

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of MR. ARTURO TOBOADA )	DOCKET NO. 900643-EI
against FLORIDA POWER & LIGHT COMPANY )	
regarding backbilling of estimated )	ORDER NO. 23486
usage for electric consumption. )	
_____ )	ISSUED: 9-14-90

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 FRANK S. MESSERSMITH

NOTICE OF PROPOSED AGENCY ACTIONORDER APPROVING BACKBILLING OF ESTIMATED USAGE  
 OF ELECTRIC CONSUMPTION

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

Mr. Arturo Toboada filed a complaint against Florida Power & Light Company (FPL) with the Florida Public Service Commission's Miami District Office on May 18, 1987, questioning the validity of a backbill he received for \$5,070.51.

In a report dated May 27, 1987, FPL advised that during a meter inspection on September 30, 1986, Mr. Toboada's meter was found with drag marks and a lowered disc. The customer's air conditioner was on, and the disc was not rotating. The meter was removed for testing and a new meter was installed.

The removed meter was tested on November 18, 1986, and registered a weighted average accuracy of 33.1%. FPL noted that the meter had an inner canopy seal which was possibly glued, tampered bearings, a lowered disc, and drag marks on bottom of disc. FPL advised that the meter was originally installed at this location in February, 1969, and that Mr.

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

ORDER NO. 23486  
DOCKET NO. 900643-EI  
PAGE 2

Toboada had been a customer there since March 18, 1977. FPL believes Mr. Toboada inherited the tampered meter when he moved to the residence.

Since the customer's meter was only registering a weighted average accuracy of 33.1%, FPL backbilled Mr. Toboada's account the 66.9% of energy the meter was not registering. The account was backbilled \$5,070.51 from January, 1983, to the date the new meter was set on September 30, 1986.

FPL said it offered Mr. Toboada payment arrangements of \$110.23 per month plus his current charges for 46 months. No payment on the backbilling was made.

After the Division of Consumer Affairs conducted an informal investigation, and based upon information and records provided by FPL, Staff wrote the customer on August 20, 1987, and advised that according to PSC rules and the company's tariffs, FPL may backbill for unmeasured electric energy usage caused by meter tampering. It was explained that the customer's account was backbilled in accordance with Commission rules, Florida Statutes, and the company's tariffs.

Mr. Toboada wrote a letter to Staff, which was received on December 14, 1987, explaining he had not tampered with his meter, and therefore, did not owe FPL the \$5,070.51 backbilled. The customer asked for a further review of his case.

On February 3, 1988, Staff wrote Mr. Toboada and explained that his account was backbilled based on the weighted average registration of 33.1% as determined by the meter test. Staff explained that 66.9% of all the electricity consumed did not register on the meter and that Mr. Toboada's account was backbilled that amount.

It was explained that for each month from January, 1983 to September, 1986, his account was additionally billed 66.9% of whatever his usage for that month had been. Staff went on to advise that if he used less electricity in any given month, the additional billing for that month would take into account a lower consumption level.

Staff explained that it was unlikely that the type of tampering found could have been caused by careless handling of the meter after it was removed from the customer's residence.

ORDER NO. 23486  
DOCKET NO. 900643-EI  
PAGE 3

Staff advised that although Mr. Toboada made allegations of FPL's misconduct and discourteous treatment, Mr. Toboada did not show proof that FPL was in violation of any Florida Statute or PSC rule in backbilling his account and the billing was proper.

On April 14, 1989, in response to a telephone call from Mr. Toboada, Staff wrote the customer and explained how he could request an informal conference.

In a letter to the PSC received on May 1, 1989, Mr. Toboada requested an informal conference. On May 2, 1989, Staff acknowledged Mr. Toboada's request and advised the informal conference would be scheduled at a later date, due to Mr. Toboada's vacation plans.

The conference, pursuant to Commission rule, was conducted by Consumer Affairs Staff on Friday, July 13, 1990, at the Commission's Miami District Office. The customer raised many issues at the conference, however, Mr. Toboada did not present any evidence, other than that previously reviewed, that he did not benefit from the tampered meter.

A review of the foregoing facts indicates that FPL was correct in backbilling Mr. Toboada for \$5,070.51 for electricity consumed between January of 1983 and September 30, 1986.

We find that the meter was in a tampered condition on September 30, 1986. We find that the meter was only registering a weighted average of 33.1% of the electricity consumed. This amount is well below the 98% weighted average amount required by Rule 25-6.052, Florida Administrative Code. FPL based its rebilling on Mr. Toboada's actual usage from January, 1983 through September 30, 1986, multiplying the kilowatt hours originally billed by the unregistering factor of 66.9%. This calculation is a reasonable estimate of the energy consumed but not billed within the meaning of Rule 25-6.104, Florida Administrative Code, and in the manner prescribed by Rule 25-6.1032(b), Florida Administrative Code. Mr. Toboada readily admits that this service location was his residence from 1977 through the backbilling period. Thus, he benefitted from this current diversion condition.

It is, therefore,

ORDER NO. 23486  
DOCKET NO. 900643-EI  
PAGE 4

ORDERED by the Florida Public Service Commission that Arturo Toboada's complaint regarding the backbilling by Florida Power & Light Company for 61,379 kilowatt hours consumed is denied. It is further

ORDERED that Florida Power & Light Company shall permit Mr. Toboada to pay the bill in forty six (46) monthly payments of one hundred ten dollars and twenty three cents (\$110.23). It is further

ORDERED that this docket shall become final and this docket closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission,  
this 14th day of SEPTEMBER, 1990.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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by: Kay Ilyan  
Chief, Bureau of Records

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.

ORDER NO. 23486  
DOCKET NO. 900643-EI  
PAGE 5

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 8, 1990.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 adversely 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 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 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.