

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Mr. Larry) DOCKET NO. 910059-EI
Timm against Florida Power) ORDER NO. PSC-92-0157-FOF-EI
and Light Company concerning) ISSUED: 04/03/92
current diversion backbilling)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER AFFIRMING BACKBILLING

BY THE COMMISSION:

After Florida Power and Light Company (FPL) rendered a backbilling in the amount of \$3,856.28, including investigative charges, Larry Timm filed a complaint with the Commission's Division of Consumer Affairs. An informal conference failed to resolve the dispute and we approved Staff's recommendation that the backbilling was proper. Mr. Timm timely requested a Formal Proceeding and the matter was referred to the Division of Administrative Hearings.

On December 2, 1991, the Hearing Officer submitted the Recommended Order to the Commission. That Order is attached to this Order as Exhibit "A". A full recitation of the facts would be unduly repetitious. In summary, the Hearing Officer found that after an anonymous tip, FPL found an underground tap on Mr. Timm's property. As Mr. Timm had been the customer of record since 1981, FPL rendered a backbilling from the date the meter was set (September 1987) through the date service was disconnected. FPL required as a condition of re-establishing service that Mr. Timm utilize an overhead service drop. The Hearing Officer found that the backbilling was proper and the conditions required for reconnection reasonable.

We find that the eleven Findings of Fact made by the Hearing Officer are soundly based on competent substantial evidence of record. We find that the Hearing Officer correctly applied the applicable law to those facts, concerning the prohibition against a utility giving an undue preference to any ratepayer and requiring a utility to backbill a customer in the event it discovers it has underbilled a customer. We find that the Hearing Officer correctly interpreted the Commission's rules concerning a "reasonable

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estimate" of the unmetered electricity consumed and the "reasonable conditions" required for the restoration of service to Mr. Timm.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Findings of Fact made by the Hearing Officer are adopted as this agency's Findings of Fact. It is further

ORDERED that the Hearing Officer's Conclusions of Law are adopted as this agency's Conclusions of Law. It is further

ORDERED that the Hearing Officer's Recommendation that the complaint of Larry Timm against Florida Power and Light Company be denied is accepted as appropriate to the disposition of this case. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 3rd day of APRIL, 1992.



STEVE TRIBBLE Director
Division of Records and Reporting

(S E A L)
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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LARRY TIMM,)
)
 Petitioner,)
)
 vs.) CASE NO. 91-2755
)
 FLORIDA POWER & LIGHT COMPANY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to Notice, this cause was heard by Linda M. Rigot, the assigned Hearing Officer of the Division of Administrative Hearings, on September 20, 1991, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Larry Timm, pro se
P.O. Box 494
Loxahatchee, Florida 33470

Larry Timm, pro se
2943 "B" Road
Loxahatchee, Florida 33470

For Respondent: K. Crandal McDougall, Esquire
Florida Power & Light Company
P.O. Box 029100
Miami, Florida 33102-9100

For Public Service Commission: Martha Carter Brown, Esquire
Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0870

STATEMENT OF THE ISSUE

The issue presented is the amount of money Petitioner owes Respondent as a result of unmetered electrical consumption.

PRELIMINARY STATEMENT

Florida Power & Light Company sent Petitioner a bill in the amount of \$3,856.28 for his unmetered consumption of electricity together with investigative costs incurred by Florida Power & Light Company, and Petitioner filed a complaint with the Florida Public Service Commission. After the Public Service Commission issued its Order Denying Complaint Regarding Backbilling, Petitioner timely requested a formal hearing regarding that proposed agency action. This matter was thereafter transferred to the Division of Administrative Hearings for the conduct of that formal proceeding.

Petitioner Larry Timm testified on his own behalf. Respondent Florida Power & Light Company presented the testimony of Debra K. Zaleuke. Additionally, Florida Power & Light Company's Exhibits numbered 1-5 were admitted in evidence.

Only the Respondent submitted post hearing proposed findings of fact in the form of a proposed recommended order. A specific ruling on each proposed finding of fact can be found in the Appendix to this Recommended Order.

FINDINGS OF FACT

1. On September 21, 1989, Debra K. Zaleuke, a current diversion investigator for Respondent, received an anonymous telephone call advising that Petitioner had been bragging about his illegal underground tap located somewhere on Petitioner's 10-acre property. She went to that property located at 2943 "B" Road, Loxahatchee, Florida. When she arrived at the trailer located at that address, she could hear that the air

))
conditioning unit was operating. She shut off the main breaker, but the air conditioning system continued to run.

2. She returned to the property on September 22, 1989. Petitioner was there on that occasion. When he saw her, he ran inside his trailer and shut off the air conditioning. She asked him to turn the air conditioning system back on, and he advised her that it had just "burned up."

3. Zaleuke pulled the electric meter and used a Wiggins tester, which showed amperage still being pulled through the meter can. She summoned a crew with a Dimatel underground fault locator, and they started digging. Petitioner told them that they "would not be able to find it."

4. They continued digging and eventually found the underground location of the illegal tap. The tap went directly to an above ground breaker system so the tap could be turned off and on at will.

5. Petitioner's electrical service was discontinued that day. The illegal underground tap was taken to Florida Power & Light Company's evidence room. The meter which was removed from Petitioner's property was subsequently tested and found to be operating properly.

6. Petitioner has been the customer of record since 1981. In August, 1987, the house located on the property burned, along with Petitioner's electric meter. In August of 1987, Florida Power & Light Company set a new meter at Petitioner's property.

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7. Even after Petitioner's home burned down, Petitioner continued to consume electricity at that address. He testified that he used electrical tools and ran water pumps for irrigation purposes even while tearing down the burned structure that had once been his residence. The property also has on it a structure where Petitioner houses his helicopter. Eventually, a trailer was moved onto the property, in which trailer Petitioner resided at the time that Florida Power & Light discontinued electrical service to him.

8. Since a new meter was installed in August of 1987, and since Petitioner's electric bill during the month of September, 1987, dropped to "0" even though Petitioner was using, by his own admission, electrical equipment at the time, Zaleuke chose the month of September, 1987, as the starting date for recomputing the backbilling to be rendered to Petitioner for his unauthorized and unmetered electrical consumption. Using the seasonal average method approved by the Florida Public Service Commission, she estimated the energy consumed through the illegal underground tap. She also computed the amount of expense Florida Power & Light Company had incurred in locating and terminating the illegal condition.

9. Florida Power & Light Company rendered to Petitioner its backbilling in the amount of \$3,856.28 representing the unauthorized, unmetered consumption of electricity from September, 1987, to September, 1989, together with its investigative costs. Petitioner has continued to refuse to pay the bill rendered to him, and his electrical service at that address remains disconnected.

10. Zaleuke's calculations for both unmetered electrical consumption and investigative costs are reasonable, and the billing rendered to Petitioner is reasonable.

11. Florida Power & Light Company has notified Petitioner of the conditions required for the restoration of service to his property. Those conditions are as follows: (1), Petitioner will provide a meter can on a pole anywhere on his property outside of a three-foot diameter from the existing yard pole; (2), Florida Power & Light Company will provide an overhead service drop to the meter can at no charge; and (3), Petitioner will pay whatever the Public Service Commission deems Petitioner's final bill to be. These conditions are reasonable.

CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the parties hereto and the subject matter hereof. Section 120.57(1), Florida Statutes.

Petitioner does not dispute that he owes Florida Power & Light "some" money. The only issue remaining between the parties in this proceeding is the amount of money which Petitioner owes. Rule 25-6.104, Florida Administrative Code, provides that in the event of unauthorized use, the utility may bill the customer on a reasonable estimate of the energy used. Florida Power & Light Company has done so. Section 3.3 of Florida Power & Light Company's Tariff Sheet No. 6.030 provides that in the event of unauthorized use, the customer's service is subject to discontinuance until full payment is made of the bill for service and the Company has been reimbursed in full for all

extra expenses incurred. Additionally, Rule 25-6.105(5)(j), Florida Administrative Code, provides that whenever service is disconnected for fraudulent use, the utility may, before restoring service, require the customer to make all necessary changes at his own expense and to pay an amount reasonably estimated as the loss in revenue.

In August of 1987, Petitioner's house burned down, and Florida Power & Light Company installed a new meter. Petitioner commenced using electricity again, by his own admission, utilizing electrical equipment and tools in tearing down the burned structure, and used electric water pumps to operate an irrigation system. Yet, Petitioner's electrical usage in September of 1987 registered at "0". Accordingly, using September of 1987 as the start date for calculating the amount of backbilling was a reasonable date to select. The calculation of the backbilling from September of 1987 through September 22, 1989, when Petitioner's electrical service was discontinued, was done in accordance with the seasonal average approach approved by the Florida Public Service Commission. The calculation of the rebilled amount is reasonable, and the investigative charges are reasonable. Additionally, the conditions required by Florida Power & Light Company before Petitioner's electrical service to that address can be restored are reasonable.

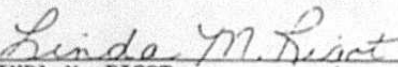
RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

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RECOMMENDED that a Final Order be entered finding that
Petitioner owes Florida Power & Light Company the backbilled
amount of \$3,856.28.

DONE and ENTERED this 2nd day of December, 1991, at
Tallahassee, Florida.


LINDA M. RIGOT
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 486-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of December, 1991.

NOTICE OF RIGHT TO SUBMIT
EXCEPTIONS: All parties have the
right to submit written exceptions
to this Recommended Order. All
agencies allow each party at least
10 days in which to submit written
exceptions. Some agencies allow a
larger period within which to
submit written exceptions. You
should contact the agency that will
issue the final order in this case
concerning agency rules on the
deadline for filing exceptions to
this Recommended Order. Any
exceptions to this Recommended
Order should be filed with the
agency that will issue the final
order in this case.

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Copies furnished:

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APPENDIX TO RECOMMENDED ORDER
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1. Respondent's proposed findings of fact numbered 1-4, 6-10, and 12-15 have been adopted either verbatim or in substance in this Recommended Order.

2. Respondent's proposed findings of fact numbered 5 and 11 have been rejected as being unnecessary.

3. Respondent's proposed findings of fact numbered 16-19 have been rejected as not constituting findings of fact but rather as constituting statements of Petitioner's position which position is not supported by the weight of any credible evidence.