

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Mark Shoff ) DOCKET NO. 911040-EQ  
Florida Power and Light ) ORDER NO. PSC-92-0795-FOF-EI  
Company regarding ) ISSUED: 08/11/92  
current diversion backbilling )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER AFFIRMING BACKBILLING

After Florida Power and Light Company (FPL) rendered a backbilling in the amount of \$3,170.14, including investigative charges, Mark Shoff filed a complaint with the Commission's Division of Consumer Affairs. An informal conference failed to resolve the dispute and we approved Staff's recommendation that the backbilling was proper. Mr. Shoff timely requested a Formal Proceeding and the matter was referred to the Division of Administrative Hearings.

On May 5, 1992 the Hearing was held, pursuant to notice in Fort Lauderdale, Florida. Mr. Shoff made no appearance at the hearing. On June 18, 1992, the Hearing Officer submitted the Recommended Order to the Commission. The Recommended Order is attached to this Order as Exhibit "A". A full recitation of the facts would be unduly repetitious. In summary, the Hearing Officer found that on September 21, 1987, an FPL meter reader conducted an inspection of the meter at Mr. Shoff's residence after extremely low consumption registered in the month of August. He found that the meter in the socket (No. 5C61037) was not the meter of record (No. 5C81831) for that address. At the next meter read date, the meter of record was found back in place and operating. It was later discovered by the company that meter no. 5C61037 had previously been installed at a rental property Mr. Shoff owns. FPL's records reflect that in October of 1987, Mr. Shoff asked to be placed on the company's "call ahead" program for meter readings.

On December 16, 1988 a meter reader found the meter at the Shoff residence installed upside down in the socket. FPL removed and replaced the meter in January of 1989. A backbilling, including investigative charges was rendered in the amount of \$3,170.14, which Mr. Shoff paid. The Hearing Officer found that

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the rebilling was reasonable in amount and properly included investigative charges for this intentional current diversion.

We find that the twelve Findings of Fact made by the Hearing Officer are soundly based on competent substantial evidence of record. Accordingly, we adopt the Hearing Officer's Findings of Fact as this agency's Findings of Fact.

We find that the Hearing Officer correctly applied the applicable law to those facts, including the requirement to backbill in the event it has underbilled a customer, a reasonable estimate of the unmetered electricity consumed and the appropriateness of including investigative charges. Accordingly, we adopt the Hearing Officer's Conclusions of Law as this agency's Conclusions of Law.

Based on the foregoing, it is

ORDERED that the Hearing Officer's Recommended Order is adopted in full as this agency's Final Order. It is further

ORDERED that Florida Power and Light Company's backbilling of Mark Shoff for unmetered electricity consumed is AFFIRMED. It is further

ORDERED that this docket shall be closed .

By ORDER of the Florida Public Service Commission this 11th day of August, 1992.

  
\_\_\_\_\_  
STEVE TRIBBLE Director  
Division of Records and Reporting

( S E A L )

RVE

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance 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.

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARK SHOFF, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 92-0844  
 )  
 FLORIDA POWER & LIGHT )  
 COMPANY, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 FLORIDA PUBLIC SERVICE )  
 COMMISSION, )  
 )  
 Intervenor. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Claude B. Arrington, held a formal hearing in the above-styled case on May 5, 1992, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner:	No Appearance
For Respondent:	K. Crandal McDougall, Esquire Florida Power & Light Company P.O. Box 029100 Miami, Florida 33102-9100
For Intervenor:	Robert V. Elias, Esquire Public Service Commission Fletcher Building, Room 226 101 East Gaines Street Tallahassee, Florida 32399-0863

STATEMENT OF THE ISSUE

Whether Petitioner was correctly billed for services by Respondent Florida Power & Light Company.

PRELIMINARY STATEMENT

On March 13, 1989, Respondent, Florida Power & Light Company billed Petitioner the sum of \$3,170.14, of which \$357.38 was for current diversion investigation charges and \$2,812.76 was for unmetered and unauthorized use of electricity. The period of unauthorized use was between September 1987 to January 1989. Petitioner paid the bill, but filed a complaint with the Florida Public Service Commission to protest the billing. After the Commission issued its Notice of Proposed Agency Action/Order Affirming Backbilling, Petitioner timely requested a formal administrative hearing to challenge the proposed agency action, and this proceeding followed.

Petitioner made no appearance at the formal hearing. Respondent presented the testimony of one witness, Martha "Mert" Liin, a Revenue Protection Specialist employed by Respondent. Respondent presented 19 exhibits, each of which was accepted into evidence. The Florida Public Service Commission presented no witnesses and no exhibits.

No transcript of the proceedings has been filed. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. Consequently, the parties waived the requirement that a recommended order be rendered within thirty days after the transcript is filed. Rule 22I-6.031, Florida Administrative Code. Rulings on the Respondent's proposed findings of fact may be found in the Appendix to this Recommended Order. Neither Petitioner nor Intervenor filed a post-hearing submittal.

FINDINGS OF FACT

1. At all times pertinent to this proceeding, Petitioner was the Respondent's customer of record at 2220 N. 57th Way, Hollywood, Florida (the subject premises) whose account number with Respondent was 72-12-201-01330-5.

2. On September 21, 1987, Respondent's personnel conducted a "verify reading" procedure for the subject premises due to low consumption recorded during the regular September meter reading. The meter reader sent to verify the meter reading found that the meter in place at the subject premises was not the meter of record. The meter of record was Meter No. 5C81831. The meter found at the subject premises on September 21, 1987, was Meter No. 5C61037. Meter No. 5C61037 was last known by Respondent to have been installed at Petitioner's rental property at 5600 Farragut Street, Hollywood, Florida. Respondent's records reflect that Meter 5C61037 was replaced at that rental property in March or April of 1987, but its records do not reflect why it was replaced or who obtained possession of Meter 5C61037.

3. On October 19, 1987, the meter of record, Meter No. 5C81831, was found back in place and operating at the subject premises.

4. On October 19, 1987, Petitioner requested that he be placed in Respondent's "call ahead" program where Respondent would call Petitioner to arrange for a specific time for the meter reader to enter upon Petitioner's property for the purposes of reading the meter.

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5. On December 16, 1988, one of Respondent's meter readers found the meter at the subject premises to have been installed upside down.

6. On January 26, 1989, Respondent removed the meter at the subject premises for meter testing and installed a new meter.

7. On March 13, 1989, Respondent, Florida Power & Light Company billed Petitioner the sum of \$3,170.14, of which \$357.38 was for current diversion investigation charges and \$2,812.76 was for unmetered and unauthorized use of electricity.

8. The backbilling was based on unauthorized consumption between September 1987 to January 1989. The backbilling period began with the discovery of the meter switch on September 21, 1987, and ended with the installation of the new meter on January 26, 1989.

9. Petitioners' kilowatt hour consumption history shows abnormally low consumption of electrical services during the backbilled period relative to other time periods.

10. The investigation and Respondent's records establish that the subject premises received unauthorized, unmetered electrical energy through meter switching.

11. Respondent calculated the amount of the backbilling by the average percentage of use method, pursuant to pertinent rules and guidelines adopted by the Florida Public Service Commission. The backbilling was appropriate because of the unauthorized use of electricity. The calculation of the amount of the backbilling was a reasonable estimate of the amount

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of the unauthorized electricity used. The amounts charged for the investigation were reasonable.

12. Petitioner paid to Respondent the amount of the backbilling.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over this matter. Section 120.57(1), Florida Statutes.

2. Rule 25-6.104, Florida Administrative Code, provides as follows:

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.

3. Section 3.3 of Respondent's approved tariff (second revised sheet no. 6.030) authorizes Respondent, in the event of unauthorized use, to bill the customer for all extra expenses, including expenses for clerical work, testing, and inspection.

4. Respondent established in this proceeding that Petitioner obtained unauthorized electrical services by means of meter switching, that Respondent reasonably estimated the amount of those unauthorized electrical services so obtained through approved methodology, and that the amounts of the backbilling both as to electrical services and as to the costs of investigation were reasonable.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

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RECOMMENDED that a Final Order be entered which finds that Respondent correctly backbilled Petitioner the sum of \$3,170.14 for investigative costs and for unauthorized use of electricity between September 21, 1987, and January 26, 1989, thereby rejecting Petitioner's challenge to the backbilling.

DONE AND ORDERED this 18 day of June, 1992, in Tallahassee, Leon County, Florida.

  
\_\_\_\_\_  
CLAUDE B. ARRINGTON  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 16<sup>th</sup> day of June, 1992.

NOTICE OF RIGHT TO SUBMIT

EXCEPTIONS: All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

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Copies furnished:

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APPENDIX TO THE RECOMMENDED ORDER  
IN CASE NO. 92-0844

The following rulings are made on the proposed findings of fact submitted on behalf of the Respondent.

1. The proposed findings of fact in paragraphs 1, 2, and 3 are incorporated in the preliminary statement. It is unnecessary to adopt these procedural matters as findings of fact.
2. All other proposed findings of fact submitted on behalf of the Respondent are adopted in material part by the Recommended Order.