	Service To	Days	Meter Reading	Kwh as billed	% Usage <sup>1</sup>	Kwh Rebilled
January	01/16/04	32	7173	3305	7.07	3558
February	02/18/04	33	8162	989	6.76	3402
March	03/18/04	29	10975	2813	7.39	3719
April	04/16/04	29	13892	2917	7.32	3684
May	05/17/04	29	16499	2607	8.18	4116
June	06/16/04	32	20897	4398	9.32	4690
July	07/16/04	31	25034	4137	10.11	5088
August	08/16/04	28	2206	3941	9.76	4486
September						
October						
November						
December						

<sup>1</sup> Seasonal monthly average use percentage applied to total annual estimated usage to derive monthly billing determinants

**METER HISTORY, 1998-2004**

<b>Meter #</b>	<b>Set Date</b>	<b>Removed</b>	<b>Date</b>	<b>Reading</b>	<b>KWH</b>	<b>Bill</b>	<b>Comments</b>
5C32759	04-01-1992	Yes	02-08-1998				
5C44770	02-08-1998		4-16-04	13892	2917	\$289.03	Mr. Thompson only customer of record on new meter.
5C53272*	Unknown	No	05-15-04	Estimated			Unauthorized foreign meter (meter 5C44770 missing).
5C44770			05-28-04	18014			Meter 5C44770 back in service again. Broken seal, loose blocks. Meter swapping.
			06-16-04	20897	4398	\$436.30	
			07-17-04	25034	4137	\$410.29	
5C83837*	Unknown	Yes	07-27-04				2 <sup>nd</sup> foreign meter. Meter of record removed from FPL's records. Photos taken. Paint on meter did not match can. 99.82% accurate weighted average. Blade wear & inner seal intact. Evidence of meter swapping.

Meter #	Set Date	Removed	Date	Reading	KWH	Bill	Comments
			07-30-04				Removed and sent for testing. New meter set.
5C72779	07-30-04		08-14-04	02206	3941	\$390.73	Locked and seal # 1407 installed.
			09-15-04	06750	4544	\$450.83	1 <sup>st</sup> reading on new meter. It appears to be without tampering
			10-14-04	10251	3501	\$346.90	
		Yes	10-14-04	10263			Removed without notice due to tampering. Socket glass covered for safety. Pending electric work to correct loose blocks.
5C21932	10-14-04						New meter. Tampering with old meter.

\* Indicates an unauthorized/foreign meter in the socket

Graphic representation of monthly usage showing relative usage for 2001, 2002 and 2003 compared to usage for 1999, 2000 and 2004

