



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: FEBRUARY 17, 2000

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

FROM: DIVISION OF LEGAL SERVICES (CROSSMAN)
DIVISION OF CONSUMER AFFAIRS (C. PEÑA)
DIVISION OF ELECTRIC AND GAS (GING)

RE: DOCKET NO. 990913-EI - COMPLAINT BY REGINA WALSH AGAINST FLORIDA POWER CORPORATION REGARDING BACKBILLING.

AGENDA: 02/29/2000 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: I:\990913R3.SAC

RECEIVED FPSC
FEB 17 11:15 AM '00
RECORDS AND REPORTING

Handwritten initials and signatures: J.A., R.E., K.P.

CASE BACKGROUND

On March 18, 1998, Ms. Regina Walsh contacted the Division of Consumer Affairs (CAF) and complained that Florida Power Corporation (FPC) disconnected her service and backbilled her account for \$2,255.06. Ms. Walsh disputed the backbilling from FPC for usage not recorded or previously billed because of alleged meter tampering. This amount also included FPC's investigative charges. An inquiry was taken and sent to FPC for a full report. On April 8, 1998, CAF received a report from FPC.

In response to the complaint, FPC reported the following sequence of events:

1) Regina Walsh opened an account on February 1, 1993. The account was disconnected for non-payment on October 17, 1996, and terminated on October 28, 1996.

2) On October 17, 1996, the reading on the meter was 04018.

DOCUMENT NUMBER-DATE

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3) On March 12, 1998, the reading on the meter was 04018. An FPC meter reader found the seal broken and an investigation was ordered.

4) On March 13, 1998, the current diversion investigator found a rigged seal and an open potential clip on the back of the meter. The open clip disables the meter from measuring usage. The investigator knocked on the door and a young woman identified herself as Regina Walsh. Upon further inquiry, the investigator determined from neighbors that Ms. Walsh's residence was occupied after the account had been terminated. At that time, the investigator removed the meter and sealed the base.

6) On March 13, 1998, a woman, who identified herself as Regina Walsh, went to the New Port Richey Solutions Store to have the service reconnected. A representative explained that due to the meter tampering investigation, she would have to pay the back-billing of \$2,255.06, plus a \$200 deposit, before the service would be restored. The backbilling period extends from October 17, 1996 to March 11, 1998, for a total of 519 days at 52 KWH per day.

7) On March 30, 1998, Ms. Walsh submitted a lease from a California trailer park. An FPC representative contacted and faxed a copy of the lease submitted by Ms. Walsh to the property manager of the trailer park. The property manager recalled that Ms. Walsh resided with a tenant, but stated that Ms. Walsh had not entered into a lease with the park. The property manager further stated that she did not recognize the witness signatures on the lease submitted by Ms. Walsh.

8) On March 30, 1998, at the request of the Florida Public Service Commission, FPC restored the service for Ms. Walsh at 11611 Scallop Drive, pending continuance of the investigation to determine responsibility for the unauthorized electric usage and meter tampering.

Ms. Walsh requested an informal conference on May 18, 1998. On May 20, 1998, CAF notified Ms. Walsh that her request was received. Staff spoke with Ms. Walsh and FPC on numerous occasions about reaching a settlement. Because of factual disputes and stalled negotiations, staff recommended this matter be brought before the Commission for final disposition.

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This matter was scheduled to be addressed at the November 30, 1999, Agenda Conference. However, on November 29, 1999, staff received a fax from Ms. Walsh's doctor stating that Ms. Walsh underwent surgery on November 17, 1999, and would require six to eight weeks to recover. As a result, the Chairman's Office deferred the matter until the February 1, 2000, Agenda Conference.

REVISED

On January 31, 2000, FPC notified staff that they had reached a settlement agreement with Ms. Walsh regarding her complaint. However, when FPC faxed a copy of the agreement to staff, it did not contain Ms. Walsh's signature. FPC maintained that they had a verbal confirmation from Ms. Walsh that she would accept the agreement. Staff left several messages for Ms. Walsh to confirm that she did in fact agree to the terms FPC was proposing. Ms. Walsh left a voicemail for staff stating that she did reach an agreement with FPC. As a result, the Chairman's Office deferred the matter until the February 17, 2000, Agenda Conference in order to allow staff additional time to receive and to review the settlement agreement between FPC and Ms. Walsh.

FPC notified staff that they sent the agreement via certified mail for Ms. Walsh to sign. A certified mail receipt confirmed that Ms. Walsh received the agreement on February 10, 2000. To date, neither staff nor FPC has received such an agreement, nor has Ms. Walsh contacted staff regarding such agreement. The following addresses staff's recommendation regarding final disposition of this matter.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission find that meter tampering occurred at 11611 Scallop Drive, Port Richey, Florida 34668?

RECOMMENDATION: Yes. FPC's report provides prima facie evidence of meter tampering at 11611 Scallop Drive, Port Richey, Florida 34668.

STAFF ANALYSIS: FPC's contention that meter tampering occurred is supported by the Revenue Protection Department investigation that uncovered the rigged meter and open potential clip. FPC also reported that no order was made for service at Ms. Walsh's residence prior to the discovery of the rigged meter. Based upon these facts, staff recommends that the Commission find that meter tampering occurred.

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ISSUE 2: Should the Commission find that Ms. Walsh is responsible for the backbilling totaling \$2,255.06?

RECOMMENDATION: Yes. Ms. Walsh was the last customer of record and present at the residence when the rigged meter was discovered. She is the owner of the property, claimed a homestead exemption for this residence, and maintained water service in her name during the entire period in question. Therefore, she is responsible for the backbilling.

STAFF ANALYSIS: Pursuant to Rule 25-6.104, Florida Administrative Code, a utility may bill a customer on a reasonable estimate of the energy used when meter tampering or unauthorized or fraudulent use occurs. The utility is not required to prove who tampered with the meter, only that it was tampered with and that the customer of record benefitted from the tampering by paying less for electricity than he or she would have had the meter not been disturbed. The company may also recover investigative costs.

Ms. Walsh stated that she left her residence in September, 1996 and moved to California for one year. Ms. Walsh also stated that she did not allow anyone to reside in her home during her absence. Upon her return to Florida in November 1997, she stated that the electricity was functioning at her home. Ms. Walsh did not notify FPC about the connected service, nor, did she inquire as to why the service was connected. Rather, she admitted receiving unmetered electric service from November 1997 to March 1998, when the meter tampering was discovered. She agreed to pay for the electric consumption for these months, but maintained that she was out of the state prior to November 1997.

FPC's records do not indicate that a service order was placed before the discovery of the rigged meter. FPC provided information to staff to support its contention that Ms. Walsh is responsible for the backbilling. FPC submitted a copy of a record from Pasco County Utility System showing that water service was maintained in the name of Regina Walsh during the entire period in question. Consumption ranged from 2000 to 7000 gallons per month during this time period. FPC also provided staff with evidence that Ms. Walsh claimed a homestead exemption for this residence for 1997. To be eligible for a homestead exemption, the claimed dwelling must be the owner's primary residence. FPC also provided a copy of a purported lease, for a California trailer park, submitted to FPC by Ms. Walsh.

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There is evidence to indicate continuous residence by someone at the address. Service was not established in anyone else's name and Ms. Walsh is the owner of the property and the last customer of record. Therefore, it is reasonable to find that she is responsible for electricity used, but not billed, during the time period in question.

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ISSUE 3: Is the backbilling amount reasonable?

RECOMMENDATION: Yes. The backbilling amount of \$2,255.06, which includes \$64.13 investigative costs, was calculated by using the average daily usage method.

STAFF ANALYSIS: FPC calculated the average daily usage of the account by using actual usage from July 1995 to March 1996. Total usage was 14,301 kWh divided by 274 days for an average daily usage of 52 kWh. Staff's own analysis included an entire year of billing history from March 9, 1995 to March 10, 1996. A total of 19,364 kWh was used over 364 days for an average daily usage of 53 kWh.

Therefore, staff believes that FPC's use of 52 kWh for average daily usage is reasonable. The average daily usage is multiplied times the applicable rates in place over the rebilling period from October 17, 1996, to March 11, 1998, for a total of \$2,190.93 plus investigative costs of \$64.13. Staff believes that \$2,255.06 is an appropriate amount of backbilling based upon Ms. Walsh's billing history as well as the investigative findings.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If no person whose substantial interests are affected files a request for a Section 120.57(1), Florida Statutes, hearing within 21 days of the order, the order will become final and effective upon the issuance of a consummating order. Since no further action will be required, this docket should be closed.