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-

RECEIVED-FPSC AUG -6 AM 11:23 RECORDS AND REPORTING

DATE: AUGUST 6, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JAYE) RVE
DIVISION OF CONSUMER AFFAIRS (PEÑA) C Peña
DIVISION OF ELECTRIC AND GAS (GING)

RE: DOCKET NO. 980730-EI - COMPLAINT BY LEONARDO RAMOS AGAINST FLORIDA POWER & LIGHT COMPANY REGARDING BACKBILLING FOR CURRENT DIVERSION.

AGENDA: 08/18/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980730.RCM

CASE BACKGROUND

On December 16, 1997, Mr. Leonardo Ramos (Mr. Ramos) filed a complaint with the Commission alleging that Florida Power & Light Company (FPL) had unfairly backbilled him for meter tampering and had accused him of using an unauthorized meter. FPL provided staff with a report stating that the backbilled account was for service provided to 16251 North West 129th Avenue, Miami, FL 33018, in the name of Leonardo Ramos. FPL records for this account indicated meter tampering and the use of an unauthorized meter at that location.

On April 10, 1997, a FPL meter reader reported a possible "foreign" or switched meter and meter tampering at Mr. Ramos' address. On May 22, 1997, an FPL Revenue Protection meter reader inspected the meter and reported an unauthorized meter at the Ramos' address. The Revenue Protection meter reader also reported that the meter's outer seal was gone, and that it had a missing

DOCUMENT NUMBER-DATE
08341 AUG-6 98
FPSC-RECORDS/REPORTING

meter test center for testing. A new meter was also installed on May 22, 1997. On June 5, 1997, the tampered meter was tested at the FPL testing facility. Test results indicated that the meter pulled from the Mr. Ramos address was a foreign meter, there was no inner seal, the bearings were tampered and the disk was lowered. The veriboard results were 10/09 and the meter only registered a weighted average of 66.02%.

As a result of the meter tests and the readings taken from the new meter, FPL billed the customer of record for electricity used but not paid for from August 13, 1991, to May 22, 1997. Backbilling dates from August 13, 1991, because consumption after the new meter was installed was much higher than any other month throughout Mr. Ramos' occupancy. This indicated to FPL that a foreign meter was being used the entire time. Using the average daily usage formula, rebilling was based on a daily average of 158 KWH (New meter set May 22, 1997--RRD June 10, 1997, R02994/19 days = 158/day). FPL's investigation indicated that between September of 1993, and May of 1997, six different meters were observed at Mr. Ramos' address.

FPL Revenue Protection Supervisor met with Mr. Ramos and his family on July 15, 1997, and explained to them what FPL had found. The Ramos' were shown the meter. They denied having tampered with or replaced any meters. FPL gave Mr. Ramos the following options for paying his bill: payment in full; 75% down payment, balance in three months; bank loan; or, promissory note and mortgage with monthly payments of $300 plus late payment charges in addition to their regular bill. FPL attempted to work out payment options for Mr. Ramos without success. Mr. Ramos defaulted. On August 20, 1997, Mr. Ramos contacted FPL and asserted that he could not abide by any of the offered payment arrangements, but that he had a pending Workmen's Compensation case which he expected to win. After verifying with Mr. Ramos' attorney that the case was pending, FPL offered payment arrangements of $500 per month plus current monthly bill and late payment charges until the Workmen's Compensation case was settled, at which time the balance would be paid in full. Mr. Ramos agreed to this arrangement.

On September 3, 1997, Mr. Ramos called FPL to ask that his extension be reinstated. He had failed to meet payment arrangements and the extension FPL had originally granted him, which caused the entire balance to become due. FPL agreed to a reinstatement of the extension, but informed Mr. Ramos that if he defaulted again, the extension would not be reinstated. On November 14, 1997, Mr. Ramos again failed to make the required payment and his electrical service was disconnected.

On December 16, 1997, Mr. Ramos called The Division of Consumer Affairs to complain about the charges of current diversion and meter tampering. He also informed staff that he could not pay the amount FPL said he owed. On February 10, 1998, the customer requested an informal conference.

The televised informal conference was conducted on June 4, 1998. Mr. Ramos asserted the he did not switch meters, nor did he tamper with meters. He also said he could not offer FPL any money to pay for the alleged amount due on the account ($17,563.40 plus $261.81 investigative costs for a total of $17,825.21). At the informal conference, Mr. Ramos offered three options to FPL for repayment. In the first arrangement, Mr. Ramos suggested that FPL should contract for his services as a landscaper by paying a reasonable fee to him for the service plus buying a percentage of his business. The customer would pay FPL in installments until the entire amount was paid in full. The second arrangement offered by the customer was that FPL grant him a loan or line of credit with which he would purchase materials and equipment to restart his business, and he would pay all of his bill that was in arrears. The third arrangement offered by Mr. Ramos was that FPL should await the results of his Workmen's Compensation claim so that Mr. Ramos could pay the amount due FPL in installments from the verdict. FPL made a final counteroffer requesting that Mr. Ramos make some reasonable payment arrangement. Mr. Ramos said he could not because he had no money. No settlement was reached at the informal conference.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission find that an unauthorized meter was found and that meter tampering and current diversion occurred at Mr. Leonardo Ramos' address, 16251 North West 129th Avenue, Miami, Florida? [PEÑA]

RECOMMENDATION: Yes. FPL's report provides sufficient evidence of an unauthorized meter and meter tampering at Mr. Ramos' address. Pursuant to Rule 25-6.104, Florida Administrative Code, as the customer of record, Mr. Ramos is responsible for a reasonable amount of backbilling.

STAFF ANALYSIS: Rule 25-6.104, Florida Administrative Code provides that:

> In the event of unauthorized or fraudulent use or meter tampering, the utility may bill the customer on a reasonable estimate of the energy used.

In Mr. Ramos' case, an FPL meter reader reported an unauthorized meter which had apparently been tampered at Mr. Ramos' address. Upon inspection and testing by FPL, the unauthorized meter was missing its inner and outer seals, its bearings had been tampered, and its disk had been lowered. The tests performed by FPL on this meter showed that it only registered a weighted average of 66.02% and the veriboard results were 10/09. FPL's investigation further revealed that a total of six different unauthorized meters had been observed at Mr. Ramos' address between September, 1993, and May, 1997. From this evidence, Mr. Ramos received energy for which he did not pay. According to Rule 25-6.104, Florida Administrative Code, as the customer of record, Mr. Ramos may be billed for a reasonable estimate of the energy used during the time diversion and tampering took place because he benefitted from the energy.

However, in this case, FPL failed to further investigate five instances of reported unauthorized meters at Mr. Ramos' address which were observed there before the tampered foreign meter was discovered. These five meters were reported over approximately a four year period. Staff does not believe it is reasonable to allow FPL to backbill for the period in which it was aware of unauthorized meters, yet chose to do nothing in response.

ISSUE 2: Is Florida Power & Light Company's calculation of the backbilled amount of $17,825.91, which includes investigation charges of $261.81, reasonable? [GING]

RECOMMENDATION: No. The backbilled amount of $17,825.21 is not a reasonable approximation of the unbilled energy plus investigative costs. Based on the circumstances in this case, Staff believes that $1,386.82 is a fair and reasonable amount of backbilling for this address.

STAFF ANALYSIS: FPL concluded that, as a result of meter tampering, the billed amount of kWh from August 13, 1991, to May 22, 1997, was substantially less than the actual amount of energy consumed. On May 22, 1997, a new meter was installed at the Ramos address, and the amount of underbilling was calculated based on the usage recorded by the new meter. Most residential usage estimates for backbilling are done using a seasonal average methodology. However, because the account at issue is a commercial account, FPL based the rebilled amount on average daily usage. In order to calculate the average daily usage, the usage recorded by the new meter is divided by the number of days in the billing period. This determines the average daily usage which is multiplied times the applicable rates in place over the rebilling period.

The recorded kWh for May 22, 1997, through June 10, 1997, was 2994 kWh. The average kWh/day usage over the 19 day period was 158 kWh/day. Staff was concerned that the 19 days may have been an insufficient sample size to estimate consumption for almost six years. FPL provided additional billing data for the period June 10, 1997, to November 14, 1997, which shows an average daily consumption closer to 171 kWh/day. Therefore, staff believes that using 158 kWh/day for rebilling is a conservative estimate. FPL is requesting that Mr. Ramos be rebilled for 202,247 kWh which is the difference between the total estimated kWh consumed between August 13, 1991, and May 22, 1997, (341,554) and what he was actually billed during this same period (139,304). According to FPL, the cost for the rebilled kWhs is $17,563.40 plus $261.81 for investigative costs totaling $17,825.21.

Although Staff agrees with the methodology FPL used to calculate the backbilling amount, Staff does not agree with the backbilling period. Between September 13, 1993 and January 9, 1997 six different meters have been identified at this address. At no time during this period did FPL initiate a current diversion investigation. When Staff asked FPL to explain why it had not acted when each of the six different meters were discovered it responded that the company was going through a period of reorganization and the policy in place at the time called for the meter reader to input whatever meter was found at an address as the new meter of record if there were no obvious signs of meter tampering. They further stated that after 1995 their procedures were modified to minimize this type of problem. Even though FPL indicated that their procedures changed after 1995, the same problem occurred on January 9, 1997, when the sixth foreign meter was found and FPL again entered it as a new meter set and meter of record. Staff believes FPL has failed to provide adequate proof of tampering prior to January 9, 1997. FPL had ample opportunity to notice any alleged meter tampering when six new meters were recorded on the customers account in a four year time period. Staff finds it problematic that so many unauthorized meter changes did not trigger an investigation on FPL's part. However, FPL did not test, nor was it able to locate, any of the six meters in question. We believe that it is inappropriate for the utility to now claim tampering and diversion occurred during a time period when the utility had strong, repeated indications that something was not correct at this location, but did nothing further to investigate and correct the situation.

Because FPL made numerous mistakes with this account over at least a four year period, Staff does not believe FPL should be allowed to recover backbilling for the entire period between August 1991 and May 1997 totaling $17,567. Staff believes that because FPL did not present sufficient evidence of meter tampering prior to May 22, 1997, that they should only be able to backbill from January 9, 1997, when the last of six meters was detected, until May 22, 1997, when a foreign and tampered meter was positively identified. Therefore, Staff recommends that the appropriate backbilling period is from January 9, 1997, until May 22, 1997. Staff believes that the 158/kWh/day average daily billing methodology is correct. Based on the rates in effect during that time, the amount that the customer owes is $1,125.01 plus investigative costs of $261.81. Based on all the extenuating circumstances in Mr. Ramos' case, Staff believes that $1,386.82 is a fair and reasonable amount of backbilling for this address.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period. [JAYE]

STAFF ANALYSIS: Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interests are affected by the proposed agency action shall have 21 days after the issuance of the Order to file a protest. If no timely protest is filed, the docket should be closed.