

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
TALLAHASSEE, FLORIDA

IN RE: Complaint by Albert Sadaka against Florida Power &  
Light Company regarding backbilling.

DOCKET NO. 980864-EI

COPY

BEFORE:	CHAIRMAN JULIA A. JOHNSON COMMISSIONER J. TERRY DEASON COMMISSIONER SUSAN F. CLARK COMMISSIONER JOE GARCIA COMMISSIONER E. LEON JACOBS
PROCEEDING:	AGENDA CONFERENCE
ITEM NUMBER:	6**PAA
DATE:	October 6, 1998
PLACE:	4075 Esplanade Way, Room 148 Tallahassee, Florida

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## APPEARANCES:

RICHARD BONEHILL and ALBERT SADAKA

ROBERT E. STONE, Esquire, and BILL FEASTER representing  
FPL

STAFF RECOMMENDATION

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.

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.

Issue 3: Should this docket be closed?

Recommendation: Yes, if no protest is filed within 21 days of issuance of the order.

P R O C E E D I N G S

1  
2 CHAIRMAN JOHNSON: Staff, we are on Item 6. And  
3 if you could present the item, we will allow the  
4 customer an opportunity to speak. staff.

5 MR. BONEHILL: Thank you, Ms. Chairman. My name  
6 is Richard Bonehill, I'm an attorney. We are here in  
7 Miami at the Public Service Commission office. And  
8 present with me is Mr. Albert Sadaka, the complainant  
9 in this Item 6. And we have -- we would like to make  
10 statements as to the Staff recommendations --

11 CHAIRMAN JOHNSON: Yes, sir. We are going to  
12 allow --

13 MR. BONEHILL: -- pursuant to this item.

14 CHAIRMAN JOHNSON: Thank you, sir. We are going  
15 to allow Staff to make a brief introduction to the  
16 item, and then we will allow you to speak. Thanks for  
17 the introductions.

18 COMMISSION STAFF: Commissioners, Item 6 is  
19 Docket Number 980864-EI, the complaint by Albert  
20 Sadaka against Florida Power & Light Company regarding  
21 backbilling. And as you have heard the attorney for  
22 the customer is on the telephone, and I believe a  
23 representative from the company is here to speak, as  
24 well.

25 MR. BONEHILL: I was unable to hear that.

1           CHAIRMAN JOHNSON: We just made some preliminary  
2           introductions, and I understand that Mr. Sadaka is in  
3           the room, and the attorney, if you could go ahead and  
4           start. If you could begin by stating your name again,  
5           and then we will allow you to make your presentation.

6           MR. BONEHILL: Okay. My name is Richard  
7           Bonehill, and present with me is Mr. Sadaka, Albert  
8           Sadaka.

9           Ms. Chairman and members of the Commission, Mr.  
10          Sadaka and I would like to thank you for your  
11          consideration and your help so that we may appear this  
12          morning before the Commission. Although we are not  
13          totally aware of your procedures and rules, the Staff  
14          has given us a brief outline that we are trying to  
15          follow. If we do something contrary to your rules, we  
16          apologize, and ask that we be corrected.

17                 It must be noted by someone who is familiar  
18          with the rules, regulations, and conduct of the Staff  
19          of the Public Service Commission that the Staff  
20          appears to favor the regulated industries over the  
21          consumer. The consumer is wrong and the utility is  
22          right. Several areas of the memorandum dated  
23          September 24th, 1998, contain incorrect statements of  
24          fact or facts that Mr. Sadaka and myself do not  
25          remember being presented in our presence, or which we

1 had been advised of, or which copies of the  
2 correspondence have been provided to us.

3 Mr. Sadaka filed this complaint because FPL  
4 threatened to turn off the electricity at his home,  
5 where his daughter requires kidney dialysis five times  
6 per week. After the complaint was filed with the  
7 Public Service Commission, it is our understanding  
8 that so long as the current was paid the electric  
9 would remain on. FPL continually co-mingled the  
10 bills, sent past due notices with the entire bill due  
11 to be paid or the electric would be shut off. This  
12 caused severe psychological tension in the Sadaka  
13 family. A daughter with severe medical problems and a  
14 wife and mother who was under doctor's care, and  
15 almost totally disabled.

16 FPL resorted to causing terror and fear in this  
17 family. FPL conducted private investigations against  
18 the rights of the privacy of the Sadakas, threatened  
19 them on the telephone, and coerced them to come to  
20 the FPL offices to give private information which was  
21 then used for criminal charges filed against the  
22 Sadakas when they refused to pay the improper  
23 backbilling.

24 Reference in this memorandum is made to criminal  
25 charges which we do not believe are relevant to these

1 proceedings, and which we believe are an attempt to  
2 prejudice the Commission. Reference to the criminal  
3 charges fail to properly state the facts of the case.  
4 Mr. Sadaka and I do not remember being asked about the  
5 conclusion of the criminal charges, and believe FPL  
6 provided this information to staff and they failed to  
7 mention it to Mr. Sadaka and myself or ask for our  
8 comment.

9 Mrs. Sadaka was made a defendant due to the fact  
10 that she was coerced in this private investigation at  
11 the FPL offices. It was determined that sometime in  
12 the past she had paid two bills with her checks,  
13 therefore, it was considered that she derived a  
14 benefit and became part of the criminal procedure,  
15 with FPL knowing that she had severe  
16 physical and medical problems.

17 FPL was further aware -- Mr. Sadaka would have  
18 continued to trial, but that his wife's case would not  
19 be dropped by the State Attorney, and I might add that  
20 these charges were instituted by FPL. Eventually, a  
21 plea of convenience was offered to Mr. Sadaka in which  
22 Mrs. Sadaka's case would be nol prossed, and that Mr.  
23 Sadaka on a plea of convenience, on a plea of no  
24 contest, without admitting the facts or guilt received  
25 a withhold of adjudication, court costs, 20 hours of

1 community service, and early termination upon  
2 completion of the community service.

3 According to the memorandum that we have been  
4 provided dated September 24th, we go to Issue 1.  
5 There is no dispute in that February and March of 1997  
6 that there is evidence of meter tampering. But FPL  
7 ignored the evidence of its own employees and its  
8 backbilling methods, which has no relation to the  
9 attempted tampering. Their employee stated, and this  
10 is their meter reader under oath, that he read the  
11 meter in January, noticed the hole in the canopy, and  
12 reported the same. In February and March -- or at  
13 least in February, he noticed some sort of a plastic  
14 thing retarding the circulation of the meter, and he  
15 removed that and reported that to FPL.

16 This is the only two times of any alleged meter  
17 tampering in this case. However, the Sadakas received  
18 a backbilling statement to March of 1991. Their staff  
19 further -- and employees of FPL further stated under  
20 oath had any tampering been noticed with the meter  
21 prior to January 1997 it would have been reported as  
22 it was in January of 1997. There is no documentation  
23 of any meter tampering from 1991 to 1996. All the  
24 Sadakas received was a bill in the amount of  
25 \$15,451.79.

1           As to Item 2 or Recommendation 2 of the  
2           complaint, Mr. Sadaka and myself never received a  
3           monthly breakdown for the backbilling. It appears  
4           that the Staff of the Commission who prepared this  
5           report have received some type of information. They  
6           deleted two years from the six years and still  
7           maintain a bill of 80 percent of the total. When I  
8           asked if they had ex parte discussions or received  
9           ex parte documents from FPL, your Staff became  
10          extremely upset, and indicated that if they was making  
11          an allegation of impropriety, I should speak with  
12          their supervisor. I dropped the subject at that time,  
13          but I ask you, is it proper for your Staff to consult  
14          with and receive ex parte information and documents  
15          without informing the complaining party and asking for  
16          a response?

17                 It certainly appears that your Staff is  
18                 over-friendly with the companies you are regulating,  
19                 and totally disregard the complaints and complainants  
20                 concerning improper practices of the utilities. Staff  
21                 mentioned the Sadaka -- the Staff failed to mention  
22                 the Sadakas repairs to their home after Hurricane  
23                 Andrew of energy-saving utilities resulting in over  
24                 \$20,000 in energy-saving appliances and repairs to  
25                 windows and roof. A pool and hot tub are all new



1 energy saving equipment. No mention is made of these  
2 efforts, or if the Sadakas were asked to explain the  
3 decline in the use of electricity.

4 How your Staff received this mention as to the  
5 monthly billings, how two years can be deleted while  
6 only 20 percent of the bill is totally without  
7 anything that we have been advised of. I ask the  
8 following question, how did FPL know that your report  
9 recommended a reduction to 14,000 or to \$12,480.54,  
10 including investigative costs? I was inquired of on  
11 what I meant by that, and I explained on September  
12 23rd, hand-delivered to my office, while we were under  
13 a hurricane watch was a offer of settlement from  
14 Florida Power & Light saying that they had reduced  
15 their claim to \$12,480.54. The same exact amount  
16 which was released by your Staff report to you on  
17 September 24th.

18 Our question was, how did FPL know the exact  
19 figure prior to the release of the staff report? We  
20 felt and feel that it is improper and highly irregular  
21 for your Staff, which is supposed to be impartial, to  
22 come up with these figures and relay them to Florida  
23 Power & Light which, in fact, made a hand-delivered  
24 letter prior to the release of your report.

25 Mr. Sadaka does not feel that he has been treated

1 fairly by your Staff in preparing this memorandum.  
2 Your staff appears to be taking the side of the  
3 utility, and working with the utility to the detriment  
4 of the complainant. I might further add that on June  
5 1st, 1997, while this complaint was still pending  
6 before the Public Service Commission, Florida Power &  
7 Light did, in fact, disconnect the power. I have a  
8 disconnect notice here that says that you have an  
9 amount due of \$15,729.01, that you have a minimum  
10 payment of \$15,685.31 to have your utility restored.

11 Neither of those figures are reflected in any of  
12 the recommendations or figures provided to the  
13 Commission by your staff or by Florida Power & Light,  
14 although we do have the disconnect notice. The  
15 daughter was on dialysis, and the dialysis machine was  
16 operating, and approximately 45 minutes later the  
17 power was restored to the Sadaka home.

18 As to Item 3, we ask that the Commission -- by us  
19 filing this protest and object to the findings and  
20 recommendation of your Staff in this memorandum,  
21 request that you reject this memorandum and that you  
22 direct the Staff that a full hearing be held prior to  
23 adopting any recommendations. Mr. Sadaka and I will  
24 assist as much as possible, but I must remind you that  
25 financial considerations remain a problem, that the

1 Commission conduct the hearing in Miami area regarding  
2 the actions and conduct of FPL towards Mr. Sadaka, and  
3 hopefully others will be saved from a similar fate as  
4 Mr. Sadaka.

5 At this time Mr. Sadaka wishes to make a  
6 statement.

7 MR. SADAKA: I just want to mention that I have  
8 never seen such gestapo-like tactics used by anybody  
9 in this country regarding the way I have been treated  
10 by Florida Power & Light. And I bring up the point,  
11 and I especially emphasize the fact that I was forced  
12 into criminal charges when FPL asserted that my wife  
13 had to be present at all hearings, and that she  
14 herself would be responsible for whatever tampering  
15 may have occurred.

16 I advised FPL that my wife was under her doctor's  
17 care for hypertension, she was very stressful, she had  
18 spent overnight in the hospital to get her blood  
19 pressure down, and she just could not tolerate this  
20 kind of treatment without adverse medical effects.  
21 But that seemed to just go over the head of any FPL  
22 investigation that was going on. In fact,  
23 I think they took that as an opportunity for them to  
24 bring pressure on myself to settle this case  
25 immediately, even though I have a strong opinion that

1           it is an entirely erroneous case. Mrs. Sadaka's  
2           health came foremost in my plea of no contest. The  
3           plea was offered to me to get Mrs. Sadaka relieved of  
4           any responsibility in the case and to get her off the  
5           docket, so I entered that plea just for that reason.  
6           And, in fact, I discussed with my attorney that I  
7           would love to have gotten that particular investigator  
8           on the witness stand in front of a jury just so I  
9           could illustrate the gestapo tactics being used by  
10          FPL.                   Now, back to -- I refer to a  
11          spreadsheet of kilowatt hour usage that was presented  
12          to me to supposedly justify backbilling for 72 months.  
13          Everything that I see on this backbilling chart is  
14          explainable. The only thing that I don't see  
15          explainable is in the year 1992 where after Hurricane  
16          Andrew we were without power for a couple of weeks  
17          and then we were without major appliances and air  
18          conditioning for a good period of time after that.  
19          Yet my kilowatt hour usage went up. This indicates to  
20          me that there is some suspicion regarding the way our  
21          meters are read.

22                 And I prepared my own spreadsheet, and I looked  
23                 at total usage for over the years, and, yes, there was  
24                 a decline in usage, and I did not at all think that  
25                 was unreasonable, because we had -- and we submitted

1 bills to the Public Service Commission, we installed  
2 energy-efficient devices to the tune of over \$22,000.  
3 In fact, the actual bills that were submitted went  
4 much higher than that, but some of those bills were  
5 due to the reconstruction of Andrew damage.

6 But we put in high energy air conditioning, we  
7 put in a solar water heater, we put in 12 ceiling fans  
8 throughout the house, strictly to minimize the  
9 consumption of energy. Or, of course, we expected the  
10 usage to go down. In fact, the usage did go down. I  
11 bring up also the fact that during 1997 when the usage  
12 seemed to have stabilized, and on the spreadsheet  
13 where there are handwritten figures, the usage seemed  
14 to stabilize above the prior years. This was because  
15 the hot tub was put back in service in December of  
16 '96, or full service roughly about January or  
17 February, and the dialysis machine was installed,  
18 which is operational 24 hours a day.

19 Then toward the end of '96, we also established  
20 offices at our home. So that the usage, the declining  
21 is explainable by the installation of energy efficient  
22 equipment. Usage increase, according to them they  
23 would be -- replacement of the meter due to the  
24 installation of a dialysis machine, the opening of a  
25 home office, and reactivation of a spa unit.

1           In the statute it mentions that a reasonable  
2 person should expect or notice when tampering is going  
3 on and when the consumption of power declines, that a  
4 reasonable person should be suspicious. I bring out  
5 all of this because I consider myself a reasonable  
6 person and I wasn't the least bit suspicious that  
7 there was any tampering going on due to all the  
8 reasons that I mentioned.

9           I also bring up that we frequently had boarded  
10 students who are coming to this country and enrolled  
11 in the aviation language school. We board them, and  
12 part of their curriculum is that they are to be  
13 boarded at English-speaking families. So, the erratic  
14 usage is due to the fact that six weeks out of year  
15 the house is closed down, we are on vacation. Other  
16 months of the year we have family and boarders and,  
17 you know, it's not necessarily the case that one would  
18 expect relatively equal usage from one year to the  
19 next. Our usage has characteristically been very  
20 erratic, and I wasn't the least bit suspicious that  
21 there was any tampering going on.

22           I also wanted to bring out that at the deposition  
23 of the meter reader, the meter reader, and I almost  
24 quote verbatim, said there is no way in hell there  
25 could have been a hole in that meter before January of

1 1997. And this is a sworn statement. If that, in  
2 fact, is the case, justification for backbilling does  
3 not seem to me to be realistic. Do you have anything  
4 further to report?

5 MR. BONEHILL: That concludes both the comments  
6 of myself and Mr. Sadaka as to Item 6.

7 CHAIRMAN JOHNSON: Thank you, Mr. Bonehill and  
8 Mr. Sadaka. Florida Power & Light, if you would like,  
9 if you would state your name --

10 MR. BONEHILL: I'm sorry, I can't hear you.

11 CHAIRMAN JOHNSON: I am now allowing Florida  
12 Power & Light to make comments.

13 MR. STONE: Good morning, Chairman Johnson and  
14 Commissioners. Name is Robert E. Stone, attorney for  
15 Florida Power & Light Company, and we are here to  
16 support the Staff's recommendation on the issue, the  
17 main issue, and that is the recalculation of the  
18 billing on this meter tampering case.

19 The Staff has calculated the billing to be  
20 \$12,480.54. They have gone through an analysis, which  
21 is indicated in the Staff's recommendation.

22 MR. BONEHILL: I can't hear you, Mr. Stone.

23 MR. STONE: I'm very sorry. I'll try to speak  
24 louder.

25 MR. BONEHILL: Speak into the speaker, please.

1 Into the microphone.

2 MR. STONE: Yes, sir. The Staff's recommendation  
3 goes through an analysis of the rebilling calculation,  
4 and has used the spreadsheet that Mr. Sadaka had  
5 prepared in this particular case that was presented at  
6 the informal conference. The spreadsheet is attached  
7 as Exhibit A, Attachment A, to the Staff's  
8 recommendation.

9 There were many different issues which Mr.  
10 Bonehill and Mr. Sadaka mentioned during the course of  
11 their presentation, the main issue that we need to  
12 focus on is the rebilling. The other issues, he  
13 mentioned alleged disconnection, FPL has talked to the  
14 meter reader and talked to the collection  
15 representative, the disconnection that he alleges on  
16 June 1st did not occur. There are other issues that  
17 he raised, but, again, the issue is the billing. The  
18 billing is a reasonable estimate.

19 We have here documented meter tampering in  
20 January of '97. We have a hole in the meter canopy.  
21 In February of 1997, there was a plastic wire inserted  
22 into the meter disk causing the disk to slow down,  
23 thereby not registering the full usage. The following  
24 month a different individual went out to the property  
25 and discovered a second wire, a plastic wire, excuse



1 me, in the meter, and that was in March of 1997.

2 Based on that we documented clear evidence of  
3 meter tampering in this case, and we went back to the  
4 kilowatt history. And if you would look or consider  
5 Attachment A to the staff's recommendation, you will  
6 notice the kilowatt hour history over the years. And  
7 very briefly, this is a 3,200 square foot home in  
8 South Florida; five bedrooms, two baths. The  
9 customer has stated to us it has two central air  
10 conditioning units, one of which runs 24 hour a days  
11 set at the temperature of 76 to 78 degrees. The  
12 second central air conditioning he stated to us runs  
13 during the night time only. If you take a look again  
14 at the kilowatt hour history, the history throughout  
15 the years from '93 through '97, through March of '97,  
16 does not reflect the usage of the air condition in  
17 that manner. In fact, if you just take a look at June  
18 of '94, for example, 1120 kilowatt hours roughly  
19 equates to about a \$100 bill. This is not reasonable.

20 And, in fact, the consumption during the year is  
21 erratic. And he indicated he had explanations for  
22 that, however, most customers you will see a low  
23 amount in the winter months, it will peak in the  
24 summer, and then it will drop down again as we are  
25 approaching the winter months again. This customer's

1 consumption was extremely erratic, was extremely low  
2 for this size house, and essentially that is why we  
3 calculated the rebilling going back to 1991. When we  
4 put in a new meter, you will note on Attachment A the  
5 items that are in handwriting, that's my handwriting,  
6 I did that, those are from our records. You will  
7 notice the consumption on this customer's meter after  
8 a new meter was put in was in the 3400, 3300, et  
9 cetera. It goes up to 4400 in June. Based on that,  
10 we went back to the period of time of '91.

11 The Staff has indicated that we should start our  
12 billing from '93, we are agreeable to that. And we  
13 believe that the billing according to the staff, the  
14 \$12,000 figure is a reasonable estimate. I will be  
15 glad to answer any questions you may have.

16 CHAIRMAN JOHNSON: Thank you.

17 COMMISSIONER JACOBS: Do you know how often your  
18 meters are read in this community?

19 MR. BONEHILL: Is that a question for Mr. Stone?

20 COMMISSIONER JACOBS: Yes, that's for Mr. Stone.

21 MR. STONE: Yes, Commissioner Jacobs, the meters  
22 are read every month. Roughly every 30 days.

23 COMMISSIONER JACOBS: Is it reasonable that this  
24 would have gone undetected for such a long time?

25 MR. STONE: Yes, and I will share with you a fact

1 that was not mentioned earlier. The meter reader that  
2 read this residence had access problems. The gate to  
3 the property was locked. He had to read with a  
4 monocular, a half of a binocular. He read it from a  
5 distance. And from a distance he is not able  
6 physically to see this hole in the meter canopy. And  
7 I have also talked to the prior meter readers, at  
8 least one prior meter reader for the previous 12  
9 months. He had indicated he too had access problems  
10 to this premises. Also using a monocular. So that is  
11 the reason, to answer your question, Commissioner. It  
12 is reasonable that the meter readers would not have  
13 seen this hole or this wire.

14 COMMISSIONER CLARK: Did they ever call and point  
15 out that they weren't getting access?

16 MR. STONE: Commissioner Clark, to my knowledge  
17 there was no contact. You are talking about FPL  
18 contacting the customer? To my knowledge there was no  
19 indication that there was a problem in the meter  
20 reader actually seeing the dials to get a good  
21 reading. So, no, we did not contact them to my  
22 knowledge.

23 COMMISSIONER CLARK: Well, I guess here is my  
24 question. You would have had to read with a monocular  
25 or whatever --

1 MR. BONEHILL: Ms. Chairman?

2 CHAIRMAN JOHNSON: Yes, sir.

3 MR. BONEHILL: We cannot hear any of the  
4 questions from the Commission members to Mr. Stone.

5 COMMISSIONER CLARK: My question, Mr. Stone, is  
6 the meter reader could not have used monoculars all  
7 the time to read this meter, is that correct?

8 MR. STONE: That is my understanding,  
9 Commissioner Clark. I talked to the reader meter, Mr.  
10 Minet (phonetic), who read this meter at the time the  
11 hole was discovered, and the wires were discovered,  
12 and I also talked to the meter reader who was his  
13 predecessor, and he told me absolutely 100 percent he  
14 had access problems. He had to read with the  
15 monocular.

16 COMMISSIONER CLARK: All the time?

17 MR. STONE: Every single time, Commissioner.

18 COMMISSIONER CLARK: How did they get access the  
19 last time to find the meter was tampered with?

20 MR. STONE: The last time, when Mr. Minet, the  
21 meter reader, found in January of '97, the gate was  
22 left unlocked. And the following month in February of  
23 '97, the gate was left unlocked. He was able to  
24 access the premises.

25 COMMISSIONER CLARK: Didn't the fact that there

1 was erratic usage alert the billing department that  
2 they needed to get in there and look at that meter?

3 MR. BONEHILL: We can't hear any questions from  
4 the Commission.

5 COMMISSIONER CLARK: Let me ask it again. Didn't  
6 the fact that there was erratic usage for this  
7 residence and coupled with the fact that you were not  
8 getting access to the premise alert you to the fact  
9 that you needed to get in there and read the meter?

10 MR. STONE: To my knowledge, no. There was  
11 nothing that triggered to say to FPL, oh, there is  
12 erratic consumption at this location, do something.

13 COMMISSIONER CLARK: Let me ask you, do you do it  
14 now? I noticed in a former recommendation that there  
15 have been some changes. What would you do now? My  
16 concern here is the length of time you have asked for  
17 backbilling.

18 MR. BONEHILL: I can't hear a thing.

19 COMMISSIONER CLARK: I don't know what to do  
20 about it.

21 MR. BONEHILL: Ms. Chairman.

22 COMMISSIONER GARCIA: You know what, don't worry  
23 they are not asking you questions. This is  
24 Commissioner Garcia. Just let Commissioner Clark -- I  
25 don't think it will be possible for you to hear

1 period.

2 MR. BONEHILL: Ms. Chairman.

3 CHAIRMAN JOHNSON: Sir, if you can wait one  
4 moment, we are going to see if we can take care of the  
5 technical problems that we are having. But if you can  
6 hold on one moment.

7 MR. BONEHILL: We did not hear the last five  
8 minutes of conversation.

9 CHAIRMAN JOHNSON: Mr. Bonehill?

10 MR. BONEHILL: Yes.

11 CHAIRMAN JOHNSON: We are going to try to link  
12 you in through a different system. We are going to  
13 break for about three minutes to set that up, and then  
14 we will try this again.

15 MR. BONEHILL: That's fine, thank you.

16 CHAIRMAN JOHNSON: We are going to be in recess  
17 for about three minutes.

18 (Recess).

19 CHAIRMAN JOHNSON: Ladies and gentlemen, we are  
20 going to go back on the record. We are going to  
21 temporarily pass Item 6. They are still working on  
22 the sound system. And we are going to the next agenda  
23 item. We are going to pass Item 6.

24 \* \* \* \* \*

25 CHAIRMAN JOHNSON: We are going to go back on the

1 record with Item 6.

2 Commissioners, did you --

3 COMMISSIONER CLARK: I think I was asking you,  
4 Mr. Stone, about the fact that you had -- your billing  
5 shows that you had erratic consumption and you were  
6 not able to get in there to actually see the meter.  
7 And my question is -- yes, you did answer why. Maybe  
8 you didn't answer. Why is it that you didn't pursue a  
9 concern about meter tampering at that time?

10 MR. STONE: Commissioner Clark, we have no  
11 procedure or mechanism in place with our computer  
12 billing records to establish tampering, so to speak,  
13 or a problem. It is just solely based on the kilowatt  
14 hours of the customer. Perhaps that's something that  
15 could be developed down the road. However, just  
16 looking at the history, remember the meter reader is  
17 reading the meter and he gets a good accurate reading.  
18 That doesn't trigger anything to him to make any kind  
19 of report, it's just a number he enters into his  
20 little hand-held computer. Could something be  
21 developed? Possibly. I don't know, I'm not a  
22 technical expert in that.

23 COMMISSIONER CLARK: I did have another question.  
24 Is this house in an area that had problems with  
25 Andrew, and if it did wasn't Andrew about the last

1 part of August '92?

2 MR. STONE: That's correct, Commissioner Clark.  
3 This house was in the area of Hurricane Andrew. It's  
4 around the Coral Gables, Florida area. And I happen  
5 to live in that area, and I know personally I was out  
6 of power for a period of time.

7 COMMISSIONER CLARK: For how long?

8 MR. STONE: Personally, I was out I would say  
9 about ten days. If I may just make one brief comment,  
10 the billing of September '92 on the spreadsheet was  
11 4166, that incorporated the time period of Hurricane  
12 Andrew, the billing cycle. That was an estimated  
13 reading. All of our readings during that time period  
14 were estimated because we were under storm  
15 restoration. The next following month's reading was  
16 an actual reading taken by a meter reader, and any  
17 discrepancy would have been trued up at that time.

18 COMMISSIONER DEASON: But the fact remains that  
19 staff is not recommending backbilling go back that  
20 far.

21 MR. STONE: That is correct, Commissioner Deason,  
22 and we accept that. We will go back to the '93 date.

23 COMMISSIONER CLARK: Well, I understand that they  
24 are not suggesting it. But my concern is a concern  
25 about the meter itself and the billing given the fact



1           that you have that huge bill in September when he  
2           probably was without service for quite awhile.

3           MR. STONE: That estimate, Commissioner Clark, is  
4           based on prior months consumption, as you will look  
5           back to the '91 months, you will see I believe they  
6           take an average. So that's how they estimate in  
7           September of '92 was generated.

8           COMMISSIONER CLARK: Maybe staff can answer the  
9           question, too, and it may have something to do with  
10          interest. I think it was initially brought up that if  
11          you delete two years -- that deleting the two years --  
12          how come there isn't more deleted from the bill?

13          COMMISSION STAFF: I asked FPL for the number,  
14          because the backbilling itself is a fairly complicated  
15          calculation, it includes tax (inaudible). So I asked  
16          FPL if you were to backbill from March '93, what would  
17          that amount be, and that is the amount FPL gave me.

18          COMMISSIONER CLARK: So we haven't verified that  
19          as backbilling. Does it strike you that it should be  
20          more?

21          COMMISSION STAFF: I think the difference is not  
22          large, because in '91 and '92, the consumption is  
23          still fairly high, so that the difference between the  
24          what FPL backbilled for '91 and '92 is less than the  
25          '93, '94, '95, and '96, where he only used about 1000

1 kilowatt hours a month. So the backbilling amounts  
2 for those years --

3 COMMISSIONER CLARK: I see.

4 COMMISSION STAFF: -- may be higher. That's why  
5 the difference in the 15,000 and 12,000.

6 COMMISSIONER CLARK: All right.

7 CHAIRMAN JOHNSON: Further questions,  
8 Commissioners?

9 MR. BONEHILL: We have lost audio. Excuse me,  
10 Commissioner.

11 CHAIRMAN JOHNSON: Yes, sir.

12 MR. BONEHILL: We have lost audio.

13 COMMISSIONER GARCIA: How can you lose audio if  
14 you are answering the question?

15 CHAIRMAN JOHNSON: We'll work on that. Mr.  
16 Bonehill?

17 MR. BONEHILL: Yes. Okay, so you can hear us and  
18 we can hear you.

19 MR. BONEHILL: You are breaking up, but I can  
20 hear you.

21 CHAIRMAN JOHNSON: Very well. Any other  
22 questions, Commissioners?

23 COMMISSIONER GARCIA: It just strikes me, Staff,  
24 and this is a broader question, and maybe Commissioner  
25 Clark can give me some reasoning. I understand why we

1 do this, and I understand the calculation, but I am  
2 tremendously troubled by the fact that a company is  
3 billing a customer in this day and age, and that its  
4 system can't figure out there is something wrong here.  
5 And when someone is spending 5200 kilowatts in '91,  
6 and in the equivalent time five years later they are  
7 about 1300 kilowatts, I am perplexed that no one  
8 decides to jump that fence or to do something extra to  
9 figure out what is going wrong. And, you know, if my  
10 butcher was charging me too little for steak for six  
11 years, you can bet that they are not going to get what  
12 was back there when they figured out they were wrong.

13 Now, I understand that we have got a different  
14 standard here and that we have different rules that  
15 apply because it's for the general body of ratepayers,  
16 and I understand that. But it troubles me  
17 tremendously that this doesn't kick up something  
18 somewhere. I know that, for example, with phone  
19 companies, if I run up my AT&T bill, AT&T calls me and  
20 says, hey, Joe, are you -- why are you calling people  
21 in Somalia? And maybe not why are you calling them,  
22 but are you calling people in Somalia. And if I  
23 answer yes, they are fine with it and we go on from  
24 there.

25 But there seems no accountability except the fact

1 that we can get them later so let's not worry about it  
2 and we use a monocular and that's good enough.

3 . COMMISSIONER CLARK: Let me just follow up on  
4 that. How often do you all -- I mean, what is your  
5 sort of standard? Is it okay to use that and not gain  
6 access, or do you at some point remind the property  
7 owner that you need access to that meter?

8 MR. STONE: Commissioner Clark, when there is a  
9 problem, the meter reader has a problem actually  
10 seeing the dials on the meter, we can estimate the  
11 bill for a period of three months, and the fourth  
12 month we will have to go in there and, I guess, knock  
13 on the door for an actual reading. That's in an  
14 estimated situation. In this case, the meter reader  
15 did not have a problem seeing from a distance.

16 COMMISSIONER CLARK: I understand that, but my  
17 question is does FPL have a policy whether it's okay  
18 for a continuous period of time to read that way as  
19 opposed to inspecting the meter?

20 MR. STONE: To answer your question, I don't know  
21 if there is a specific policy.

22 COMMISSIONER CLARK: Madam Chairman, I'm  
23 inclined, based on the representation made from Mr.  
24 Bonehill to just set this matter for hearing. I  
25 understand that we send it over to DOAH. There are

1 enough concerns raised in my mind about how to  
2 calculate the backbilling. You know, I would be  
3 willing to do the PAA or just send it directly for  
4 them, DOAH to gather the facts. I would point out to  
5 Mr. Bonehill that our staff is supposed to investigate  
6 and they have brought to us the results of that  
7 investigation, and that you do have the opportunity  
8 for the hearing even if we issue the PAA. But I am  
9 inclined, based on the representation made, to just  
10 send it to hearing.

11 COMMISSIONER GARCIA: I will second. But I do  
12 want to add that perhaps it has come time in this day  
13 and age with computers looking at every part of our  
14 lives, that there has to be a standard for FPL to say  
15 there is something not right here. And I would like  
16 to encourage staff to sit down with the company, the  
17 companies, perhaps, Mr. Elias and Mr. Jenkins, and  
18 let's see if we can set some kind of broad standard.  
19 I understand that we allow them recovery, I understand  
20 this is how the systems works, but there comes a point  
21 that you have to be accountable. If not for their own  
22 interests, then for the interests of the ratepayers  
23 and for the interest of justice. But going back five  
24 years or four years to backbill a client or using a  
25 monocular for years as opposed to looking at the

1 actual site, maybe it's time we look at that.

2 COMMISSIONER JACOBS: I would think there  
3 would be even more practical concerns. Because if you  
4 or this -- the company's perspective in this case is  
5 very much more challenging, because over the course of  
6 years you haven't detected a problem such as this.  
7 And I know that you have practical limitations, as  
8 well, but I would think that maybe some kind of annual  
9 review, if that were possible, to see if these  
10 billings are consistent. I mean, you would have  
11 picked this up within a year or two at least, instead  
12 of, you know, the length of time that we are looking  
13 at here. You would have picked up something irregular  
14 within a year or two of seeing these highly erratic  
15 and abnormal billings.

16 COMMISSIONER CLARK: May I say --

17 COMMISSIONER DEASON: Excuse me, hold on just a  
18 second. I think we need to slow down for just a  
19 minute. I think we are potentially going down a very  
20 slippery slope on this. We have had accusations of  
21 gestapo tactics. Let me tell you that if the  
22 companies start keeping files on customers to the  
23 extent that I think I'm hearing being requested, that  
24 is the gestapo tactics. Things change over a period  
25 of years. Children grow up, they move away. That may

1 cause a change in consumption. People die. You know,  
2 children are born into families. People go on  
3 extended vacations. A lot of things can cause a bill  
4 to be erratic. And if we are going down this slope,  
5 we are actually asking companies to start interfering  
6 in customers' lives and asking them, "Well, who lives  
7 with you, why did your bill go down or go up? Did  
8 somebody die or did somebody move away? Did you have  
9 a birth in the family?" That's none of the utility's  
10 business. And I'm concerned we are going down that  
11 slope.

12 COMMISSIONER CLARK: Commissioner Deason, I don't  
13 think we are. I think what we are suggesting is --  
14 I'm concerned about a situation where they continued  
15 to read it through a monocular or whatever it is, and  
16 that coupled with the notion of what appears to be  
17 erratic billing did not trigger something in their  
18 mind. But let me just --

19 COMMISSIONER DEASON: Well, how do you define  
20 erratic billing?

21 COMMISSIONER CLARK: What I see on what they have  
22 had here. I mean, it's not just the erratic billing,  
23 it is the way they were reading the meter. And let me  
24 just say it is also influenced by the item we had in  
25 Number 5. And in that item FPL does not contest the

1 lower billing, because there were several -- they had  
2 noticed meter tampering a number of times and they say  
3 the company was going through a period of  
4 reorganization, the policy in place at the time called  
5 for the meter reader to input whatever meter was found  
6 at an address as the new meter of record if there was  
7 no obvious meter tampering. It indicates to me that  
8 they are going through some changes. I think it may  
9 be well to have them come to Internal Affairs and just  
10 tell us what their policies are with respect to meter  
11 reading and how you detect tampering and those sorts  
12 of things just so we have a comfort level that it is  
13 appropriate, because we have had now two instances of  
14 requests for extensive backbilling.

15 COMMISSIONER GARCIA: My point was no more than  
16 that. I agree with you, Commissioner Deason, that we  
17 shouldn't be employing gestapo tactics. But I will  
18 tell you what, when a customer comes in before this  
19 forum, there is a series of laws and rules that  
20 pertain to the customer that make it quite difficult  
21 for the customer to meet the burden to some degree.  
22 And I don't want the company to keep records on who  
23 lives in my house or what happens, but I think that  
24 there should be -- when there is a fluctuation of 50  
25 percent or more for a sustained period of time, the



1 company should at least physically see the meter. And  
2 in this case, they didn't.

3 I don't want the company to know when I'm  
4 traveling or not traveling. That's neither here nor  
5 there, but at least to physically be at the meter and  
6 get an idea. Now, I may -- we may sit down with staff  
7 and staff may say no, we don't want to do that. I  
8 mean, we have looked at it and there is not a problem,  
9 and that's why.

10 COMMISSIONER CLARK: Commissioner, I'm suggesting  
11 they come to Internal Affairs and tell us how you do  
12 it.

13 CHAIRMAN JOHNSON: Mr. Feaster.

14 MR. FEASTER: If I may. Please let me commit  
15 that the company will get together with staff and  
16 bring something to Internal Affairs. I don't know  
17 that this is something that needs to be attached to  
18 this. We strike a balance. I mean, clearly our  
19 tariff says we have unrestricted access.  
20 Notwithstanding that, we have a large number of  
21 customers who have fences, who have dogs, who have  
22 security systems around their property. We have a  
23 very small percentage of those customers who defer  
24 current. Whenever we try to strike a balance for the  
25 convenience of our customers, customer satisfaction

1 and other reasons, of requiring that we get someone  
2 physically close enough to touch their meter. But we  
3 are certainly willing to pursue that with the help of  
4 the staff.

5 COMMISSIONER GARCIA: Commissioner, I don't  
6 necessarily -- and maybe I'm going a little bit  
7 farther than Commissioner Clark. I don't necessarily  
8 need FPL by itself to issue this. I simply want staff  
9 to look at this statewide. I mean, to the IOUs just  
10 to get an idea of what they are doing, and understand  
11 the policies so that at least in my case I have a  
12 comfort level when and if we move issues that this.  
13 But I'm not -- I don't think Commissioner Clark or I  
14 intended to attach it to this particular --

15 COMMISSIONER CLARK: No. And, in fact,  
16 Commissioner Deason, there were a number of things  
17 that Mr. Sadaka indicated would account for it being  
18 erratic; that they were away for six months, had  
19 changes in usage, changes in what they installed  
20 changing it to, using their home as an office. That I  
21 see are factual disputes that we were not going to  
22 resolve here. And that was the reason for leaving it  
23 as appropriate to send it to DOAH. But I felt that  
24 separate from these cases, I have some discomfort  
25 about the alacrity with which FPL has caught these

1 backbillings, and the request to backbill for  
2 significant periods of time. Whether staff meets with  
3 them and is confident that they are doing the right  
4 thing, or we have a presentation briefly at Internal  
5 Affairs. I would like to hear it at Internal Affairs,  
6 but I realize I take up other Commissioners' time in  
7 that, so if the staff will do it and be comfortable  
8 with it, we have just had these instances that make me  
9 uncomfortable with what is going on.

10 CHAIRMAN JOHNSON: A motion then to the first  
11 issue. There is a motion that we send this to DOAH  
12 for an administrative hearing.

13 COMMISSIONER CLARK: I would move we deny staff  
14 and send it directly for hearing at DOAH.

15 CHAIRMAN JOHNSON: Is there a second? There is a  
16 motion and a second. Any further discussion? Seeing  
17 none, all those in favor signify by saying aye. Aye.

18 COMMISSIONER GARCIA: Aye.

19 COMMISSIONER CLARK: Aye.

20 COMMISSIONER JACOBS: Aye.

21 CHAIRMAN JOHNSON: Opposed?

22 COMMISSIONER DEASON: Nay.

23 CHAIRMAN JOHNSON: Show it approved on a  
24 four-to-one vote. To the second issue of whether or  
25 not we set it for an Internal Affairs an opportunity

1 to hear --

2 COMMISSIONER CLARK: That would be up to you to  
3 discuss with the staff. That's my recommendation, and  
4 I'm sure FPL will get back to staff, and probably you  
5 or Mr. Talbott about putting it on Internal Affairs.

6 CHAIRMAN JOHNSON: Staff will coordinate that  
7 effort. First, you may want to -- after meeting with  
8 the company, brief the Commissioners as to the  
9 findings and then we will determine if there is a need  
10 to take a further step.

11 COMMISSIONER CLARK: That is an excellent  
12 decision.

13 CHAIRMAN JOHNSON: With that, we are going to  
14 take a thirty minute lunch break. Mr. Bonehill and  
15 Mr. Sadaka, we have set this matter for an  
16 administrative hearing. One of the attorneys will  
17 call you and brief you on the proper procedures for  
18 pursuing the administrative hearing process. Thank  
19 you for your participation.

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## CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF LEON )

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 26<sup>th</sup> day of October, 1998.



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