

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Pat Kintz/James)	DOCKET NO. 910625-EG
Kiselak against Florida Power and Light)	ORDER NO. 24751
Company regarding diversion meter)	ISSUED: 7-3-91
tampering rebilling for estimated)	
usage of electricity)	
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On August 20, 1990, a male voice identifying himself as Pat Kintz filed a telephone complaint against Florida Power & Light Company (FPL) with the Division of Consumer Affairs. Kintz stated that FPL refused to put service in his name due to an outstanding balance of over \$8,000 in meter tampering/current diversion charges under the previous customer's name, James Kiselak. Ms. Pat Kintz later called the Commission, advising that the Pat Kintz who had filed the telephone complaint was really her tenant Jack Dorn and she was the actual customer.

In a report dated September 10, 1990, FPL advised that in August of 1989, a neighbor informed the company that the customer at 3987 NW 163 Street in Miami had been tampering with the meter, and advised that this customer was James Kiselak. On September 19, 1989, FPL found a hole in the canopy of the meter, but no wire. On March 18, 1990 a meter reader working on a Sunday found a wire through the hole stopping the disc. At the time the disc was stopped, three air conditioning units were running. FPL explained that it delayed changing out the meter in an attempt to verify the tampering.

FPL backbilled the customer for \$8,087.67 by using the average percentage of usage method for calculating the rebilling. The backbilling covers the period from March, 1986, when the meter was set, to April of 1990. This was the second case of meter tampering

DOCUMENT NO. 910625-EG
 06695 JUL -3 1991
 PSC-RECORDS/REPORTING

ORDER NO. 24751
DOCKET NO. 910625-EG
PAGE NO. 2

involving the customer of record at this address. The previous meter was removed in 1986 and the customer paid the backbilled amount without dispute. James Kiselak was the customer of record at the time.

FPL further stated that it had conducted an interview with Pat Kintz on June 19, 1990. At this time, Kintz indicated she was the owner of the property and was solely responsible for payment of the electric bill. She also stated she had resided at that address for the past six years. On August 1, 1990, she made an office visit to establish service in her name. As proof that she owned the property, she provided a copy of her deed that indicated the property had just been purchased on July 31, 1990. It was later determined that in October, 1990, Mr. Kiselak was still the mortgagor on this property. When asked about the statements she made on June 19, she replied that she did not remember. She then provided her driver's license, which was issued October 11, 1988, and listed her address as 3987 NW 163 Street. When asked about this discrepancy by FPL, the company reported "she stated she had been moving in for six years."

In a letter to the Commission dated January 11, 1991, Kintz stated that she lived at the address in question from September of 1988 to January of 1989, and rented the back room from Kiselak. She further claimed to have moved out in January of 1989 and come back in November of 1989, again as a renter. She advised staff that she purchased the property on July 31 and wanted service in her name, but FPL refused.

In a report dated February 21, 1991, FPL informed the Commission that "a reliable source, who maintained a close relationship with Kiselak over a period of several years" confirmed on February 6 that Kiselak still resides at 3987 NW 163 Street. An undercover detective working for FPL took surveillance pictures and documented that Kiselak was at the property and apparently living there.

An informal conference, held pursuant to Commission rule on May 6, 1991 failed to resolve the dispute. FPL presented additional evidence supporting its contention that Kiselak still occupied the residence.

We find that the electric meter in question was not registering consumption properly. When tested with the wire in the canopy, the meter registered 0% accuracy on a full load. After the wire was removed, the meter then tested to be running at 100.47% accuracy on a full load. Therefore, the meter in its tampered state was not registering electric consumption accurately.

ORDER NO. 24751
DOCKET NO. 910625-EG
PAGE NO. 3

We find that FPL was in compliance with applicable law in backbilling Mr. Kiselak for the estimated usage of electric consumption. 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." FPL rebilled Kiselak's account from March, 1986 (when the meter in question was set) to April of 1990, when the new meter was set. Since Kiselak, the customer of record, was receiving direct benefit from the unmetered electricity through lower bills, FPL acted properly in rebilling the account.

We find that the amount of the backbilling is reasonable. The type of meter tampering involved in this case is manually manipulated from month to month. There is no precise way of determining how long the wire was stopping registration each month. Accordingly, FPL used the average percentage of usage method to estimate the amount of electricity consumed. FPL believed that the tampered condition did not affect the customer's consumption for the month of April, 1989, as the kilowatt hour registration (2,079 kwh) seemed reasonable, in contrast to all other readings which were inconsistent with the consumption expected in a duplex with five window air conditioners. Consumption for both units was registering on one meter. It appears that the wire was not in place for most, if not all, of that month. FPL took this April reading, applied it to the average percentage of usage charts, and arrived at an average total yearly usage of 30,529 kwh. The backbilling was based on this average. We note that the Kwh rebilled for August and September of 1989 were only marginally higher than the actual consumption in August and September of 1990, after the diversion had been corrected.

In addition to the usage rebilling, an investigation fee of \$375.53 was assessed as Kiselak was the only customer of record for the duration of this meter being in place. The condition could not have been inherited.

We find that FPL acted in accord with applicable law when it refused to establish service at this address in the name of Ms. Kintz. The greater weight of the evidence; ie the post dated deed from Mr. Kiselak to Ms. Kintz, Kiselak's credit report which indicates that he uses the subject address as his mailing address for all his credit cards, his continued responsibility for the mortgage on the property, his observed and documented frequenting of the residence and his failure to provide the readily available credible evidence of another bona fide residence address supports the finding that Kiselak and Kintz continue to occupy the residence.

We have held that only the customer of record is responsible for a bill. Pat Kintz is not indebted to the company.

ORDER NO. 24751
 DOCKET NO. 910625-EG
 PAGE NO. 4

However, FPL tariffs provide that FPL "may refuse or discontinue service for failure to settle, in full, all prior indebtedness incurred by any Customer(s) for the same class of service at any one or more locations of such Customer(s). The Company may also refuse service for prior indebtedness by a previous customer provided that the current applicant or customer occupied the premises at the time the prior indebtedness occurred and the previous customer continues to occupy the premises." (Sheet No. 6.0110, Section 1.5)

Based on the evidence, it appears Ms. Kintz and Mr. Kiselak benefitted from the service during the period of current diversion since the account was in Mr. Kiselak's name, and Ms. Kintz resided there. It appears that Ms. Kintz and Mr. Kiselak continue to occupy the residence. Because of this, FPL may refuse service to Ms. Kintz at 3987 N.W. 163rd St., Miami, pursuant to FPL tariff Sheet No. 6.010, Section 1.5 as approved by the PSC.

In consideration of the foregoing it is

ORDERED by the Florida Public Service Commission that the complaint of Pat Kintz/James Kiselak against Florida Power and Light Company is hereby denied. It is further

ORDERED that this Order shall become final unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that if no party/substantially interested person timely files a petition for formal proceeding or notice of appeal as appropriate, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 3rd
 day of July, 1991.


 STEVE TRIBBLE, Director
 Division of Records and Reporting

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ORDER NO. 24751
DOCKET NO. 910625-EG
PAGE NO. 5

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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on
7-24-91

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 adversely 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 sewer 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.