

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Mrs. Carmen) DOCKET NO. 951208-EI
Alba against Florida Power &) ORDER NO. PSC-96-0284-FOF-EI
Light Company regarding alleged) ISSUED: February 26, 1996
current diversion/meter)
tampering rebilling for)
estimated usage of electricity.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION ORDER
DENYING RELIEF AGAINST FLORIDA POWER & LIGHT COMPANY

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

On September 21, 1994, the Consumer Affairs Division (CAF) of the Florida Public Service Commission filed a complaint against Florida Power & Light Company (FPL) on behalf of Mr. Mario Alba, the husband of Mrs. Carmen Alba. In his complaint, Mr. Alba contended that FPL had unfairly backbilled his wife's account for meter tampering.

In a report provided to the CAF, FPL stated that the electric service that was backbilled at 13404 Southwest 1st Terrace, Miami, Florida, was in the name of Mrs. Carmen Alba. FPL records indicated that Mrs. Alba's meter had been tampered with.

On January 9, 1995, the Bureau of Complaint Resolution sent a letter to Mr. Alba advising him of its initial finding that FPL appeared to be in compliance with Commission rules in its

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backbilling of service to Mrs. Alba. Mr. Alba subsequently requested that an informal conference be held.

An informal conference was held in Miami on September 18, 1995. In attendance were Mr. Alba, Mr. Alba's daughter, three representatives from FPL, and two representatives from the Division of Consumer Affairs.

At the informal conference Mr. Alba stated that the meter was not tampered with by anyone at his residence. He argued that FPL's meter reader man, after having been attacked by Mr. Alba's dog, may have tampered with the meter at his residence. In addition, Mr. Alba suggested that the marks on the disk may have been made by ants. Mr. Alba maintained that the outer seal, which was lost by FPL, was not tampered with; therefore, meter tampering did not occur.

Mr. Alba also stated that the meter test results, which showed a 50.87 percent accuracy level, would have caused his bills to be extremely high. He argued that there was a 1.01 percent difference in the kilowatt hour consumption from August, 1994, through June, 1995, compared with the previous year's consumption for the same period. (See Attachment A). Mr. Alba alleges that the increase in consumption resulted from: 1) his children, now in their teens, taking more showers; 2) the installation of a larger air conditioning unit; 3) his home-based computer business that he started in February, 1994; 4) and the increase in the square footage of his home.

Mr. Alba also stated that FPL had inspected his home on several occasions because of his participation in FPL's energy-saving programs. Mr. Alba argued that FPL had ample opportunity to notice the allegedly tampered meter during these visits. In addition, Mr. Alba argues that he complained to FPL numerous times about high bills and that FPL removed his meter twice.

Mr. Alba suggested that the reason for FPL's failure to notice a tampered meter was because the meter was not tampered with. In addition, Mr. Alba argued that because the meter's outer seal was intact there was no possible way he could have tampered with the inner seal.

FPL argued that research by field experts has shown that outer seals can easily be reproduced or fabricated, so as to appear intact. FPL acknowledged that the outer seal had apparently either been discarded or lost. FPL said that the disk was raised so high on the meter that it could be observed by the human eye and scraping could be heard. FPL agreed with Mr. Alba that there were

a few small ants on the bottom of the meter canopy. FPL, however, argued that ants could not affect the disk or cause drag marks. Also, FPL maintained that meters do not come from the factory with black marks or raised disks. FPL denied Mr. Alba's allegation that FPL's meter man tampered with the meter.

FPL claimed that Mr. Alba's allegation that he complained to FPL numerous times about high bills and that FPL had removed his meter twice, was unfounded. FPL argued that Mr. Alba's meter had never been removed. FPL removed the original meter on June 29, 1994, and installed a new one that day. On September 28, 1994, the original meter was tested and inspected according to Commission rules. FPL's inspection report of Meter No. 5C71356 revealed that the outer seal was still intact but that it had a raised disk, a broken inner seal, tampered top and bottom bearings, and a bent canopy ring. The meter also registered at an accuracy level of 50.87 percent.

FPL questioned Mr. Alba about his home-based business. FPL discussed the possibility of changing Mr. Alba's account from a residential to a commercial account. FPL, however, in a later report to CAF, stated that Mr. Alba's account would remain on residential rates per FPL's guidelines in its tariffs.

No agreement was reached at the informal conference. Mr. Alba's complaint was set for the November 7, 1995, Agenda. In October, 1995, after discussing the case with staff of the Bureau of Complaint Resolution, the Division of Legal Services revised the Agenda date. On November 8, 1995, staff sent a number of interrogatories to FPL. FPL responded and the FPSC's staff revised the Agenda date again in order to review FPL's responses. In its responses, FPL stated that Mr. Alba's house was inspected prior to joining the Residential Load Management program. In addition, the services performed during the energy conservation checks at Mr. Alba's residence did not require that FPL check the meter. FPL's energy auditor checked the customer's insulation, water faucets, and water heater temperatures. Appliances were load tested and windows and doors were inspected. FPL stated that a meter test was offered, but refused by the customer.

DECISION

On May 23, 1994, an FPL meter reader noticed a raised disk on the meter at 13404 Southwest 1st Terrace, Miami, Florida. The meter was removed and replaced on June 29, 1994. FPL's inspection report showed: the meter's outer seal intact, a raised disk, a broken inner seal, a tampered top bearing, and a bent canopy ring.

Also, the test results showed that the meter was registering at an accuracy level of only 50.87 percent. This is below the minimum accuracy limit of "not less than 98 percent," as stated in Rule 25-6.052, Florida Administrative Code. FPL's investigative reports suggest that the meter had been registering at a reduced level for an extended time period.

Mr. Alba's allegation that the meter tampering occurred as a result of the dog incidents with the meter man is not supported by factual evidence. According to FPL this was the meter reader's first time reading the meter. Mr. Alba contends that FPL's testing is inaccurate and would reflect outrageous bills. FPL, however, explained to staff that the accuracy test was verified. The Test Board used to test Mr. Alba's meter was calibrated weekly for accuracy.

FPL maintains that the outer seal of a meter need not appear damaged in order for an individual to tamper with the inner disk. FPL maintains that there are many ways to remove and replace an outer seal. The seal on Mr. Alba's meter was an older seal, which had a solid yellow body, and could be removed without evidence of tampering. FPL maintains that the wire part of the outer seal can be pulled out and replaced, giving the appearance that the seal is intact. FPL states that some seals are rigged so perfectly that only an X-ray would show the tampering.

Based upon the evidence of metering tampering, Mrs. Alba is responsible for a reasonable amount of the backbilling. FPL may bill Mrs. Alba for the reasonable estimate of the energy used pursuant to Rule 25-6.104, Florida Administrative Code.

FPL's inspection report stated that Mrs. Alba's billing history was affected by the meter tampering. Subsequent to the meter inspection, FPL billed Mrs. Alba's account based on the average monthly usage on the new meter (5205 kilowatt hours registered for July, 1994). From this information, FPL determined that Mrs. Alba's bill should be \$10,633.43. This amount was based on a yearly average usage of 52,726 kilowatt hours (kwh), plus a current diversion investigative charge of \$204.01. FPL established August 23, 1988, to June 29, 1994, as the appropriate time period for backbilling.

FPL noted in its report that there was not a sustained drop in Mrs. Alba's kilowatt hour consumption during the corporate record retention period consisting of a five-year period and the current year. Therefore, FPL chose not to use the 50.87 percentage determined from the meter test results. FPL felt this method would not accurately reflect current consumption.

ORDER NO. PSC-96-0284-FOF-EI
DOCKET NO. 951208-EI
PAGE 5

Mr. Alba notified FPL that his air conditioning unit was defective in July 1994. Mr. Alba maintained that this was one of the reasons the bill for the month after the new meter was installed was so high. (See Attachment B -- Alba kwh History Summary).

FPL recalculated the backbilling based on four months of usage after the air conditioner problem was documented. Mr. Alba was not satisfied with this recalculation. Instead, he asked FPL to use a six-month period, November, 1994 through April, 1995, as a basis for recalculating the backbilling.

FPL recalculated the backbilling based on Mr. Alba's request. The estimated yearly average consumption for the period November, 1994, through April, 1995, was 35,384 kwh. This calculation resulted in a backbilling amount of \$1,995.90 for unmetered usage and \$204.01 for a current diversion investigative charge. FPL stated that Mrs. Alba owed a combined total of \$2,199.91.

We find that the total backbilled amount of \$2,199.91 was calculated in a reasonable manner and in accordance with Rule 25-6.104, Florida Administrative Code.

Based on the foregoing, it is,

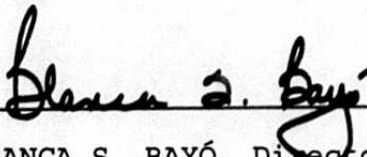
ORDERED by the Florida Public Service Commission that the request for relief of Mr. Mario Alba, on behalf of Mrs. Carmen Alba, against Florida Power & Light Company, as discussed above, is hereby denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket should be closed.

ORDER NO. PSC-96-0284-FOF-EI
DOCKET NO. 951208-EI
PAGE 6

By ORDER of the Florida Public Service Commission, this 26th
day of February, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 18, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

ORDER NO. PSC-96-0284-FOF-EI
DOCKET NO. 951208-EI
PAGE 7

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

**July was not considered due to A/C failure

Comparative consumption analysis. Last three years
 As of July 7, 1995

	July	August	Sep	Oct	Nov	Dec	Jan	Feb	March	April	May	June	total
Date	07/22/94	08/22/94	09/21/94	10/21/94	11/22/94	12/22/94	01/24/95	02/22/95	03/23/95	04/21/95	05/22/95	06/21/95	New meter readings
KW	5205	3903	3584	3835	3604	3008	2283	1779	1859	2555	3090	2949	32449
Varl		0.052	0.0803	0.13512	0.18768	0.4229	0.0676	-0.1109	-0.043	-0.021	-0.054	-0.12648	1.01%Variance over the year*
date	07/22/93	08/23/93	09/22/93	10/21/93	11/2/93	12/23/93	01/24/94	02/23/94	03/24/94	04/24/94	05/23/94	06/22/94	Old Meter readings
KW	3096	3864	3390	3380	3108	2340	1944	2376	2144	2665	3484	3366	32061
Varl													
Date	07/22/92	08/21/92	09/22/92	10/21/92	11/20/92	12/21/92	01/21/93	02/22/93	03/24/93	04/22/93	05/21/93	06/22/93	Old meter readings
	3595	3556	3245	3377	2961	1888	2333	1626	1743	2555	3050	3386	29720

*VARIANCE. Variance shown as percentage of increase or decrease in consumption when comparing the last eleven months. A negative number shows a decrease in consumption.

The reason for the variance include the following factors:

- 1- Weather. For example: Dec 1994 was the warmest December in many years.
- 2- Addition to the house. In Sept 1994 we converted the garage into an office and connected the vents to the air conditioner.
- 3- A new much larger air conditioner unit that was installed in August 1994 is 5 tons, the old unit was only 3.5 tons.
- 4- Since Feb 1994 I started a new at home business (assembling and selling computer equipment). Since that time the number of employees has been increasing steady. Also the number of customers and presentations made at the office at home.
- **5- During most of July 1994 the air conditioning unit was defective and was running constantly until it was replaced in August 1994. Also the reading in July 1995 could be due to the fact that the new meter was reading too much perhaps due to a defect or perhaps malicious tampering on the part of certain ill intended employees from FPL. To this I have some evidence and some expert opinions.