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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Thomas W. Hart against Florida Power & Light Company regarding backbilling.)	DOCKET NO. 970047-EI
)	ORDER NO. PSC-97-0215-FOF-EI
)	ISSUED: February 24, 1997
)	

PETITION ON PROPOSED AGENCY ACTION

Petitioner, Thomas W. Hart, pursuant to applicable Rules of Administrative Procedure, files the following Petition protesting proposed Agency action and would state the following in support thereof:

1. This petition is instituted pursuant to Florida Administrative Code Section 25-22.036.
2. The petition is appropriate under the above-mentioned Code provision in that Thomas W. Hart is a person subject to Commission jurisdiction and a person substantially affected by Commission action regarding the imposition of certain charges to said Petitioner.
3. The Petitioner, Thomas W. Hart, resides at 301 N.E. 5th Court, Dania, Florida 33004. The Petitioner has a substantial interest which will be affected by the Commission's determination in that said Commission has entered an order back billing the Petitioner over a six year period in excess of \$9,000.
4. The following is a statement of all known disputed issues and material fact:
 - A. There was no "erratic kilowatt usage" at the Petitioner's residence.
 - B. The meter can face plate at the Petitioner's residence was not rigged and the canopy seal was not missing.
 - C. The projected usage of kilowatt hours made by FPL of 3030 was erroneous based on a faulty calculation.
 - D. The face plate and outer seal on the Petitioner's meter were not rigged and the inner seal was not missing.
 - E. The results of the tests of the Petitioner's meter instituted by FPL are faulty and inaccurate. Furthermore, the dial and bearing on the Petitioner's meter was not tampered with.
 - F. FPL's methodology of rebilling the Petitioner's account was erroneous and faulty. Specifically, FPL's methodology of backbilling for the period of June 21, 1990 through May 13, 1996 was erroneous and based on improper assumptions.

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- G. Petitioner takes exception to and disagrees with the progressive meter readings documented by FPL and that there was any physical tampering with the meter dial.
- H. FPL's procedure for backbilling the Petitioner from June 21, 1990 through May 13, 1996 is unreasonable, unwarranted and based on faulty assumptions.
- I. FPL used improper seasonal percentage of usage factors and projected yearly usage amounts to derive an incorrect, erroneous and faulty projection of actual usage.
- J. More specifically, FPL's procedure of using the seasonal percentage of usage chart, comparing the total kilowatt hours sold to all residential customers in the Petitioner's service area is improper and an unfair comparison as individual electrical consumption varies from household to household.
- K. Petitioner takes exception to the meter readings taken by FPL, as well as the multiplication factors used by FPL in its calculation of the amounts to be backcharged.
- L. FPL's conclusion that the Petitioner's meter was only reading 72.62% is incorrect, erroneous and based on faulty assumptions.
- M. Furthermore, FPL's assumptions regarding the kilowatt usage of the Petitioner's residence is not based in any factual foundation, is speculative and otherwise erroneous.
- N. The total amount backbilled to the Petitioner is exorbitant, unreasonable, not related to any factual basis and based on faulty assumptions.
- O. The conclusions reached by the Public Service Commission are erroneous, incorrect and based on faulty presumptions.

5. Concise statement of the ultimate facts, rules and statutes which entitle Petitioner to relief - Without admitting any liability, Petitioner would state that his electrical consumption since his meter has been replaced by FPL is less than the consumption prior to FPL's alleged discovery of an alleged tampering of the meter. Since FPL replaced the Petitioner's meter in May 1996, the Petitioner's electrical consumption has averaged less than 800 kwh per month. In stark contrast, FPL takes the position that Petitioner's estimated electrical consumption over the past 7 years averaged 2500 kwh per month. It is obvious that FPL's calculations as to the estimated average consumption of electricity at the Petitioner's residence is substantially overstated.

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In addition, according to FPL's own evidence, the investigator did not notice any problems with the Petitioner's meter until July 20, 1995. As admitted by FPL, there was no prior "erratic kilowatt usage" and there was no observation of any tampering prior to July 20, 1995. Consequently, the Public Service Commission's conclusion that the Petitioner should be backbilled to June, 1990 is unfounded and has no basis in fact.

Furthermore, the testing of Petitioner's meter was not done by an independent laboratory but by FPL.

6. The Petitioner is entitled to relief pursuant to Florida Statute §120.57, Florida Statutes §120.569(1), Florida Statutes §120.68 and Florida Administrative Code Rules 25-22.029 and 25-22.036.

WHEREFORE, for the aforementioned reasons, Petitioner respectfully requests that the backbilling by FPL be discharged, that the Order of the Public Service Commission dated February 24, 1997 be reversed, that a hearing be conducted before a Hearing Officer and that FPL go hence without day and the Petitioner be awarded his attorney's fees and costs.



THOMAS W. HART

I HEREBY CERTIFY that a true copy of the foregoing was served by U.S. Mail delivery this 14 day of March, 1997, to Blanca S. Bayo, Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and to the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0880.



THOMAS W. HART