

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Jesus Fernandez)	DOCKET NO. 910670-EI
against Florida Power and Light Company)	ORDER NO. 24767
regarding current diversion/meter)	ISSUED: 7/8/91
tampering rebilling for estimated)	
usage of electricity)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT

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.

On August 13, 1990, Mr. Arturo Hernandez, attorney for Jesus Fernandez, filed a complaint against Florida Power & Light Company (FPL) with the Division of Consumer Affairs. The complaint concerned a backbill Fernandez received from FPL for current diversion. Hernandez stated his client had no knowledge of the current diversion and wanted the matter reviewed.

In a report dated August 27, 1990, FPL advised Staff that on May 22, 1990, a meter reader observed particles on the meter disk. On June 1, a meterman inspected the meter and removed it for testing. A new meter was set on that date. The old meter was found to have a broken inner seal with tampered bearings.

In a follow-up report dated November 14, 1990, FPL advised the Commission that this was not the first meter tampering case for this customer at the address in question. In March of 1981, the meter serving Fernandez's residence was found with a missing inner seal and raised disk. The customer was backbilled and the account was paid in full. It was later developed that there had been a third meter tampering incident at this address, in 1976. While Mr. Fernandez was the customer of record at that time, he was not the first customer on that particular meter and the diversion was treated as an inherited condition.

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Based on its investigation, staff advised the customer on January 3, 1991 that, according to PSC rules, FPL may rebill for unmeasured electric energy usage caused by meter tampering and that FPL had complied with these rules.

On April 15, 1991, Arturo Hernandez wrote to the Commission requesting an informal conference on behalf of Jesus Fernandez. The conference was held, pursuant to Commission rules, on May 16, 1991 in the Commission's Miami office. No settlement was reached. Neither Fernandez nor his attorney presented any evidence, other than previously reviewed, that the customer did not benefit from the tampered meter condition, or that the rebilling was incorrect.

We find that the meter in question was not accurately registering consumption. Rule 25-6.052, Florida Administrative Code, requires that meters register at an average accuracy between 98% and 102%. On June 20, 1990, Fernandez's meter was tested and found to be registering at 0% on both full (30 amp) and light (3 amp) loads. Therefore, the meter was not registering consumption accurately. The customer's load apparently exceeded thirty amperes at times, as a portion of the consumption registered.

We find that FPL was proper in backbilling Mr. Fernandez. 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." FPL rebilled Fernandez's account from July of 1985 (the earliest date for which it retained detailed records) to June of 1990, when the new meter was set. Since Mr. Fernandez, the customer of record, was receiving direct benefit from the unmetered electricity, FPL acted properly in rebilling the account.

We find that the backbilled amount of \$9,880.94 is appropriate. FPL estimated the additional amount of kilowatt hours (kwh) by using the average monthly percentage of annual usage method. The company took the customer's first two readings on the new meter (June and July, 1990), applied them to the average percentage of usage charts, and derived an average total yearly usage of 37,956 kwh. The backbilling was based on this yearly average. In addition to the usage rebilling, an investigative fee of \$214.60 was assessed because Fernandez was the only customer of record on that meter, and the condition could not have been inherited.

In consideration of the foregoing, it is

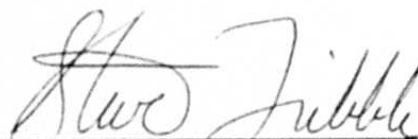
ORDERED that the complaint of Mr. Jesus Fernandez against Florida Power and Light Company is DENIED. It is further

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ORDERED that this Order shall become final 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. It is further

ORDERED that if no party/substantially interested person timely files the appropriate notice of appeal/petition for formal proceeding this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 8th
day of JULY, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

R V E

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.

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,

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Florida 32399-0870, by the close of business on
July 29, 1991.

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.

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.