

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Dundee Citrus
Growers Association against
Florida Power Corporation
regarding backbilling and
apparent power diversion.

DOCKET NO. 980083-EU
ORDER NO. PSC-98-0381-FOF-EU
ISSUED: March 10, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING REQUEST FOR INFORMAL CONFERENCE
AND APPROVING BACKBILLING AMOUNT

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.

Dundee Citrus Growers Association ("Dundee") is a citrus packing and processing operation served by Florida Power Corporation ("FPC"). Dundee is served by a multiphase metering configuration, taking service under Rate Schedule General Service Demand-Primary.

On August 28, 1995, during a storm, Dundee experienced a loss of a phase on its metering cluster, resulting in a loss of power. That same day, FPC crews restored power to the location by placing a jumper cable around the damaged phase connection, pending permanent repair. The temporary connection was not removed and the metering apparatus properly repaired until March 14, 1996. FPC did not offer an explanation for this delay. However, it was not disputed, among the parties, that during the time period the jumper cable was in place, the meter was under-registering the actual usage by Dundee.

When the phase connection was properly repaired, FPC calculated the amount the meter had under-registered usage based on

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historical billing data, and issued a bill to Dundee for \$70,707.92. Dundee disputed the historical time period used for this calculation and at the customer's request, FPC recalculated the back bill amount using a different base period which resulted in a bill of \$55,130.46. In addition to the recalculation, FPC then reduced the bill by an additional twenty (20%) percent. Thus, the final bill rendered to Dundee was for \$44,104.37.

We first became aware of this complaint through a letter from the customer's consultant Mr. Maury Blalock, in November 1996. At that time, staff of the Electric and Gas Division (EAG) conducted an investigation. At the request of the customer, the investigation was handled as an informal complaint, not subject to Rule 25-22.032, Florida Administrative Code. EAG staff conducted independent research, gathered information from the utility, solicited input and additional information from the customer, and conducted an on-site meeting with the customer in an effort to ascertain all the relevant facts. Based on the results of the investigation, staff advised the customer by letter that the rebilling appeared to be reasonable.

On August 4, 1997, staff sent a letter to Mr. Blalock, stating that staff recognized that Mr. Blalock disagreed with staff's previous informal findings and suggested that if he wished to pursue the matter, he should file a complaint to be processed as provided in Rule 25-22.032, Florida Administrative Code.

On August 6, 1997, in a letter from Mr. Blalock to staff, Mr. Blalock indicated that Dundee Citrus had asked him to file a formal complaint requesting an informal conference pursuant to Rule 25-22.032, Florida Administrative Code. This letter summarized the customer's position and again alleged a cover-up by FPC. The letter also reiterated Dundee's offer of \$15,000 in payment to resolve this matter.

At the February 17, 1998, Agenda Conference we were presented with two questions: (1) was the amount of the backbilling appropriate, and (2) should Dundee's request for an informal conference be granted?

I. CALCULATION OF BACKBILLING AMOUNT

For nearly a year, an extensive investigation into the matters raised by Dundee has been conducted, including an on-site visit to the customer's location. Each of the customer's concerns is discussed below.

The customer maintained originally that his usage was significantly different during the time period in question than for the historical period FPC had used to compute the rebilling amount. Even though FPC did adjust slightly the time frame for the rebilling calculation, Dundee argued that the FPC estimate overstated the amount of energy used because the actual production of the plant was significantly below the production during the historical time period. Despite repeated requests for documentation to support this position, none was provided by Dundee. However, as a citrus packer, Dundee must report the number of containers it packs to the Florida Department of Agriculture(FDOA). FDOA packing receipts for the historical time period used for the rebilling and the period in question in this dispute were obtained to evaluate Dundee's position. A review of the receipts suggests that Dundee packed more containers during the time period of the complaint than the historical period, which would indicate more usage, not less. During the site visit, Dundee appeared to reverse its position, saying production did not influence the usage because Dundee served as a storage facility as well as a processing plant and certain equipment operated whether or not Dundee actually packed any produce.

In addition, there was a dispute concerning the operating characteristics of the meter design in place at the time of the malfunction. According to correspondence from the customer, FPC represented that the meter in place at the time of the loss of phase was a standard three-phase meter. Dundee noted that if the metering configuration consisted of a standard three-phase meter, the loss of a phase should result in a simple 1/3 reduction in registration for a three-phase meter. If this were true, actual meter readings could be used to easily and simply calculate the unregistered amount of energy. This would result in an amount significantly less than the amount calculated by FPC using historical data. However, through independent research, including discussions with the meter manufacturer, it has been established that the meter in place at the time of the malfunction was in fact a 2½ phase meter. Because of the configuration of this type of meter design, the simple 1/3 analysis was inappropriate.

While still maintaining that FPC deliberately misrepresented the meter type, the customer argued that even if it were a 2½ phase meter, FPC should conduct a bench test to recreate the error and test for the appropriate loss in registration empirically. FPC argued that a simulation was inappropriate because the error produced by loss of phase on a 2½ phase meter was random and the likelihood of reproducing the exact error at Dundee's location was small. Through discussions with other meter experts, it was confirmed that re-creation of the event was not a reliable indicator of the magnitude of error for loss of a phase on a 2½ phase meter.

Although Dundee takes issue with the method used by FPC to calculate the rebilling amount, use of a similar historical billing period to estimate underbillings has been accepted by this Commission in numerous cases. As a result of our independent analysis, we find no support for Dundee's insistence on a simulation. Nor is there any support for Dundee's original insistence that their usage was significantly different from the historical base used to compute the rebilling. In this instance, there does not appear to be any other reasonable means for accomplishing the rebilling. The method used by FPC appears consistent with what we have approved in other rebilling situations.

While FPC may have erred in not properly repairing or replacing the malfunctioning installation sooner, the customer did not suffer any significant harm from the temporary connection. Dundee continued to operate its business in its usual manner.

Rule 25-6.103(2)(c), Florida Administrative Code, provides that in the event of a non-registering or a partially registering meter, "the utility may bill the customer on an estimate based on previous bills for similar usage." Therefore, we find that FPC appropriately calculated the amount to be rebilled for time period August 28, 1995, through March 14, 1996. The complaint by Dundee that the backbilling amount was unreasonable is, therefore, denied. Further, the rebilled amount of \$44,104.37, shall be paid, in equal monthly installments over the next six months, beginning with the next full billing cycle.

II. REQUEST FOR AN INFORMAL CONFERENCE

The following is a discussion of some of the pertinent activities after receipt of the initial complaint by the customer.

On March 31, 1997, Mr. Blalock sent a letter to staff summarizing the customer's position. No new information was presented and Mr. Blalock did not dispute any technical information presented by staff. The letter repeats allegations of FPC negligence in not repairing the condition in timely matter.

On May 6, 1997, a staff analyst and a safety engineer met with Mr. Blalock and Mr. Nelson at Dundee Citrus. The meeting lasted several hours and Mr. Blalock and Mr. Nelson were afforded the opportunity to present any information they chose. Staff familiarized themselves with the file prior to the meeting. No new information was provided during the meeting. The safety engineer did note that Mr. Blalock indicated during the meeting that the customer's activities were not related to electric usage. When staff pointed out that Mr. Blalock had made the assertion that usage was a significant factor earlier, he reported that Mr. Blalock and Mr. Nelson left the room briefly. When they returned the subject was not pursued, rather the topic turned to the operation of Dundee as a cooperative and the difficulty in coming up with the rebilled amount. Staff also noted that several lightning arresters were blown which could affect the customer's service and contacted FPC for immediate repair.

On May 8, 1997, Mr. Blalock sent a letter to staff acknowledging the meeting with the staff analyst and the safety engineer, which reiterated a history of the case, again criticizing FPC for not timely repairing the meter. He also noted the blown lightning arresters reported by staff. The letter reiterated customer's willingness to pay approximately \$15,000. The letter also alleged a cover-up by FPC of the facts.

On May 15, 1997, the safety engineer sent an e-mail message memorializing his findings with respect to clarifying information on work orders obtained from FPC which showed the removal of a 2 ½ phase meter and the installation of a 3 phase meter. The safety engineer repeated that he had verified the meter number shown on the removal work order with the meter manufacturer as being a 2 ½ phase model. He also indicated that he was faxing a copy of the work orders to replace the blown lightning arresters noted in Mr. Blalock's letter of May 8.

On May 15, 1997, in a letter from Mr. Blalock to staff, Mr. Blalock indicated receipt of the information from staff verifying the removal and replacement of meters based on work orders supplied to staff by FPC. Mr. Blalock asserted that he requested the same information from FPC some months previous and what FPC gave staff was in conflict with that earlier information. The letter again alleges negligence and cover-ups by FPC and accuses FPC of deliberately delaying settlement of this case. On May 28, 1997, a facsimile was sent from Mr. Moeller (FPC) to staff, verifying the usage data and rebilling calculations used to arrive at the \$88,000 provided to staff earlier.

On July 17, 1997, staff sent a letter to Mr. Blalock summarizing staff's report of the May 6 meeting. Staff noted that both FPC and Dundee Citrus Growers agreed that the installed meter was malfunctioning: due to a loss of phase; that staff's research had confirmed FPC's position that the error could not be reliably calculated by causing the same problem in a controlled environment; and that FPC's method of rebilling appeared to be appropriate. The letter ends by saying the informal investigation by the Division of Electric and Gas was closed and attaching a copy of Rule 25-22.032, Florida Administrative Code, on the procedure for filing a complaint with CAF for an official informal conference was attached.

On July 22, 1997, in a letter from Mr. Blalock to staff, Blalock, again, attempts to convince staff of his position.

On August 4, 1997, staff sent a letter to Mr. Blalock, stating that staff recognized that Mr. Blalock disagreed with staff's findings and suggested that if he wished to pursue the matter, he should file a complaint with CAF. Again staff attached a copy of Rule 25-22.032.

On August 6, 1997, in a letter from Mr. Blalock to staff, Mr. Blalock indicated that Dundee Citrus had asked him to file a formal complaint. The letter again summarizes the customer's position and alleges a cover-up by FPC. The letter also reiterated Dundee's offer of \$15,000 in payment to resolve this matter.

On August 7, 1997, in a letter from Mr. Blalock to staff, Mr. Blalock indicated that he did not disagree with staff's analysis of rebilling in staff's letter of July 17, 1997. Despite staff's analysis to the contrary, Mr. Blalock asserted that the meter was not damaged and therefore the meter simulation should be performed. It was Mr. Blalock's opinion that meter simulation is superior to

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use of historical data. Mr. Blalock concluded his letter by citing a previous letter asserting FPC's negligence in repairing the situation.

FPC has promptly and completely responded to all staff requests. We, therefore, find no support for Mr. Blalock's allegations of a cover-up. While FPC may have erred in not properly repairing or replacing the malfunctioning installation sooner, the customer did not suffer any significant harm from the temporary connection.

Because of the extensive inquiry made to date, we believe there are no other avenues to exhaust. Pursuant to Rule 25-22.032(4), Florida Administrative Code, the Director of the Division of Consumer Affairs may make a recommendation to the Commission for a dismissal based upon a finding that the complaint states no basis for relief. In this case, given the extensive prior investigation and review as well as the fact that the customer has refused FPC's settlement offers, it does not appear that there is any benefit to be derived from an informal conference. As such, we find that the customer's request for an informal conference shall be denied.

In this case, we believe that the amount of the backbilling of \$44,104.37, is a reasonable estimate based upon previous usage. Therefore, the complaint by Dundee that the backbilling amount was unreasonable should also be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Dundee's request for an informal conference is denied. It is further

ORDERED that the amount of the backbilling of \$44,104.37, is a reasonable estimate based upon previous usage. It is further

ORDERED that the backbilling amount of \$44,104.37, shall be paid, in equal monthly installments over the next six months, beginning with the next full billing cycle. It is further

ORDERED that if no person, whose substantial interests are affected by this order, chooses to file a protest within 21 days of the issuance of this order, then this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 10th
day of March, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

JCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 31, 1998.

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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.

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.