

MEMORANDUM

OCTOBER 26, 1998

REC'D - FSC
OCT 26 AM 11:00
REC'D
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (JAYE) *RUE For GAJ*
RE: DOCKET NO. 980730-EI - COMPLAINT BY LEONARDO RAMOS
AGAINST FLORIDA POWER & LIGHT COMPANY REGARDING
BACKBILLING FOR CURRENT DIVERSION

FSC-98-1455-FOF-EI

Attached is a NOTICE OF PROPOSED AGENCY ACTION: ORDER APPROVING BACKBILLING AMOUNT, with attachments, to be issued in the above-referenced docket. (Number of pages in order - 7)

GAJ/js
Attachment
cc: Division of Electric and Gas (Ging)
Division of Consumer Affairs (Peña)
I:980730or.gaj

see 1 & 2

1/1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Leonardo
Ramos against Florida Power &
Light Company regarding
backbilling for current
diversion.

DOCKET NO. 980730-EI
ORDER NO. PSC-98-1455-FOF-EI
ISSUED: October 26, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING BACKBILLING AMOUNT

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

On December 16, 1997, Mr. Leonardo Ramos (Mr. Ramos) filed a
complaint with the Commission alleging that Florida Power & Light
Company (FPL) had unfairly backbilled him for meter tampering and
had accused him of using an unauthorized meter. FPL provided staff
with a report stating that the backbilled account was for service
provided to 16251 North West 129th Avenue, Miami, FL 33018, in the
name of Leonardo Ramos. This is a commercial account. FPL records
for this account indicated meter tampering and the use of an
unauthorized meter at that location.

On April 10, 1997, a FPL meter reader reported a possible
"foreign" or switched meter and meter tampering at Mr. Ramos'
address. On May 22, 1997, an FPL Revenue Protection meter reader
inspected the meter and reported an unauthorized meter at the
Ramos' address. The Revenue Protection meter reader also reported
that the meter's outer seal was gone, and that it had a missing
inner seal. The meter was pulled on this day and sent to FPL's

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meter test center for testing. A new meter was also installed on May 22, 1997. On June 5, 1997, the tampered meter was tested at the FPL testing facility; test results indicated that the meter pulled from Mr. Ramos address was a foreign meter, there was no inner seal, the bearings were tampered with and the disk was lowered. The veriboard results were 10/09 and the meter only registered a weighted average of 66.02%.

As a result of the meter tests and the readings taken from the new meter, FPL billed the customer of record for electricity used but not paid for from August 13, 1991, to May 22, 1997. Backbilling dates from August 13, 1991, because consumption after the new meter was installed was much higher than any other month throughout Mr. Ramos' occupancy. This indicated to FPL that a foreign meter was being used the entire time. Using the average daily usage formula, rebilling was based on a daily average of 158 KWH (New meter set May 22, 1997--RRD June 10, 1997, R02924/19 days = 158/day). FPL's investigation indicated that between September of 1993, and May of 1997, six different meters were observed at Mr. Ramos' address.

FPL Revenue Protection Supervisor met with Mr. Ramos and his family on July 15, 1997, and explained to them what FPL had found. The Ramoses were shown the meter. They denied having tampered with or replaced any meters. FPL gave Mr. Ramos the following options for paying his bill: payment in full; 75% down payment, balance in three months; bank loan; or, promissory note and mortgage with monthly payments of \$300 plus late payment charges in addition to their regular bill. FPL attempted to work out payment options for Mr. Ramos without success. On November 14, 1997, Mr. Ramos' electrical service was disconnected.

On December 16, 1997, Mr. Ramos called The Division of Consumer Affairs to complain about the charges of current diversion and meter tampering. He also informed Commission staff that he could not pay the amount FPL said he owed. On February 10, 1998, the customer requested an informal conference.

The televised informal conference was conducted on June 4, 1998. Mr. Ramos asserted the he did not switch meters, nor did he tamper with meters. He also said he could not offer FPL any money to pay for the alleged amount due on the account (\$17,563.40 plus \$261.81 investigative costs for a total of \$17,825.21). At the informal conference, Mr. Ramos offered three options to FPL for repayment. In the first arrangement, Mr. Ramos suggested that FPL

should contract for his services as a landscaper by paying a reasonable fee to him for the service plus buying a percentage of his business. The customer would pay FPL in installments until the entire amount was paid in full. The second arrangement offered by the customer was that FPL grant him a loan or line of credit with which he would purchase materials and equipment to restart his business, and he would pay all of his bill that was in arrears. The third arrangement offered by Mr. Ramos was that FPL should await the results of his Workmen's Compensation claim so that Mr. Ramos could pay the amount due FPL in installments from the verdict. FPL made a final counteroffer requesting that Mr. Ramos make some reasonable payment arrangement. Mr. Ramos said he could not because he had no money. No settlement was reached at the informal conference.

The recommendation filed in this docket on August 6 for the August 18 Agenda Conference was deferred to allow the company to attempt to reach a settlement with the customer. FPL has been unable to reach a formal settlement with the customer. However, FPL has now agreed with Staff's original recommendation on the amount the customer should be backbilled.

We believe that FPL's report provides sufficient evidence of an unauthorized meter and meter tampering at Mr. Ramos' address. Pursuant to Rule 25-6.104, Florida Administrative Code, as the customer of record, Mr. Ramos is responsible for a reasonable amount of backbilling. 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.

In Mr. Ramos' case, an FPL meter reader reported an unauthorized meter, which had apparently been tampered, at Mr. Ramos' address. As described above, the unauthorized meter was missing its inner and outer seals, its bearings had been tampered, and its disk had been lowered. The tests performed by FPL on this meter showed that it only registered a weighted average of 66.02% and the veriboard results were 10/09. FPL's investigation further revealed that a total of six different unauthorized meters had been observed at Mr. Ramos' address between September, 1993, and May, 1997. From this evidence, Mr. Ramos received energy for which he did not pay. According to Rule 25-6.104, Florida Administrative Code, as the customer of record, Mr. Ramos may be billed for a reasonable

estimate of the energy used during the time diversion and tampering took place because he benefitted from the energy.

We believe that the underbilled amount of \$17,825.81 was correctly derived using standard methodology for diversion cases. However, because of the particular circumstances of this case, we believe that the fair and reasonable amount of backbilling is \$1,386.82. FPL has indicated that it agrees with this amount.

FPL concluded that, as a result of meter tampering, the billed amount of kWh from August 13, 1991, to May 22, 1997, was substantially less than the actual amount of energy consumed. On May 22, 1997, a new meter was installed at the Ramos address, and the amount of underbilling was calculated based on the usage recorded by the new meter. Most residential usage estimates for backbilling are done using a seasonal average methodology. However, because the account at issue is a commercial account, FPL based the rebilled amount on average daily usage. In order to calculate the average daily usage, the usage recorded by the new meter is divided by the number of days in the billing period. This determines the average daily usage which is multiplied times the applicable rates in place over the rebilling period.

The recorded kWh for May 22, 1997, through June 10, 1997, was 2994 kWh. The average kWh/day usage over the 19 day period was 158 kWh/day. Commission staff was concerned that the 19 days may have been an insufficient sample size to estimate consumption for almost six years. FPL provided additional billing data for the period June 10, 1997, to November 14, 1997, which shows an average daily consumption closer to 171 kWh/day. Therefore, we concur with staff. We believe that using 158 kWh/day for rebilling is a conservative estimate. Using this methodology Mr. Ramos would be rebilled for 202,247 kWh which is the difference between the total estimated kWh consumed between August 13, 1991, and May 22, 1997, (341,554) and what he was actually billed during this same period (139,304). Based on this methodology, the cost for the rebilled kWhs is \$17,563.40 plus \$261.81 for investigative costs totaling \$17,825.21.

We agree that the methodology FPL used to calculate the backbilling amount is consistent with the methodology used in previous current diversion cases. We do not agree, however, that the customer should be billed the full \$17,825.21. Between September 13, 1993 and January 9, 1997 six different meters have been identified at this address. At no time during this period did

FPL initiate a current diversion investigation. When Commission staff asked FPL to explain why it had not acted when each of the six different meters were discovered it responded that the company was going through a period of reorganization and the policy in place at the time called for the meter reader to input whatever meter was found at an address as the new meter of record if there were no obvious signs of meter tampering. The Company further stated that after 1995 their procedures were modified to minimize this type of problem. Even though FPL indicated that their procedures changed after 1995, the same problem occurred on January 9, 1997, when the sixth foreign meter was found and FPL again entered it as a new meter set and meter of record. We believe FPL failed to provide adequate proof of tampering prior to January 9, 1997. FPL had ample opportunity to notice any alleged meter tampering when six new meters were recorded on the customers account in a four year time period. We find it problematic that so many unauthorized meter changes did not trigger an investigation on FPL's part. However, FPL did not test, nor was it able to locate, any of the six meters in question. We believed that it was inappropriate for the utility to claim tampering and diversion occurred during a time period when the utility had strong, repeated indications that something was not correct at this location, and did nothing further to investigate and correct the situation.

Because FPL was unable to document that any meters prior to the one installed on January 9, 1997, were under registering, we believe that the utility should only be able to backbill from January 9, 1997, when the last of six meters was detected, until May 22, 1997, when a foreign and tampered meter was positively identified. Applying the 158/kWh/day average daily billing methodology, using the rates in effect during that time, the amount that the customer owes is \$1,125.01 plus investigative costs of \$261.81. Based on all the extenuating circumstances in Mr. Ramos' case, we believe that \$1,386.82 is a fair and reasonable amount of backbilling for this address.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that sufficient evidence of meter tampering and current diversion occurred at Mr. Leonardo Ramos' address, 16251 North West 129th Avenue, Miami, FL, 33018, to warrant backbilling. It is further

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ORDERED that the amount of reasonable backbilling of Mr. Ramos' account is \$1,386.82, based upon underbilled usage from January 9, 1997, to May 22, 1997. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of October, 1998.



KAY FLYNN, Chief
Bureau of Records

(S E A L)

GAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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

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hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 16, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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 substantially 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 wastewater 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.