

LAW OFFICES OF FRANK L. HOLLANDER
ATTORNEY AT LAW

ONE BISCAYNE TOWER
SUITE 3760
2 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131-1815

TELEPHONE: (305) 373-9999
TOLL FREE: (800) 966-4041
TELEFAX: (305) 373-7777
WEBSITE: WWW.ATTORNEYATLAW.BZ
EMAIL: FRANK@HOLLANDER.LAWYER

July 14, 2018

Response to July 12, 2018 Affidavit of Alex Urquiaga filed July 12, 2018

Filed electronically at www.floridapsc.com

Lisa Smith
Commission Deputy Clerk II
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Kurt Schrader
Senior Attorney
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

David M. Lee, Senior Attorney
Attorney for Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408

RE: Docket No.: 20180109-EI - Petition for initiation of formal proceedings for relief against Florida Power & Light Company "FPL" regarding back billing for alleged meter tampering and disconnection, by Terry A. Avera

Dear Mr. Schrader:

This letter is Terry Avera's response to the July 12, 2018 filed Affidavit of Alex Urquiaga filed by FPL. It did not respond to a Staff's Data Request. FPL's response to the Staff's First Data Request (Nos. 1-7) was due on or before June 26, 2018 and filed on the same date.

The affidavit of Alex Urquiaga, FPL Revenue Protection Manager was filed late and not in response to a Staff's Data Request.

The Staff's Data Request to FPL requested 7 items, including the following 2:

- A. 3. Prior to or on April 26, 2017 did anyone from FPL notify Mr. Avera that the meter at his residence was being replaced?

FPL responded:

"It is not FPL's policy to notify customers when we replace our equipment, unless there is an issue with safe access to the meter. In this case the customer was not notified."

In fact, the customer Terry Avera was notified as the FPL meter electrician knocked on the residential front door of Terry Avera's then home and give him actual notice.

The FPL meter electrician advised there was a problem with the meter communication with the FPL meter center. They went to the meter together. They looked at the meter together before any physical contact or work began on the meter, Mr. Avera when looking at the condition of the meter observed the meter to appear to be in a normal looking condition, with no visible alterations, no visible damages, no visible tampering indications.

The first work/contact made with the meter by the FPL electrician was that he cut the outer seal (a silver wire with a grey and white plastic/glass encasement labeled FPL 09, serial no. 0175709 with a black center color code) using a special tool, a hammer head type tool Mr. Avera had never seen before. A regular wire cutter won't cut the silver wire upon information from one with knowledge. The inner seal was intact. The electrician unlocked the inner seal with a key from his pocket. The electrician carelessly threw the inner seal lock onto the nearby ground, paying no further attention to it. It couldn't be cut (like the outer seal was) without damaging the meter. The electrician lifted the door and pulled out the meter from the socket box and they looked at it. It had no DM boots attached to any of the blades. The electrician placed the meter on the ground and stooped down and looked into the socket/meter box to discover 4 to 5 DM boots lodged in the several sockets on both sides. The electrician then walked away towards his truck with nothing in his hands, no hammer head tool, no meter, no outer seal, no inner seal, no line side tap, code "96", no jumper, code "63," and no DM boots. He returned with his needle nose pliers 8 - 12 inches long and with a safety leather glove with his left hand he removed the multiple DM boots which fell into the meter box. He cleared the condition, the DM boots were removed, so there was no need to replace the meter. Mr. Avera observed no meter replacement, and believes the same meter was placed back into the box and sealed. The outer wire seal was cut by the meter electrician in Mr. Avera's presence and placed on top of the box. There was no line side tap, code "96." as the affidavit admits, on page 1, paragraph 3. The affidavit indicates on page 1, paragraph 3 the "documented unauthorized line side tap" was "incorrect."

There's no likelihood one could place DM boots in the socket without breaking the inner seal.

No comment was made by the meter electrician at the house that day that he observed a "piece of wire." To the contrary, he said had he found an unauthorized condition he would contact the police. Supplemental #1 wrongly states that the meter electrician when removing the meter found the DM boot on the meter. Mr. Avera saw no DM boot on the meter, but only in the socket, not attached to the meter. A careful reading of supplemental # 1, dated November 7, 2017 p. 2 first paragraph, reveals the meter electrician found a DM boot (in the socket) but not "the piece of wire" on the meter. Although the Affidavit, not based on personal knowledge, states in paragraph 14 the jumper was found in the field at Mr. Avera's home, according to the November 7, 2017 test report, "jumper on the side" was merely "recreated." It is also noted that on February 26, 2018 when the meter was removed from the lock box, no piece of wire was present. Further to support the nonexistence of the piece of wire as attached to the meter, since FPL maintains it was there outside in the elements, of rain, sun, wind, etc. causing low consumption since 2011, you will note the condition of the piece of wire shown in the "attached photo" to supplemental #1 p.2, paragraph 1, shows a piece of wire in new, and pristine condition. Mr. Avera maintains that piece of wire is only a tool used by FPL Chief Meter Electrician Thomas Youngman as a testing device when attempting to recreate a claimed condition of a jumper.

The "attached photo" referenced in supplemental # 1 dated November 8, 2017 with the piece of wire was first disclosed only after both the November 7, 2017 recreated jump test and the November 8, 2017 unannounced visit to the Avera residence when 2 neighbors observed the same FPL meter electrician photographing the meter.

No evidence has been provided by FPL as to when the meter electrician delivered meter ACD5693 to the MTC for lock up. It is only known that the lock box was sealed and locked on or after November 8, 2017, the day meter ACD5262 was removed from the house. The secure lock box was unlocked on February 26, 2018 at the MTC when meter ACD 5262 was found in the secured lock box along with meter ACD 5693 without containing any piece of wire, decrepit or otherwise, and containing a DM boot that could have been placed there from its November 8, 2017 removal from the socket at the house. By all accounts meter ACD5262 was removed from the residence November 8, 2017 along with DM boots from the socket. Meter ACD 5393 could have been tampered with from April 26, 2017 through November 7, 2017 while in FPL's sole custody and control. There was a breach in the chain of custody of meter ACD5693 during this period.

B. The Staff's Data Request to FPL requested:

4.d. Photographs of the meter AC5693 showing the condition before replacement depicting the broken/missing seal and line side tap, if available.

FPL responded:

"As previously reported in FPL's response to the customer's complaint, no photographs were taken of the unauthorized condition in the field."

This response to the first data request 1-7, was the only and first response to the Docket No.: 20180109-EI Petition for Initiation of Formal Proceedings for Relief.

Prior to the Petition for Initiation of Formal Proceedings for Relief, on October 3, 2017 Mr. Avera issued his informal complaint. Thereafter FPL issued reports:

Final report dated 10/24/17: contains no report that a photo was taken of the unauthorized condition in the field at anytime.

Supplemental #1 dated 11/8/17 (dated the same day the meter electrician was seen by 2 neighbors at the residence taking a meter photo) references, for the first and only time, "attached photo" of meter ACD5693 showing a handwritten note, an investigation label of meter ACD5693 photographed (supposedly) on April 26, 2017 with code "96", line side tap, but tellingly showing no DM boot or code "97."

Each of the 6 subsequent supplementals retreats on making any reference to an "attached photo."

FPL claims:

1. Supplemental #2 dated 11/21/17 states on page 2, 1st paragraph, on November 8, 2017 FPL Meter electrician visited the residence to remove the DM boots from the meter which requires a field visit. The electrician documented the meter as ACD5262 and replaced the meter with ACD4610 without the DM boots.
2. Final report 10/24/17, p.1 states on April 26, 2017 meter ACD 5693 was removed from the residence and sent to MTC and on p.2 1st paragraph, on June 15, 2017 the meter was inspected at the MTC and the disconnect boot was present.
3. Supplemental #5 dated 3/8/18 p.1 states meters ACD5262 and ACD5693 had been secured in a lock box, (without specifying when) and that on February 26, 2018 at the MTC, after opening the lock box, both meters ACD 5262 and ACD5693 were found in the lock box and ACD5693 was found with a DM boot on the left load blade.

Observations and Conclusions:

1. **No DM Boot on meter ACD5693:** if Supplemental # 2 is accurate, the DM boots were removed November 8, 2017, so there would be no DM boot present on meter AC5693 when inspected June 15, 2017 unless additional DM boots were inserted on August 31, 2017 when FPL disconnected service without notice by the meter electrician and the RP Investigator who visited the residence to disconnect service for meter tampering (when there never was any). See supplemental #2 dated 11/21/17. There is no photographic evidence that the DM boot was found in the field on April 26, 2017, as according to Supplemental # 5 dated 3/8/18, pp. 4 and 5, no photographs were taken of the plastic disconnect meter boot (“unauthorized condition”) in the field. The DM boot was only later placed on the meter ACD5693 blade, after ACD5693 was removed from the residence April 26, 2017, after it was replaced by meter ACD 5262 April 26, 2017, and after meter ACD5262 was removed and replaced by meter ACD4610 on November 8, 2017. Given both meters ACD5693 and ACD5262 were placed in the lock box together, necessarily on or after November 8, 2018 according to Supplemental # 2 when ACD5262 was removed from the residence, the opportunity arose for the DM boot to be inadvertently or otherwise switched from ACD5262 to ACD5693 on or after November 8, 2017 inside the lock box.
2. **No Line Side Tap:** There also was no unauthorized line side tap, as claimed in supplemental # 1, p. 1, according to the July 12, 2018 Affidavit of Alex Urquiaga, p.1, paragraph 3.
3. **No Jumper:** Also, there was no jumper. According to Supplemental #5 p. 1, dated 3/8/18, on February 26, 2018 at the MTC, Mr. Thomas Youngman, Chief Meter Electrician performed a visual inspection of meter ACD5693 after removing secured lock box seal 0018331 FPL yellow 2013, and removing from the lock box both meter ACD5693 and ACD5262. ACD5262 was removed from the house on November 8, 2017 along with DM boots, so therefore the lock box had to be locked only on or after November 8, 2017 when both ACD5693 and ACD5262 were available to be both placed therein. Mr. Youngman’s visual inspection of ACD5693 revealed an intact inner seal, a DM boot attached to the left load blade of the meter, but no jumper. According to the Affidavit of Alex Urquiaga, p. 6, paragraph 14, the jumper found in the field (confused by the FPL meter electrician as a line side tap; the Urquiaga affidavit p. 1 paragraph 3, admits there was no line side tap, code “96,” with no jumper code designated as code “63,”) according to Urquiaga affidavit, p. 6, paragraph 14) was stored in Mr. Youngman’s desk at the MTC after completing the November 7, 2017 test of meter ACD5693. There is no photographic evidence that the jumper was found in the field on April 26, 2017, according to Supplemental 5 dated 3/8/18, p. 4, no photographs were taken of the unauthorized jump (“unauthorized condition”) in the field. There was no jumper found as a tamper information code “63” in the February 26, 2018 FPL Meter Test of ACD5693 by Chief Youngman. The testing protocol for a jumper is different from the testing for a line side tap, according to Affidavit of Alex Urquiaga, p. 1, paragraph 3. No explanation or description for the difference in the testing protocol has been provided. Upon information, a jumper requires the breaking of the inner seal, yet unequivocally, on April 26, 2017 the meter electrician found the inner seal intact and therefore renders a finding of a jumper, “63” wrong.

Please do not hesitate to contact my office at (305) 373-9999 if you or your staff have any questions.

Sincerely,
/s/Frank L. Hollander
Frank L. Hollander

Enclosures

cc: The parties of record