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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20170098-EI

COMPLAINT BY RICHARD RALPH
MALCOLM AGAINST FLORIDA POWER
& LIGHT COMPANY.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK

DATE: Tuesday, October 3, 2017

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

1
2 **CHAIRMAN BROWN:** Now we're getting back to
3 Item 3. All right. And we do, as I said earlier, we do
4 have Mr. Malcolm on the phone. But, Mr. Malcolm, we
5 will have you muted until we turn to you. We're going
6 to have our staff introduce the item. All right.

7 Good morning.

8 **MS. PAGE:** Good morning, Commissioners.
9 Pamela Page with the Office of General Counsel.

10 In Item No. 3 staff --

11 **CHAIRMAN BROWN:** Ms. Page, could you speak up
12 a little bit louder?

13 **MS. PAGE:** Sure.

14 **CHAIRMAN BROWN:** Thank you.

15 **MS. PAGE:** Sorry.

16 **CHAIRMAN BROWN:** Maybe turn the microphone
17 closer to you.

18 **MS. PAGE:** Oh, yes. Is that better?

19 **CHAIRMAN BROWN:** Yes.

20 **MS. PAGE:** All right. In Item No. 3 staff
21 recommends that the Commission deny a formal complaint
22 filed by Mr. Richard Malcolm concerning his service
23 account with Florida Power & Light Company. Mr. Malcolm
24 states in his complaint that FPL wrongfully back billed
25 him due to meter tampering and that FPL's bill for

1 electric service is unreasonable.

2 Staff reviewed FPL's back billing calculations
3 and determined that Mr. Malcolm's account was fairly and
4 reasonably back billed. Mr. Malcolm's account was
5 properly billed in accordance with Commission rules,
6 statutes, and orders, as well as FPL's tariffs.

7 Mr. Malcolm wishes to address the Commission
8 by telephone, and Florida Power & Light is present to
9 answer any questions that may arise.

10 **CHAIRMAN BROWN:** Thank you, Ms. Page.

11 Good morning, Mr. Malcolm.

12 **MR. MALCOLM:** Yes, good morning.

13 **CHAIRMAN BROWN:** We can hear you perfectly.
14 So I will start the timer. You have three minutes to
15 address us, and welcome.

16 **MR. MALCOLM:** Yes. Well, the first issue is
17 the property was not mine until September or October
18 when my dad died (unintelligible.) So, you know,
19 there's no way it could be reasonably calculated that I
20 could be responsible for three years' worth of light
21 bills, because my name is not Rich Malcolm. My name is
22 Richard Ralph Malcolm, as I've told FPL numerous times.

23 The account was opened not by me, but I'm
24 assuming somebody that was related to my dad that, you
25 know, I don't know about. And the only thing I did was

1 pay the bills.

2 Now I didn't have control of the property
3 until October, when I contacted FPL and I tried to put
4 the bill in my name because my dad was sick. So he
5 subsequently died I think about a month later.

6 And also FPL has communicated (unintelligible)
7 -- you know, there's no (unintelligible) anybody
8 because, first of all, FPL claimed that there was
9 tampering. There was no tampering with the meter. What
10 there was was an (unintelligible) condition. Somebody
11 put something, a metal object, and it looked like
12 sabotage to start a meter fire.

13 Now the meter itself was not tampered with,
14 and FPL could not create the same condition, so there's
15 no way they could come up with the exact amount. And
16 also FPL is a public monopoly. They're the ones that
17 came up with the amount that was due. I don't think
18 they have jurisdiction to regulate themselves. I
19 believe a court of competent jurisdiction has to
20 regulate them.

21 And not only that, FPL cannot use that
22 evidence to fine anybody for meter tampering because I
23 think that the (unintelligible) that, you know, FPL
24 reports is not sufficient to substantiate theft of
25 power. (Unintelligible). That case, you know, exceeds

1 FPL's jurisdiction.

2 So, you know, if you go to court, it's going
3 to be dismissed because, first of all, they violated my
4 rights by not (unintelligible) unsafe conditions, and
5 then they go back and try to charge three years, which
6 is unprecedented.

7 So, you know, FPL, in my opinion, is grossly
8 abusing their power (unintelligible), and there's no
9 case that is going to support their cause in juris
10 prudence.

11 **CHAIRMAN BROWN:** Thank you. Thank you so much
12 for your participation and your comments, Mr. Malcolm.
13 We are going to mute you so that we can have questions
14 and discussion on the bench. You were on a cell phone,
15 it was difficult to hear, but I could still kind of get
16 some of -- most of it, I think. And I understand your
17 argument and read your complaint too.

18 We're going to turn to FPL now for any
19 response that they have.

20 **MR. LEE:** Good morning, Commissioners, Madam
21 Chair. David Lee for Florida Power & Light Company. It
22 sounds like the gist of Mr. Malcolm's complaint is that
23 he doesn't believe he's responsible for the back billing
24 at the address. And the heart of that is he claims that
25 he's not the record owner or the person responsible for

1 the bills, but the record speaks otherwise.

2 Mr. Malcolm has owned the property, according
3 to Miami-Dade County's Property Appraiser's website,
4 since January 9th of 2014. The meter condition was
5 discovered -- or the condition started on July 1st of
6 2014. It wasn't discovered for a couple of years later.

7 Mr. Malcolm throughout time has, according to
8 Sunbiz, owned several businesses where he's either been
9 the registered agent, the president, or the vice
10 president, using the subject address as the address for
11 either the corporation or himself. He's told staff and
12 our employees that he has an office at the property and
13 has -- that he rents the property out to tenants,
14 collects rent, and they don't pay the utilities, that he
15 pays the utilities. His email address -- he seems to
16 think because the account is in Rich Malcolm and his
17 name is Richard Malcolm that somehow that means it's not
18 him. But his email address that he's emailed with staff
19 and FPL multiple times is richmalcolm76@gmail.com.

20 Mr. Malcolm, on multiple occasions, has said
21 that his father died in October of 2016, then said other
22 dates as to when his father died, and then also
23 indicated that he took over the property after two years
24 of a protracted battle after his father passed away.
25 Well, that would have predated when the property

1 appraiser shows he took over in 2014, so I don't think
2 he has his dates correct.

3 In addition, Mr. Malcolm, you know, despite
4 saying he doesn't live there and doesn't own property
5 there, after this was brought to light and he filed this
6 complaint, he then attempted to call us and set up
7 another account, tried to change the account over into a
8 business name that he owns, according to Sunbiz.

9 So while Mr. Malcolm is saying he doesn't own
10 it, all the record information indicates that he is the
11 record owner. I haven't really heard any challenges to
12 the adequacy of the meter tampering charges, so unless
13 you have any questions, I won't address that. Thank
14 you.

15 **CHAIRMAN BROWN:** No, thank you, and those were
16 helpful comments, too.

17 Commissioners, questions?

18 I have a question. And, again, I appreciate
19 the clarification that you've provided. So if the
20 Commission grants the recommendation and approves the
21 recommendation, how is FPL going to pursue collection of
22 the \$1,800? Are you going to file a civil suit to get a
23 judgment?

24 **MR. LEE:** Well, the first step is his power is
25 still on and in that name, so if they don't pay --

1 because we've been protecting the balance since the time
2 the complaint was filed, so we haven't attempted any
3 sort of collection action. But our first step is if
4 they don't pay, we disconnect the electrical service.
5 And unless they pay it, you know, we won't reconnect.
6 If we need to go collect, then we'll send it to a
7 collection agency and they'll take it from there.

8 **CHAIRMAN BROWN:** So he's just been fighting
9 the charges and hasn't made any more payment other than
10 his monthly charges for the most part.

11 **MR. LEE:** Right. I don't know what his
12 outstanding balance is as we sit here today, but for the
13 most part he's been paying his monthly bill.

14 **CHAIRMAN BROWN:** Okay. Can you elaborate on
15 the actual tampering of the meter?

16 **MR. LEE:** Sure.

17 **CHAIRMAN BROWN:** From what I understand,
18 talking to staff, it was pretty egregious.

19 **MR. LEE:** So the first indication was -- he
20 has a smart meter, and so there was a, what they call a
21 unique outage on July 1st, 2014. So what that's an
22 indication is that more than one meter is on a
23 transformer and only one meter goes out of service, and
24 that is generally an indication that somebody has taken
25 the meter out of the socket. However, we have a lot of

1 cases to investigate, so unfortunately we're not able to
2 do it realtime.

3 So in 2016 they went out. They found the
4 meter was not displaying anything. The meter man pulled
5 the meter off, saw the seal was missing, and then
6 noticed there's four, not to get too technical, but
7 there's four blocks on the back and there was a piece of
8 metal sort of wedged between two of those, so on the
9 load side and the customer side, I'm sorry, the supply
10 side. So that would decrease the amount of voltage
11 that's being registered, the kWh that's being registered
12 on the meter.

13 When we took it back to the meter shop, we
14 then plugged it into one of our test facility -- test
15 devices, and it came back at 73 percent. So it was
16 registering, according to our test device, 73 percent of
17 normal load. However, there was a retest done at the
18 customer's request, and it came out 83 percent. So we
19 adjusted the bill after that by that differential.

20 The explanation that I was given is that the
21 device, they can't just put it into our board. They
22 have to use like a brace -- or not a brace, but a
23 temporary thing that they plug the meter into and then
24 plug that into the board. Due to that piece of metal
25 being there, and I guess they said the clamps were a

1 little loose, and so they think that's what made for the
2 differential. They've subsequently retested it, and
3 it's come back 83 percent every time.

4 So his current, I think, bill was reduced
5 from -- the consumption was originally billed at
6 \$2,323.66 plus cost of investigative charges of 547.28
7 for a total of 2,870.94. It was reduced where the new
8 charges were 1,319.15 along with the same investigative
9 charges for a new total of 1,866.43, and that's the
10 balance that we're seeking to enforce.

11 **CHAIRMAN BROWN:** Well, it sounds to me like
12 FPL has spent a lot of time on this particular
13 complaint, and I would support the staff recommendation.

14 Commissioners, any questions, comments?

15 If not, we're ripe for a motion.

16 **COMMISSIONER GRAHAM:** Move staff.

17 **COMMISSIONER BRISÉ:** Second.

18 **CHAIRMAN BROWN:** Any further discussion?

19 Seeing none, all those in favor, say aye.

20 (Vote taken.)

21 The motion passes. Thank you.

22 **MR. LEE:** Thank you.

23 **CHAIRMAN BROWN:** Thank you, Mr. Malcolm, for
24 your participation.

25 (Agenda item concluded.)

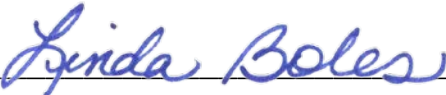
1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 9th day of October, 2017.

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FPSC Official Hearings Reporter
(850) 413-6734