

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LARRY TIMM, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 91-2755  
 )  
 FLORIDA POWER & LIGHT COMPANY, )  
 )  
 Respondent. )  
 )  
 )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to Notice, this cause was heard by Linda M. Rigot, the assigned Hearing Officer of the Division of Administrative Hearings, on September 20, 1991, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Larry Timm, pro se  
P.O. Box 494  
Loxahatchee, Florida 33470  
  
Larry Timm, pro se  
2943 "B" Road  
Loxahatchee, Florida 33470  
  
For Respondent: K. Crandal McDougall, Esquire  
Florida Power & Light Company  
P.O. Box 029100  
Miami, Florida 33102-9100  
  
For Public Service Commission: Martha Carter Brown, Esquire  
Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0870

STATEMENT OF THE ISSUE

The issue presented is the amount of money Petitioner owes Respondent as a result of unmetered electrical consumption.

PRELIMINARY STATEMENT

Florida Power & Light Company sent Petitioner a bill in the amount of \$3,856.28 for his unmetered consumption of electricity together with investigative costs incurred by Florida Power & Light Company, and Petitioner filed a complaint with the Florida Public Service Commission. After the Public Service Commission issued its Order Denying Complaint Regarding Backbilling, Petitioner timely requested a formal hearing regarding that proposed agency

action. This matter was thereafter transferred to the Division of Administrative Hearings for the conduct of that formal proceeding.

Petitioner Larry Timm testified on his own behalf. Respondent Florida Power & Light Company presented the testimony of Debra K. Zaleuke. Additionally, Florida Power & Light Company's Exhibits numbered 1-5 were admitted in evidence.

Only the Respondent submitted post hearing proposed findings of fact in the form of a proposed recommended order. A specific ruling on each proposed finding of fact can be found in the Appendix to this Recommended Order.

#### FINDINGS OF FACT

1. On September 21, 1989, Debra K. Zaleuke, a current diversion investigator for Respondent, received an anonymous telephone call advising that Petitioner had been bragging about his illegal underground tap located somewhere on Petitioner's 10-acre property. She went to that property located at 2943 "B" Road, Loxahatchee, Florida. When she arrived at the trailer located at that address, she could hear that the air conditioning unit was operating. She shut off the main breaker, but the air conditioning system continued to run.

2. She returned to the property on September 22, 1989. Petitioner was there on that occasion. When he saw her, he ran inside his trailer and shut off the air conditioning. She asked him to turn the air conditioning system back on, and he advised her that it had just "burned up."

3. Zaleuke pulled the electric meter and used a Wiggins tester, which showed amperage still being pulled through the meter can. She summoned a crew with a Dimatel underground fault locator, and they started digging. Petitioner told them that they "would not be able to find it."

4. They continued digging and eventually found the underground location of the illegal tap. The tap went directly to an above ground breaker system so the tap could be turned off and on at will.

5. Petitioner's electrical service was discontinued that day. The illegal underground tap was taken to Florida Power & Light Company's evidence room. The meter which was removed from Petitioner's property was subsequently tested and found to be operating properly.

6. Petitioner has been the customer of record since 1981. In August, 1987, the house located on the property burned, along with Petitioner's electric meter. In August of 1987, Florida Power & Light Company set a new meter at Petitioner's property.

7. Even after Petitioner's home burned down, Petitioner continued to consume electricity at that address. He testified that he used electrical tools and ran water pumps for irrigation purposes even while tearing down the burned structure that had once been his residence. The property also has on it a structure where Petitioner houses his helicopter. Eventually, a trailer was moved onto the property, in which trailer Petitioner resided at the time that Florida Power & Light discontinued electrical service to him.

8. Since a new meter was installed in August of 1987, and since Petitioner's electric bill during the month of September, 1987, dropped to "0" even though Petitioner was using, by his own admission, electrical equipment at

the time, Zaleuke chose the month of September, 1987, as the starting date for recomputing the backbilling to be rendered to Petitioner for his unauthorized and unmetered electrical consumption. Using the seasonal average method approved by the Florida Public Service Commission, she estimated the energy consumed through the illegal underground tap. She also computed the amount of expense Florida Power & Light Company had incurred in locating and terminating the illegal condition.

9. Florida Power & Light Company rendered to Petitioner its backbilling in the amount of \$3,856.28 representing the unauthorized, unmetered consumption of electricity from September, 1987, to September, 1989, together with its investigative costs. Petitioner has continued to refuse to pay the bill rendered to him, and his electrical service at that address remains disconnected.

10. Zaleuke's calculations for both unmetered electrical consumption and investigative costs are reasonable, and the billing rendered to Petitioner is reasonable.

11. Florida Power & Light Company has notified Petitioner of the conditions required for the restoration of service to his property. Those conditions are as follows: (1), Petitioner will provide a meter can on a pole anywhere on his property outside of a three-foot diameter from the existing yard pole; (2), Florida Power & Light Company will provide an overhead service drop to the meter can at no charge; and (3), Petitioner will pay whatever the Public Service Commission deems Petitioner's final bill to be. These conditions are reasonable.

#### CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties hereto and the subject matter hereof. Section 120.57(1), Florida Statutes.

13. Petitioner does not dispute that he owes Florida Power & Light "some" money. The only issue remaining between the parties in this proceeding is the amount of money which Petitioner owes. Rule 25-6.104, Florida Administrative Code, provides that in the event of unauthorized use, the utility may bill the customer on a reasonable estimate of the energy used. Florida Power & Light Company has done so. Section 3.3 of Florida Power & Light Company's Tariff Sheet No. 6.030 provides that in the event of unauthorized use, the customer's service is subject to discontinuance until full payment is made of the bill for service and the Company has been reimbursed in full for all extra expenses incurred. Additionally, Rule 25-6.105(5)(j), Florida Administrative Code, provides that whenever service is disconnected for fraudulent use, the utility may, before restoring service, require the customer to make all necessary changes at his own expense and to pay an amount reasonably estimated as the loss in revenue.

14. In August of 1987, Petitioner's house burned down, and Florida Power & Light Company installed a new meter. Petitioner commenced using electricity again, by his own admission, utilizing electrical equipment and tools in tearing down the burned structure, and used electric water pumps to operate an irrigation system. Yet, Petitioner's electrical usage in September of 1987 registered at "0". Accordingly, using September of 1987 as the start date for calculating the amount of backbilling was a reasonable date to select. The calculation of the backbilling from September of 1987 through September 22,

1989, when Petitioner's electrical service was discontinued, was done in accordance with the seasonal average approach approved by the Florida Public Service Commission. The calculation of the rebilled amount is reasonable, and the investigative charges are reasonable. Additionally, the conditions required by Florida Power & Light Company before Petitioner's electrical service to that address can be restored are reasonable.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order be entered finding that Petitioner owes Florida Power & Light Company the backbilled amount of \$3,856.28.

DONE and ENTERED this 2nd day of December, 1991, at Tallahassee, Florida.

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LINDA M. RIGOT  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of December, 1991.

#### APPENDIX TO RECOMMENDED ORDER

1. Respondent's proposed findings of fact numbered 1-4, 6-10, and 12-15 have been adopted either verbatim or in substance in this Recommended Order.

2. Respondent's proposed findings of fact numbered 5 and 11 have been rejected as being unnecessary.

3. Respondent's proposed findings of fact numbered 16-19 have been rejected as not constituting findings of fact but rather as constituting statements of Petitioner's position which position is not supported by the weight of any credible evidence.

#### COPIES FURNISHED:

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#### NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.