

State of Florida



## 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-

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**DATE:** April 24, 2014

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Brownless)  
Division of Economics (Garl) *Y PNTJ.W.D*  
Division of Engineering (Moses) *ESD TB* *ABN JOC*

**RE:** Docket No. 140024-EI – Initiation of formal proceedings on Complaint No. 1109752E of Brenda Rodriguez against Duke Energy Florida, Inc. for alleged improper billing.

**AGENDA:** 05/09/14 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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#### Case Background

On May 7, 2013, Brenda Rodriguez filed Complaint No. 1109752E against Duke Energy Florida, Inc. (Duke or Company). In that complaint, Ms. Rodriguez contested Duke's assertion that she had tampered with her meter causing it to register zero kilowatt hours (kWh) and further contested the amount of the investigation and back-billing charges Duke imposed.

In its response to the complaint, Duke stated that on March 20, 2013, Duke completed a Revenue Assurance (power theft) investigation at Ms. Rodriguez's residence. Based on this investigation, and in accordance with Rule 25-6.105, Florida Administrative Code (F.A.C.), Duke billed Ms. Rodriguez \$12,157.52 (estimated consumption and investigative fees) and her account was credited with payments of \$4,183.08, leaving a balance of \$7,974.44 due as of

February 21, 2014.<sup>1</sup> Duke also filed criminal charges in Osceola County (Case No. 2013 CF 004218) for violations of Sections 812.014(2)(C)(3) and 812.014(2)(C), Florida Statutes (F.S.), felony grand theft and misdemeanor theft of utilities on November 12, 2013. All charges in the criminal case were dismissed by the State Attorney's Office on March 26, 2014.

This recommendation addresses the appropriate disposition of Ms. Rodriguez's complaint, including whether there is sufficient evidence of meter tampering, whether the back-billing period is appropriate, whether the estimated amount of usage is reasonable, and whether the investigative costs are reasonable and appropriate. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, F.S.

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<sup>1</sup> See: Duke Energy Florida letter, February 21, 2014, Re: Docket No.: 140024; Duke Energy Florida's Response to Complaint Ms. Brenda Rodriguez, by Matthew R. Bernier to Ms. Carlotta Stauffer, Commission Clerk, Document No. 00872-14.

### **Discussion of Issues**

**Issue 1:** Is there sufficient evidence that meter tampering occurred at the Rodriguez residence at 185 Anzio Drive, Kissimmee, Florida 34758, to permit Duke to back-bill the Rodriguez account for unmetered kilowatt hours?

**Recommendation:** Yes. The results of meter testing conducted at the Rodriguez residence by Duke and Commission staff confirm that meter tampering occurred. Because Ms. Rodriguez is the customer of record, she should be held responsible for a reasonable amount of back-billing. (Brownless, Garl)

**Staff Analysis:** Following is the history of electric meters that have serviced the Rodriguez residence:

- Meter number 1359241 was installed at the residence on October 20, 2003. Ms. Rodriguez established her account on January 5, 2004. Meter number 1359241 was removed on May 4, 2006, as part of Duke's grid modernization.
- Meter number 5905065 was installed on May 4, 2006, and removed on March 27, 2013, as part of Duke's revenue protection (power theft) investigation.
- Meter number 1714187 was installed on March 27, 2013, as a replacement for meter number 5905065. Meter number 1714187 is still serving the residence.

The suspect meter number 5905065 was tested by Duke staff at its facilities on June 19, 2013. At the time of the test, it was established that the meter contained no inner seal, which indicated that the meter had been taken apart. Evidence of meter tampering was further supported by the absence of a pin on the meter board, which prevented electric consumption from being recorded. Furthermore, the meter had not been put back together properly as the case was not locked into place. Once the pin was replaced, the meter properly recorded electric consumption.

Commission Rule 25-6.060, F.A.C., allows a customer to request a meter test, during which the meter test is supervised and witnessed by a representative of the Commission. A witnessed meter test was conducted on July 22, 2013, at the Rodriguez residence with Ms. Rodriguez present. Also present were a Commission engineering specialist and a Duke meter technician. The Commission specialist and the Duke technician each separately tested both the tampered-with meter (meter number 5905065) and the current meter (meter number 1714187). All tests indicated that both meters were recording within acceptable limits approved by the Commission.

Based upon the evidence provided, and although Ms. Rodriguez denies that there has been meter tampering, staff believes it is reasonable to find that meter tampering occurred at her residence. Ms. Rodriguez benefited from the tampering, whether she was aware of it or not, and should therefore be required to pay a reasonable estimate of the energy used but not originally billed, as provided for by Rule 25-6.104, F.A.C.

**Issue 2:** Is Duke's back-billing period and estimate of usage for a total amount due of \$11,555.14 for unmetered electric usage, and a \$312.40 investigation charge reasonable and appropriate?

**Recommendation:** Yes. The period back-billed, the estimate of energy used, the amount back-billed, and the investigation charge are reasonable and appropriate. (Brownless, Garl)

**Staff Analysis:** Rule 25-6.104, F.A.C., provides that in the event of meter tampering, the utility may bill the customer based on a reasonable estimate of the energy used. The estimate of the energy used is dependent on the back-billing period and the estimated average use during that period.

Back-billing period

Duke records show that average monthly electricity consumption between initiation of Ms. Rodriguez's service in 2004 through 2009 ranged from 2,606 kWh to 3,528 kWh.

On July 23, 2010, Duke's meter tamper report provided two indicators of potential tampering of meter number 5905065 during the billing period of June 23, 2010 to July 23, 2010. Duke has advised that not all indicators that appear on the meter tamper report will lead to a meter tampering case. However, consumption for the referenced billing period was almost half the consumption of the same billing period for the prior year. The next billing statement reflected zero consumption. On September 23, 2010, Duke's meter tamper report provided two additional indicators of potential tampering of meter number 5905065. The consumption for that billing period was less than a third of the consumption for the same billing period the prior year. After reflecting approximately normal consumption for the next three months, the account's kWh history showed zero consumption for 26 consecutive months, from the billing period ending January 24, 2011, to February 22, 2013.

The following table provides a summary of kWh usage from the time the account was established until 7 months after the present meter number 1714187 was installed. The shaded columns represent the monthly usage used for the back-billing calculations:

Month	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Jan	1504	1880	4499	2992	2603	2543	3339	0	0	0
Feb	1900	2168	2607	2549	2198	2399	2281	0	0	0
Mar	1820	2197	2380	2289	2420	3001	2026	0	0	2026
Apr	2353	1880	3516	2988	2683	3259	2222	0	0	2816
May	2584	2248	3028 <sup>1</sup>	2867	2953	3888	3026	0	0	3102
Jun	4287	3105	4137	3473	3719	4263	3157	0	0	4090
Jul	3598	3257	3916	4050	3495	4506	2709 <sup>2</sup>	0	0	4022
Aug	4129	3422	4336	4344	3316	4166	0	0	0	4368
Sep	2302	3160	4140	4333	4139	3907	1296 <sup>3</sup>	0	0	4174
Oct	3026	3521	3914	4053	3216	3961	3019	0	0	
Nov	2085	2174	2893	3400	2597	3250	2447	0	0	
Dec	2823	2255	2970	2684	2840	2636	2021	0	0	
Totals	32411	31267	42336	40022	36179	41779	27543	0	0	
Mo. Avg.	2701	2606	3528	3335	3015	3482	2295	0	0	-

<sup>1</sup> Meter number 5905065 installed on May 4, 2006

<sup>2</sup> First two leads on Meter Tamper Report for potential meter tampering

<sup>3</sup> Two additional leads on Meter Tamper Report for potential meter tampering

Duke based the amount to be back-billed on the 12-month period from July 2009 to June 2010, prior to the first indicators of meter tampering. Staff believes this was a reasonable period to use for back-billing purposes.

Estimated average use

Staff investigation of Duke's back-billing of the Rodriguez account showed Duke back-billed only for the months zero usage was reported: August 2010, and January 2011 through February 2013. Duke did not back-bill the months which had shown questionable, but greater than zero usage, specifically June, July, and September 2010. Duke's intent was to estimate kWh usage by referring to the baseline 12-month period, July 2009 to June 2010, and assuming the usage each month with zero usage reported being the same as the corresponding month in the baseline period. For example, kWh usage for January 2012 was estimated to be 3,339 kWh, the same as accurately reported by the unaltered meter in January 2010. Using the estimated values, Duke calculated the monthly bills for those months with zero reported usage. Back-billed amount totaled \$11,845.12.

Upon further review, staff noted that Duke used 4,263 kWh, the consumption for June 2009, rather than 3,157 kWh from the baseline period for the June usage in 2010 and 2011. A Commission Division of Consumer Assistance & Outreach (CAO) staff member contacted Duke on behalf of Ms. Rodriguez and negotiated an adjustment of \$289.98. The adjustment reduced the back-billed amount to \$11,555.14. The CAO staff member also obtained agreement from Duke to waive late fees of \$415.58 that had been charged to the Rodriguez account for the months of May through July 2013. Furthermore, Duke agreed to a 24-month payment arrangement for the unpaid balance. Ms. Rodriguez has not accepted the proposed payment plan and remains dissatisfied with the back-billed amount.

Staff believes the method Duke used to estimate kWh usage during the months the tampered meter recorded zero consumption was both reasonable and appropriate. The back-billed amounts stemming from the estimated usage, as corrected, also appear reasonable and appropriate.

Investigative costs

Duke also requests that it be allowed to recover its reasonable and prudent investigative costs of \$312.40 from the customer. The Commission has allowed utilities to collect reasonable investigative costs in prior meter tampering cases, and staff believes that the investigative costs requested by Duke in this case are reasonable and prudent costs of investigating meter tampering.<sup>2</sup> Staff also believes that the general body of ratepayers should not pay for those costs. The cost causer should pay for those costs directly. Duke's Third Revised Tariff Sheet No. 4.050, Section 5.04, provides in pertinent part:

Unauthorized connections to or tampering with the Company's meters or metering equipment, or indications or evidences thereof, shall subject the Customer to prosecution under the laws of the State of Florida, to adjustment of prior bills for services rendered and liability for payment of the adjusted amount, and to liability for reimbursement to the Company of all extra expenses incurred by the Company as a result thereof, and to discontinuance of service until such indebtedness has been paid.<sup>3</sup>

While Rule 25-6.104, F.A.C., does not specifically allow reimbursement for investigative costs, staff recommends that, in accordance with its tariff, Duke should be allowed to recover the reasonable and prudent costs from the customer who caused that cost. Duke expended additional time and resources in determining the extent of the problem, which costs would not have been incurred had tampering not taken place.

Based on the above, staff calculates that the total additional charge should be \$11,555.14 for unmetered electric usage, plus \$312.40 for the investigative charge, for a total of \$11,867.54. After applying credits for payments made on the back-billed amount and current charges, Duke reports the Rodriguez account has a balance due of \$7,974.44 as of February 21, 2014.

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<sup>2</sup> See: DOAH Case No. 96-4935, Order No. PSC-97-0988-FOF-EI, issued August 20, 1997, in Docket No. 960903-EI, In re: Complaint of Mrs. Blanca Rodriguez against Florida Power & Light Company regarding alleged current diversion/meter tampering rebilling for estimated usage of electricity, where reasonable investigative costs were allowed.

<sup>3</sup> But see: DOAH Case No. 04-2758, Order No. PSC-05-0806-FOF-EI, issued August 5, 2005, in Docket No. 040208-EI, In re: Consumer complaint against Florida Power & Light Company by Leticia Callard, where the Administrative Law Judge disallowed investigative costs. In the Callard case, the tariff was never made a part of the record at DOAH.

**Issue 3:** Should the Commission grant Ms. Rodriguez the relief sought in her petition?

**Recommendation:** No. Staff recommends that the Commission deny Ms. Rodriguez's petition as it does not demonstrate that Duke's attempt to collect \$7,974.44 violates any statutes, rules or orders or that Duke's calculation of the \$7,974.44 is unreasonable. (Brownless)

**Staff Analysis:** Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order. In accordance with Rule 25-22.032(9), F.A.C., the parties may agree to settle their dispute at any time. Likewise, Rule 25-6.033, F.A.C., states that a utility should include provisions relating to disconnecting and reconnecting services and billing periods in its tariff. Rule 25-6.100, F.A.C., outlines bill requirements, and Rule 25-6.101, F.A.C., states that a bill is delinquent after 20 days from the bill mail or delivery date.

Ms. Rodriguez's petition fails to show that Duke's attempt to collect the outstanding \$7,974.44 violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C. Therefore, the Commission should deny Ms. Rodriguez's petition for relief.

Ms. Rodriguez's complaint filed on May 7, 2014, consists of a two-page handwritten letter to which is attached portions of letters sent to her by both the Commission and Duke on which Ms. Rodriguez has made notations. It appears that Ms. Rodriguez has two basic complaints. First, that she did not tamper with her meter and was unaware that the meter had been tampered with. Second, that Duke took too long to advise her that her meter was not working correctly and as a result of this delay, she has been backbilled for more than she should have had Duke acted promptly.

With regard to the first issue, it seems improbable that Ms. Rodriguez did not realize that her meter was not working correctly since for a period of one month in August of 2010 and for 26 consecutive months from January 2011 until February 2013, she was not charged for **any** kWh consumption at all. Ms. Rodriguez appears to be contending that the installation of an EnergyWise Home/Load Management Device (Device) on March 26, 2010, led her to believe that she actually had no kWh consumption. However, Ms. Rodriguez's bills from April through December of 2010 would have indicated an average monthly consumption of 2,211 kWh. Given her billed usage with the Device in place, it again seems highly improbable that Ms. Rodriguez did not realize her meter was not working correctly.

With regard to the second issue, Duke did receive notice of potential meter tampering (Mobile Meter Reading Tamper Flag Report) in July of 2010 and again in September of 2010. CAO staff contacted Duke regarding this notification and Duke stated as follows:

The Mobile Meter Reading tamper flag report provides thousands of leads for 'potential' tampering in Duke Energy Florida's service territory. For example, from July 2012 to July 2013, the meter tamper report identified 45,489 potential leads. Not all leads that appear on the report will end up being a tampering case. There is a massive amount of time required to manually research and review

the data before a field investigation takes place. Each individual investigation requires that the Revenue Protection Investigator review DEF's Customer Service System to see if a field investigation is warranted. Usage patterns must be reviewed along with the dates of the tamper flags to see if an abnormal decrease in consumption occurred after the flag(s). If the research warrants, a field investigation is initiated to inspect DEF's equipment for possible tampering or diversion.

The report does not prioritize possible leads, so manual review is necessary and time consuming. Additionally, this report is one component of work that the Revenue Assurance team is responsible for addressing and is filtered in with other investigations that take place. We take electric theft very seriously and want to address leads as quickly as possible.

As discussed in Issue Nos. 1 and 2, staff believes that the facts support a determination that meter tampering did, in fact, occur at Ms. Rodriguez's residence and that the remaining back-billed amount Duke is requesting of \$7,974.44 is reasonable. Thus, staff recommends that the Commission deny Ms. Rodriguez's petition as it does not demonstrate that Duke's attempt to collect \$7,974.44 violates any statutes, rules or Orders or that Duke's calculation of the \$7,974.44 is unreasonable.

**Issue 4:** Should this docket be closed?

**Recommendation:** Yes. If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued and the docket closed. (Brownless)

**Staff Analysis:** If no timely protest is filed by a substantially affected person within 21 days of the Proposed Agency Action Order, a Consummating Order should be issued and the docket closed.