



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-

DATE: SEPTEMBER 24, 1998

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

FROM: DIVISION OF LEGAL SERVICES (JAYE) *RVE*
DIVISION OF CONSUMER AFFAIRS (C. PEÑA) *BID ey*
DIVISION OF ELECTRIC AND GAS (E. DRAPER) *EID* *JDJ*

RE: DOCKET NO. 980864-EI - COMPLAINT BY ALBERT SADAKA AGAINST
FLORIDA POWER & LIGHT COMPANY REGARDING BACKBILLING

AGENDA: OCTOBER 6, 1998 - REGULAR AGENDA - PROPOSED AGENCY ACTION
- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 20 DAY RECOMMENDATION FILING PERIOD REQUIRED BY
RULE 25-33.032(8), FLORIDA ADMINISTRATIVE CODE
WAIVED BY BOTH PARTIES

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980864.RCM

CASE BACKGROUND

On April 18, 1997, Mr. Albert Sadaka filed a complaint with the Division of Consumer Affairs (CAF) against Florida Power & Light Company (FPL). FPL backbilled Mr. Sadaka in the amount of \$15,451.79 for alleged unbilled energy and investigative charges from March 19, 1991, through March 21, 1997. Mr. Sadaka contends that the backbilled amount is too high.

In a report provided to CAF, FPL stated that the backbilled amount was for service provided to 5600 South West 85th Street, Miami, Florida 33143, under the name Albert Sadaka. FPL records indicate that meter tampering had taken place at Mr. Sadaka's residence. FPL alleges that meter tampering occurred at this location from March 19, 1991, through March 21, 1998.

DOCUMENT NUMBER-DATE

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Fpsc-RECORDS/REPORTING

DATE: September 24, 1998

On July 16, 1997, CAF forwarded Mr. Sadaka a letter advising him that CAF's initial finding was that FPL appeared to be in compliance with applicable rules in its backbilling. Mr. Sadaka requested an informal conference. Subsequently, Mr. Sadaka requested that the informal conference be postponed until after a related criminal matter was concluded.

The criminal proceeding against Mr. Sadaka, State of Florida v. Albert R. Sadaka and Gina Sadaka, Case No. M97-37449-A, charged him with a violation of Section 812.14, Florida Statutes (Trespass and Larceny with Relation to Utility Fixtures). Mr. Sadaka pled no contest and received a sentence of six months probation, 20 hours of community service, and \$112 in court costs.

The informal conference was eventually held on June 23, 1998. No settlement was reached.

DISCUSSION OF ISSUES

ISSUE 1: Is there sufficient evidence that meter tampering occurred at the Sadaka residence at 5600 South West 85th Street, Miami, Florida, to allow FPL to backbill the Sadaka account for unmetered kilowatt hours?

RECOMMENDATION: Yes. Prima facie evidence of meter tampering documented both in FPL's reports, and during the informal conference, demonstrates that meter tampering occurred. [C. PEÑA]

STAFF ANALYSIS: FPL supported its conclusion that meter tampering occurred at 5600 South West 85th Street, by documenting several events as follows:

- 1) On January 16, 1997, an FPL meter reader reported a hole in the center of the canopy at Mr. Sadaka's address.
- 2) On February 17, 1997, an FPL meter reader found an object inserted in the meter canopy impeding the meter's disk from rotating. When the object was removed the disk began turning.
- 3) On March 12, 1997, an FPL revenue protection investigator removed the object inserted in the meter canopy that was impeding the meter's disk from rotating. When the object was removed the disk started turning. The altered meter was removed and sent to

DOCKET NO. 980864-EI

DATE: September 24, 1998

FPL' facilities for testing. A new meter was put in its place. The test revealed that the tampered meter with the object in place only registered a weighted average of 00.0%. With the object removed, the tampered meter registered 98.31% weighted average.

No information to the contrary was provided to staff.

Rule No. 25-6.104, Florida Administrative Code, states that "[i]n 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 has clearly demonstrated that the meter at 5600 South West 85th Street was altered in order to prevent an accurate recording of the energy used. Therefore, staff recommends that sufficient evidence of meter tampering was documented both in FPL's reports, and during the informal conference, to demonstrate that meter tampering occurred.

ISSUE 2: Is Florida Power & Light Company's calculation of the backbilled amount of \$15,451.79, including investigation charges of \$299.28, for the period March 19, 1991, to March 12, 1997, reasonable?

RECOMMENDATION: No, FPL should backbill Mr. Sadaka for the period March 17, 1993, through March 12, 1997, resulting in a charge of \$12,181.26 for unbilled energy. In addition, FPL should bill Mr. Sadaka for investigation charges of \$299.28 for a total amount of \$12,480.54. [E. DRAPER]

STAFF ANALYSIS: Staff does not dispute the methodology FPL used to calculate the backbilling amount. Staff does dispute the backbilling period. FPL believes that Mr. Sadaka should be backbilled for the period of March 19, 1991, through March 12, 1997. Staff believes, based on the analysis below, that Mr. Sadaka should be backbilled for the period of March 17, 1993, through March 12, 1997.

Based on its investigation, FPL concluded that as a result of meter tampering, the billed amount of kWh from March 1991 to March 1997 was substantially less than the actual amount of energy consumed. When FPL believes that meter tampering has occurred, it will install a new meter that has been tested for accuracy. A new meter was installed March 12, 1997. As the attached billing record shows (Attachment A), Mr. Sadaka's energy consumption in the subsequent months ranges from 2,430 kWh to 4,465 kWh. FPL states that this usage level is consistent with an approximately 3200 square foot house which has two central air-conditioners, two refrigerators, a pool, and spa pump.

Staff agrees with FPL that a drop in consumption level occurred in March 1991 (952 kWh). However, it appears that this drop is a one-time occurrence. For the remaining months in 1991 and in 1992 Mr. Sadaka's consumption remains above the 2000 kWh level. Based on the attached usage chart, staff notes that beginning in March 1993 Mr. Sadaka's registered usage drops below the 2000 kWh level and remains well below 2,000 kWh for most months until the new meter was installed in March, 1997.

Staff agrees with FPL that a house of this size must at least register 2,000 kWh per month. This belief is supported by the fact the Mr. Sadaka's usage after the new meter was installed averages in the 3,000 to 4,000 kWh range. Since Mr. Sadaka was the customer of record and benefitted from more energy than that for which he was billed, staff believes that it is appropriate to backbill his

DOCKET NO. 980864-EI
DATE: September 24, 1998

account for non-billed usage from March 17, 1993, through March 12, 1995.

In order to arrive at the total backbilled amount, FPL employed the Average Percentage Use Method. Staff reviewed FPL's calculations and agrees that the billing amounts were applied appropriately. Therefore, staff recommends that the Commission find that the total backbilled amount of \$12,480.54 for unbilled consumption from March 17, 1993, to March 12, 1997, including \$299.28 for investigative charges, was calculated in a reasonable manner as required by Rule 25-6.104, Florida Administrative Code.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if no protest is filed withing 21 days of the issuance of the order. [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.

ATTACHMENT A

Month	1998	1997	96	95	94	93	92	91
Jan	<u>3341</u>	604	2856	1331	1241	2118	2651	2156
Feb	<u>2641</u>	1980	279	854	499	2180	2205	1775
Mar	<u>2430</u>	2201	1598	1846	1652	1514	2072	2952 952
Apr	<u>3274</u>	<u>3129</u>	992	1379	2045	1740	1477	2018
May	<u>3415</u>	<u>3335</u>	1482	1561	1224	1961	2017	3695
Jun	_____	<u>4165</u>	1343	2199	1120	3778	2723	5209
Jul	_____	<u>3696</u>	1422	1848	2768	4383	3478	6299 5235
Aug		<u>4160</u>	879	781	800	3254	4716	4884
Sep		<u>4396</u>	1310	1700	1821	2616	4166	3615
Oct		<u>3189</u>	1304	1152	1245	1011	4389	5866
Nov		<u>2603</u>	1396	1369	951	1646	3841	3323
Dec		<u>2915</u>	1484	1572	2114	874	2372	2229
Totals		4785	16345	17592	17480	27075	36107	42012

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