STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LETICIA CALLARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 04-2758
	)	
FLORIDA POWER & LIGHT COMPANY,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing on November 29, 2004, and on December 30, 2004. The first day of hearing was conducted by video teleconference at sites in Tallahassee and Miami, Florida. The second and final day of hearing was held at the courthouse in Miami, Florida.

APPEARANCES

For Petitioner: Leticia Callard, pro se
7860 Southwest 18th Terrace
Miami, Florida 33155

For Respondent: David M. Lee, Esquire
Florida Power & Light Company
Law Department
700 Universe Boulevard
Juno Beach, Florida 33408

STATEMENT OF THE ISSUES

The issues in this case are whether Petitioner tampered with her electricity meter and, if so, whether Respondent has established a reasonable estimate of the un-metered electricity consumed, for which Petitioner could be retroactively billed.

PRELIMINARY STATEMENT

On April 16, 2004, the Florida Public Service Commission ("PSC") issued a Notice of Proposed Agency Action Order Approving Billing Due to Meter Tampering ("Proposed Agency Order") wherein it made the following pertinent findings of fact:

> [M]eter tampering occurred at Mrs. Leticia Callard's address, . . . [which] warrant[s] backbilling. . . . [T]he amount of reasonable backbilling of Mrs. Callard's account is $9279.18 for unbilled consumption from January 2, 1997, to July 24, 2002, including $348.21 for investigative charges.

The PSC "encouraged [Mrs. Callard] to contact [Respondent] Florida Power & Light Company immediately to make payment arrangements . . . in order to avoid discontinuance of [electricity] service without notice."

Petitioner Leticia Callard disputed the aforementioned fact-findings and timely requested a formal hearing. On August 4, 2004, the PSC referred the case to the Division of Administrative Hearings for further proceedings. An Administrative Law Judge was assigned to preside in the matter.

The final hearing took place on November 29, 2004, and December 30, 2004. Petitioner called her husband, Jorge Callard, as her only witness and introduced Petitioner's Exhibits A, B, D, G-1, G-2, and I into evidence. Respondent presented the testimony of its employees Chase Vessels, Edward List, Bert Cunill, James Bartlett, and Linda Cochran. In addition, Respondent offered Respondent's Exhibits 1 and 2, which were received in evidence.

The final hearing transcript, comprising three volumes, was filed on March 9, 2005. Each party filed a proposed recommended order ahead of the enlarged deadline, which was April 5, 2005.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2004 Florida Statutes.

FINDINGS OF FACT

1. Respondent Florida Power & Light Company ("FPL") is a utility that sells electricity to residential and commercial customers in Florida; as such, FPL is subject to the PSC's regulatory jurisdiction.

2. FPL measures the amount of electricity used by its residential customers in kilowatt-hours ("kWhs"). A customer's cumulative electricity usage is recorded on a meter. Each month, a meter reader looks at a customer's meter and records the current cumulative total of kWhs consumed. From the current cumulative total of kWhs is subtracted the previous month's

cumulative total, which equation produces the number of kWhs used during the preceding month, for which amount the customer is then billed.

3. For example, if a meter read on May 5, 2005, shows a current cumulative total of 6950 kWhs, and if the same meter, when read on April 5, 2005, had shown 5750 kWhs, then the customer's usage, for the 30-day period from April 5, 2005, to May 5, 2005, is 1200 kWhs. The customer will then be sent a bill for May 2005 reflecting the cost of 1200 kWhs of electricity.

4. Petitioner Leticia Callard ("Callard") is one of FPL's residential customers. Years before the present dispute arose, FPL installed meter #5C35633 at the house in Miami, Florida, where Callard resides.

5. Meter #5C35633 has five dials on its face that display kWhs. The dials are protected under a glass canopy, which is sealed to the meter to guard the meter's integrity. The dials cannot be accessed without breaking the seal.

6. On July 5, 2001, a meter reader conducted a regularly scheduled reading, for billing purposes, of meter #5C35633. (A customer's monthly invoice from FPL tells which day the meter reader will next look at the customer's meter.) He recorded a cumulative total of 5361 kWhs. This was a red flag because the previous reading, taken on June 5, 2001, had been 5733 kWhs.

Thus, the meter appeared to have run backwards. This is known as a "regressive reading." A regressive reading is suspicious because the dials on a properly functioning meter should move in only one direction——forward. When a regressive reading is taken, FPL investigates further to determine if meter tampering has occurred.

7. Accordingly, FPL sent an investigator named Chase Vessels to the Callard residence to conduct an unscheduled reading of meter #5C35633. (An unscheduled reading——that is, one taken between the normal monthly meter-read dates——is called a "check reading." Check readings are useful in investigating possible meter tampering because they occur without advance warning to the customer.) Mr. Vessels read the meter on July 6, 2001, which then showed 5497 kWhs. This, too, was a regressive reading relative to that taken on June 5, 2001.

8. Mr. Vessels discovered that the seal on meter #5C35633 was broken and had been "rigged" to appear intact. Mr. Vessels also noticed that there were smudges on the face of the meter around the dials, suggesting that someone might have been manipulating the dials.

9. Another check reading was taken on July 16, 2001, at which time Callard's meter showed 6515 cumulative kWhs. Thereafter, Mr. Vessels attempted to make additional check readings but was unable to access the meter without alerting the

customer. He finally saw the meter again on June 27, 2002. On that date, Mr. Vessels again noted the rigged seal and the smudges on the meter's face, near the dials.

10. Believing that tampering likely had taken place, FPL directed Edward List to remove meter #5C35633 and replace it with another one, which he did on July 24, 2002. Mr. List also observed the rigged seal and the smudges around the dials on meter #5C35633. When he removed the meter, Mr. List placed a sticker on the canopy, which he initialed, identifying the date of removal and the location from which the meter was taken. Mr. List then sent meter #5C35633 back to FPL for testing.

11. At FPL's Meter Technology Center, James Bartlett inspected and tested meter #5C35633. He confirmed that the seal was broken, and that the meter's face was scratched and smudged. Further, when Mr. Bartlett tested the meter, he found that it was "off scale," meaning that it was not measuring kWhs as accurately as it should have been.

12. Based on the above facts, which are established by credible and persuasive evidence in the record, the undersigned finds and determines that, more likely than not, meter #5C35633 was tampered with, preventing FPL from fully charging Callard for her actual electricity consumption. Specifically, it is determined that Callard (or someone) physically manipulated the

meter's dials, rolling them backwards to reduce the cumulative total of kWhs used and hence understate usage.

13. More difficult to determine is when this tampering occurred. As FPL acknowledges, tampering of this sort is episodic, and affects only the instant billing cycle. That is, if a customer were to tamper with his meter on, say, May 15, 2005, then the bill covering the period that includes May 15, 2005, would be inaccurate, but future bills would be correct (assuming no further tampering), just as bills covering earlier periods would be accurate or not depending on whether tampering had previously occurred during those periods. To come up with a reasonable estimate of the energy used but not paid for, then, it is necessary to establish, in some reasonable fashion, the period(s) affected by the tampering.

14. FPL estimates that from the billing cycle which ended on January 2, 1997,[1] until July 5, 2002, Callard used a total of 101623 kWhs for which she was not billed, due to meter tampering. The cost of this amount of electricity, according to FPL, is $8,930.97.

15. For reasons that will be discussed later, it is determined that FPL's estimate of the amount of "un-metered" electricity significantly overstates Callard's probable actual usage and hence is not reasonable. FPL has introduced enough data into the record, however, for the fact-finder to make a

reasonable determination of the amount of un-metered electricity that Callard used.

16. As a starting point, the evidence shows the total kWhs for which Callard was actually billed each month from January 1997 to July 2002. Thus, Callard's annual "as billed" electricity usage for each of the years in question, expressed in kWhs, can easily be ascertained. The figures are as follows:

1997: 23899

1998: 27483

1999: 13383

2000: 14840

2001: 14134

In addition, from January 2002 to July 2002, Callard was billed for 8395 kWhs, according to readings taken from meter #5C35633.

17. It does not take a trained eye to spot the dramatic difference between the years 1997 and 1998, on the one hand, and 1999 through 2001 (and 2002) on the other. Based on these figures, the undersigned made the tentative determination that the tampering probably began in 1999.

18. To confirm or falsify this preliminary determination, the undersigned considered the concept of Percentage of Annual Usage, Monthly ("PAUM"). PAUM shows what part of a customer's annual energy consumption occurred in a given month; it is calculated by dividing the year's total usage (in kWhs) into the

subject month's usage. Thus, for example, if a customer consumed 30000 kWhs in 2004, and if his usage in May 2004 was 3000 kWhs, then the customer's PAUM for May 2004 would be 0.10, or 10 percent.

19. PAUM is a useful datum because residential customers tend to use more or less energy depending on the time of year. As Floridians know from common experience, for example, electricity usage in this state tends to increase in the hot summer months, when air conditioners are running, and decrease in the milder autumn or winter months, when windows are open.

20. To estimate un-metered electricity usage, FPL employs a methodology that factors in the PAUMs of an average customer for each of the months during which tampering is suspected to have occurred. Thus, in this case, FPL produced numbers that purportedly are the average customer's PAUMs for every month from January 1997 through July 2002. The following table shows the PAUMs of an average customer, according to FPL.

	1997	1998	1999	2000	2001	2002
JAN	6.84	6.88	7.51	6.57	7.43	7.43
FEB	6.59	5.75	6.32	5.79	6.48	6.48
MAR	7.03	5.82	5.72	6.13	6.78	6.78
APR	6.96	6.23	7.04	6.73	7.08	7.08
MAY	7.65	7.38	8.12	9.44	7.26	7.26
JUN	9.41	9.90	9.06	10.09	9.24	9.24
JUL	10.35	10.93	9.77	10.54	10.14	10.14
AUG	10.59	10.71	11.23	10.54	10.20	
SEP	10.26	10.82	10.81	10.43	11.01	
OCT	9.50	9.99	9.70	9.54	9.15	
NOV	7.82	8.08	7.78	7.29	7.73	
DEC	7.00	7.52	6.94	6.91	7.50	

21. Using an average customer's PAUMs, it is possible to calculate an actual customer's estimated annual usage ("EAU") even if there is a paucity of reliable data concerning the actual customer's true usage. Suppose, for example, that FPL suspects Smith is tampering with his meter and, as a result, conducts check readings on May 10, 2000, and May 20, 2000, recording cumulative totals of 7250 kWhs and 8420 kWhs, respectively. This tells FPL that Smith used 1170 kWhs in 10 days, or 117 kWhs per day. The June 2000 billing cycle is 30 days, so FPL can estimate that Smith's actual usage for that month should be approximately 3510 (30 x 117).[2] If the average customer's PAUM for June 2000 is 10.09 percent, then FPL can calculate an EAU for Smith, based on the two check readings. The formula is:

$$EAU = \frac{kWhs(JUN2000)}{PAUM(JUN2000)}$$

In this example, therefore, EAU would be 3510 ÷ 0.1009, which equals 34787. If Smith were billed for only 27500 kWhs in 2000, then the estimated amount of un-metered electricity for that period, based on an EAU of 34787, would be 7287 kWhs (34787 – 27500).

22. Here, FPL failed to introduce any evidence explaining how the average customer's PAUMs were derived, or by whom. Moreover, there is no evidence shedding light on whether the

average PAUMs were based on usage data collected in a particular county or counties, or throughout the state. Nor does the evidence show whether the usage data from which the average customer's PAUMs were derived reflect the consumption patterns of FPL customers specifically, or some other, broader group of electricity consumers.[3] The undersigned therefore has determined that it would be unreasonable to apply these average PAUMs against Callard to determine EAUs for the years in question, except as a last resort, in the absence of better data.

23. As it happens, there might be better data concerning Callard's usage patterns. Using the kWhs for which Callard was actually billed for each of the months in issue, it is possible to calculate Callard-specific PAUMs.

24. Based on the number of kWhs for which Callard was billed each month from January 1997 through July 2002, Callard's PAUMs were as follows:

	1997	1998	1999	2000	2001	2002
JAN	5.10	5.27	10.16	4.10	18.25	6.88
FEB	5.04	3.21	4.86	4.55	0.06	6.91
MAR	4.23	3.60	4.55	5.16	10.26	6.30
APR	4.14	3.60	6.55	4.75	6.86	9.75
MAY	4.47	4.78	7.96	5.60	6.19	10.68
JUN	11.00	10.09	8.13	7.96	7.33	10.57
JUL	14.40	15.14	9.86	11.93	4.05	8.37
AUG	14.75	14.68	22.54	8.42	11.70	
SEP	15.25	14.73	5.75	23.09	9.67	
OCT	10.24	11.51	5.56	10.16	8.98	
NOV	6.59	8.32	5.51	7.94	8.79	
DEC	4.78	5.07	8.57	6.34	7.87	

25. Once again, the figures show a marked difference between the years 1997 and 1998, on the one hand, and 1999 through July 2002 on the other. The PAUMs for 1997 and 1998 are consistent with one another and indicate practically identical seasonal usage patterns. In contrast, from 1999 forward, the PAUMs are punctuated with several facially anomalous figures, as well as a number of irregular seasonal figures.

26. Beginning with the facial anomalies, note the extremely high PAUMs for August 1999 and September 2000——22.54 percent and 23.09 percent, respectively. These numbers are plainly out of line with the corresponding PAUMs for 1997 and 1998. Further, it seems unlikely that a customer would consume nearly one quarter of her entire annual electricity demand in one month. The same observations can be made about January 2001, whose PAUM, at 18.25 percent, is not only inconsistent with the corresponding PAUMs for 1997 and 1998, but also suggests, implausibly, that Callard used nearly one-fifth of a year's worth of electricity in one month. The PAUM for February 2001 is facially anomalous, too, but for the opposite reason: it is highly unlikely that a customer would use so little electricity (just 1/1667th of a year's supply) in a given month.

27. The seasonal abnormalities are nearly as striking. Take the PAUMs for January 1999; July 1999; September 1999; October 1999; August 2000; March 2001; July 2001; April 2002;

May 2002; and July 2002. None of these is consistent with the putatively normal seasonal use patterns reflected in the PAUMs for 1997 and 1998. Plus, the undersigned considers it highly improbable, for example, that Callard used just 4.04 percent of her annual energy demand in the hot summer month of July 2001 or, conversely, consumed a heavy 10.26 of her annual usage that year in the usually mild month of March. These figures, in short, are not believable.

28. The likeliest explanation for the anomalous PAUMs during the years 1999 through 2002 is that meter tampering skewed the usage percentages. Thus, the undersigned believes that Callard's PAUMs, as calculated based on "as billed" kWhs, buttress his preliminary determination that the tampering began in 1999, raising the inference that Callard's PAUMs for 1997 and 1998, as shown in the table above, likely reflect her actual seasonal usage patterns for those years.

29. To verify the validity of such an inference, the undersigned compared the average of Callard's PAUMs for 1997 and 1998 to the average of the average customer's PAUMs for the same years as reported by FPL. The table below shows the numbers.

	Callard	FPL
JAN	5.19	6.86
FEB	4.13	6.17

MAR	3.92	6.43
APR	3.87	6.60
MAY	4.63	7.54
JUN	10.55	9.66
JUL	14.77	10.64
AUG	14.72	10.65
SEP	14.99	10.54
OCT	10.88	9.75
NOV	7.46	7.95
DEC	4.93	7.26

30. Comparing one column to the other reveals that Callard's seasonal usage patterns mirror those of FPL's average customer; the energy consumption of both rises and falls in tandem throughout the year. Indeed, the PAUMs for January, June, October, and November are quite close (within about one percentage point, on average). To be sure, these figures reveal that Callard used about four percent more electricity than the average customer during the hottest summer months (July, August, September) and approximately two-and-a-half percent less during the milder winter and spring months. But the undersigned considers such disparities to be of far less consequence than the identity of the usage patterns.[4]

31. In sum, the comparison of Callard's average PAUMs for 1997 and 1998 to the average of FPL's average customer's PAUMs for those same years persuades the undersigned that the average PAUMs for Callard reasonably reflect her true usage patterns.

32. Thus, the undersigned finds and determines that, more likely than not, the tampering began in 1999——and that Callard is not liable for un-metered electricity usage during 1997 and 1998.

33. From the foregoing determination it is possible to home-in on a reasonable EAU for Callard. A good starting point is the average of Callard's total kWhs for 1997 and 1998, which is 25691.[5] As an average of true annual usage figures (i.e. numbers untainted by tampering), this number should be a reasonably accurate predictor of Callard's probable annual usages in the years 1999 to 2002. Comparing this average figure to the EAUs that can be derived from meter readings taken in subsequent years at times when tampering is not suspected should either confirm the reliability of 25691 as a valid predictor of subsequent annual usage, or invalidate it.

34. Recall the check readings of 5497 and 6515, respectively, that were taken on July 6, 2001, and July 16, 2001. These readings show that Callard consumed 1018 kWhs in 10 days, or 101.8 kWhs per day during the August 2001 billing cycle. Since that was a 29-day billing period, it is reasonable

to infer that Callard should have been billed for approximately 2952 kWhs in August 2001 (29 x 101.8). Because Callard's average PAUM for August is 14.72 percent, the EAU based on these check readings is 20054 (2952 ÷ 0.1472).

35. Next, there is a reading of 1774 kWhs, which was taken on August 5, 2002, from the replacement meter that had been installed on July 24, 2002. This reading demonstrates that Callard used 1774 kWhs in 12 days, or 147.8 kWhs per day during the August 2002 billing cycle. This was a 31-day cycle, so it is reasonable to infer that Callard should have consumed 4582 kWhs in August 2002.[6] Because Callard's average PAUM for August is 14.72 percent, the EAU based on this initial reading from the replacement meter is 31128 (4582 ÷ 0.1472).

36. The average of the respective EAUs based on the check readings from July 2001 and the reading of the replacement meter on August 5, 2002, is 25591 kWhs[7]——which is remarkably similar to the average of Callard's total kWhs for 1997 and 1998. (The latter figure, again, is 25691.) That these averages are so close not only reconfirms the undersigned's determination that no tampering occurred in 1997 and 1998, but also persuades him that in any month where the number of Callard's "as billed" kWhs produces an EAU within the range of 20054 kWhs to 31128 kWhs, tampering is unlikely to have occurred.

37. Using the "as billed" kWhs for each month from January 1999 to July 2002, and applying the average of Callard's PAUMs for 1997 and 1998 as shown in paragraph 29 above, the undersigned calculated an EAU for every month in which tampering might have occurred. The results are set forth in the table below.

	1999	2000	2001	2002
JAN	26204	11715	49692	18728
FEB	15738	16344	194	23632
MAR	15536	19541	36990	22679
APR	22661	18217	25065	35556
MAY	23002	17948	18098	32570
JUN	10313	11204	9820	14142
JUL	8937	11984	3873	8003
AUG	20489	8485	11230	
SEP	5137	22855	9119	
OCT	6838	13860	11664	
NOV	9879	15804	16662	
DEC	23266	19087	22556	

38. It is easy to spot, in the above figures, the months where tampering likely occurred: they are the months whose "as billed" kWhs number produces an EAU of less than 20054 (usually quite a bit less). Likewise, the months where tampering probably did not occur are readily distinguished: they are the ones where the EAU is greater than 20054. As it happens, there are not many close calls. The figures for most months either reflect obvious tampering or clearly appear to be legitimate.

39. Based on the above data, the undersigned finds and determines that, in all likelihood, tampering did not occur in

the following 14 months: January, April, May, August, and December 1999; September 2000; January, March, April, and December 2001; and February, March, April, and May 2002.[8]

40. The average EAU for these 14 months is 27658. Therefore, the undersigned finds and determines that a reasonable EAU for 1999, 2000, and 2001 is 27658 (a figure, incidentally, that differs little from Callard's actual annual usage in 1998).

41. To determine an EAU for the first seven months of 2002, the undersigned added Callard's average PAUMs for those months and found that Callard used, on average, 47.06 percent of her annual electricity consumption during the months from January to July. Thus, it is found and determined that a reasonable EAU for the first seven months of 2002 is 13016 (27658 x 0.4706).

42. With these numbers in hand, the reasonable amount of un-metered electricity consumption for which Callard is liable can now be ascertained, as shown in the following table:

	EAU	"As Billed" Usage	Difference (Un-Metered Usage)
1999	27658	13383	14275
2000	27658	14840	12818
2001	27658	14134	13524
2002	13016	8385	4621

It is found and determined that from January 1999 to July 2002, Callard consumed a total of 45238 kWhs of electricity for which she was not billed, due to meter tampering.

43. The value of 45238 kWhs of electricity, delivered during the period at issue, is $3,975.66.[9]

44. It was previously found that FPL's estimate of the amount of Callard's un-metered electricity usage was unreasonable. The undersigned will now summarize the reasoning behind this determination.

45. FPL's first methodological flaw was assuming, without proving, that the meter tampering began in January 1997. In this regard, FPL offered no evidence——at least none that was persuasive——that Callard's meter was tampered with that year, or in 1998 for that matter. In fact, contrary to FPL's assumption, the data in evidence persuasively establish that no meter tampering occurred during 1997 and 1998. Thus, it would be unreasonable to retroactively bill Callard for the months from January 1997 through December 1998, as FPL proposes to do.

46. FPL's second methodological flaw was assuming, without proving, that the average customer's PAUMs (which figures were not really properly proved, either) could reasonably be applied to Callard. The unreasonableness of this particular assumption is magnified by the fact that there exists reliable data (from 1997 and 1998, when no tampering occurred) about Callard's

actual PAUMs, making resort to the average customer's PAUMs unnecessary.

47. These two flaws led FPL to derive an EAU for Callard for the years in question (including, erroneously, 1997 and 1998) that significantly and unreasonably overstated her probable usage. To calculate an EAU, FPL first assumed that tampering had not occurred in July 1998, September 1998, November 1998, or during the initial 12 days' service of the replacement meter, from July 24, 2002 to August 5, 2002. (FPL did not persuasively explain its selection of the particular months of 1998, but for reasons already detailed, the undersigned agrees and has found that no tampering occurred then——or at any other time in 1998.)

48. Next, FPL calculated an EAU for each of the foregoing periods, using the "as billed" kWhs for the chosen months of 1998 and a projected monthly total for August 2002, to each of which was applied the average customer's PAUM for the respective period. The following table shows the numbers.

Month/Year	KWhs	Avg. FPL Customer's PAUM	EAU
July 1998	4160	10.93	38060
September 1998	4048	10.82	37412
November 1998	2286	8.08	28292
August 2002	4440[10]	10.20	43529

49. Taking the average of the foregoing EAUs, FPL concluded that Callard's true annual usage from January 1997 to July 2002 averaged 36824 kWhs. (This figure is substantially greater than the amount the undersigned ultimately has determined reflects Callard's average annual usage——27658.)

50. As an aside, the undersigned observes that if accurate PAUMs are applied to reliable figures for monthly kWhs consumption, then the resulting EAUs, as calculated from the periodic readings, should be fairly close to one another. With this in mind, notice what happens when Callard's average PAUMs (based on 1997 and 1998 usages) are substituted for the average customer's PAUMs in FPL's equations:

Month/Year	KWhs	Callard's Avg. PAUM	EAU
July 1998	4160	14.77	28165
September 1998	4048	14.99	27005
November 1998	2286	7.46	30643
August 2002	4440	14.72	30163

51. Using Callard's average PAUMs for the periods in question produces EAUs that are, more so than FPL's numbers, fairly close to one another, which outcome persuasively reestablishes that Callard's average PAUMs are true numbers, and hence more reasonably applied in this case than the average FPL customer's PAUMs.[11]

52. Indeed, a comparison of the two preceding tables underscores the unreasonableness of FPL's methodology. Notice that FPL happened to pick the three peak summer months (July, August, and September), when Callard's usage exceeds the average customer's by 4.2 percent on average. FPL's approach has a built-in bias against Callard and is guaranteed to produce inflated EAUs.

53. At any rate, once FPL had concluded that Callard's average annual usage should be 36824 kWhs, it multiplied that figure times the average customer's PAUM for each of the 67 months from January 1997 to July 2002, producing monthly "re-bill" amounts of kWhs. For example, the average customer's PAUM for December 2001 is 7.5 percent. Thus, FPL contends that Callard should have been billed for 2762 kWhs that month (36824 x .075); it refers to this figure (2762) as the "re-bill" amount for December 2001. FPL then added together all the "re-bill" figures, subtracted therefrom the aggregate of the "as billed" numbers, and came up with a difference of 101623 kWhs, for which FPL contends Callard is liable.

54. This amount, however, exceeds a reasonable estimate of the un-metered energy consumed, by 56385 kWhs. The undersigned therefore rejects FPL's calculation.

55. As a final point, FPL claims that it is entitled to recover from Callard $348.21 as reimbursement for investigative

costs. FPL failed to offer any proof, however, concerning the goods and/or services upon which it spent this sum. Consequently, while the amount requested is neither shocking nor unreasonable on its face, there is no evidential basis on which the undersigned can make a finding that the sum of $348.21 is reasonable in this case.

CONCLUSIONS OF LAW

56. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569, and 120.57(1), Florida Statutes.

57. Florida Administrative Code Rule 25-6.104 provides as follows:

> 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.

58. The burden of proving meter tampering and a reasonable estimate of the un-metered energy used was on FPL. See Rodriguez v. Florida Power and Light Co., et al., DOAH Case No. 96-4935, 1997 WL 1052759, *3 (Fla.Div.Admin.Hrgs. May 21, 1007).

59. Rule 25-6.104, under which FPL is traveling, plainly does not authorize the utility to recover investigative costs, as FPL has sought to do here. In support of this particular claim, FPL relies on In Re: Complaint of Mrs. Blanca Rodriquez against Florida Power & Light Company regarding alleged current

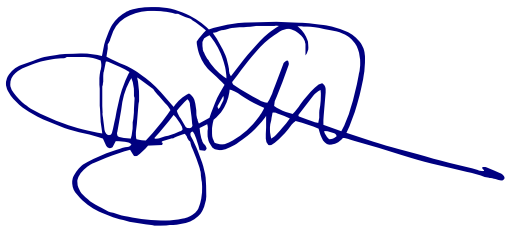
diversion/meter tampering rebilling for estimated usage of electricity, Docket No. 960903-EI, Order No. PSC-96-1216-FOF-EI (PSC Sept. 24, 1996), where the PSC proposed that FPL recover a sum for investigative charges. In Rodriguez, however, the PSC did not cite any law supporting its award.

60. Based on the unambiguous language of Rule 25-6.104, the undersigned concludes that no legal basis exists for awarding investigative costs to FPL in this matter.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commission enter a final order authorizing FPL to retroactively bill Callard $3,975.66 for the un-metered energy she used from January 1999 through July 2002.

DONE AND ENTERED this 13th day of May, 2005, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of May, 2005.

ENDNOTES

[1]/ The evidence shows that FPL generally took its regular reading of Callard's meter during the first week of each month, typically on or before the fifth day. For convenience, the undersigned henceforth will refer to the billing cycle that ended on January 2, 1997 (or February 4, 1998, etc., as the case may be), simply as the "January 1997 bill" (or "February 1998 bill," etc.), or words to that effect, even though, in reality, the time period covered by the January 1997 bill was mostly December 1996. Similarly, references herein to electricity used in a particular month, say January 1997, are intended to mean electricity used during the billing cycle that ended that month, even though, given the usual meter-read date, most of that electricity likely would have been consumed in the immediately preceding month.

[2]/ The assumption here is that tampering has not occurred between the check readings, on the theory that the customer, who would not be expecting the unscheduled meter-reads, would fail to roll back the meter dials ahead of the check readings.

[3]/ Detailed information about the usage data underlying the average PAUMs, which is not available in the instant record, might have provided a basis for determining whether the average customer's PAUMs could fairly be applied in calculating Callard's un-metered energy consumption. This is because the more the average customer resembles Callard, the likelier the average customer's PAUMs will match Callard's. But the converse is true as well. It is commonly known in this state, for example, that the climate of North Florida differs from that of South Florida. One would expect, therefore, that the seasonal usage patterns of a Jacksonville resident would differ from those of a Miami resident, reflecting the climatic differences between the two regions. Thus, if the average customer's PAUMs were based on data collected statewide, then the average customer probably lives in a somewhat less tropical environment than Callard, and accordingly probably has somewhat different seasonal usage patterns.

[4]/ As mentioned previously, FPL offered no evidence in support of its average PAUMs, and consequently the undersigned does not

know what the profile of the average customer is. As a result, there is no reason for the undersigned not to assume that the average customer enjoys somewhat milder summers (which would tend to reduce energy consumption) and faces somewhat colder winters (which would tend to increase energy consumption) than Callard typically experiences in Miami, Florida. Consequently, the undersigned does not view Callard's deviations from the average percentages as evidence of meter tampering.

[5]/ This figure was obtained by adding 23899 and 27483 and dividing the resulting sum by two.

[6]/ Basing the EAUs on, say, a 30-day billing cycle, instead of, as above, 29 and 31 days, respectively, would obviously produce different numbers from the ones shown——but not materially different numbers. Because the outcome is not affected one way or the other, the undersigned has opted simply to use the actual number of days in the relevant cycle for his calculations.

[7]/ This figure was obtained by adding 20054 and 31128 and dividing the resulting sum by two.

[8]/ It is noted that the EAUs for January 2001, March 2001, April 2002, and May 2002 are greater than 31128 and hence out of the range established by the July 2001 check readings and the initial reading of the replacement meter in August 2002. The undersigned considers it possible that Callard tampered with the meter during these months and (whether by accident or design) overstated her true usage. Because there is no evidence suggesting that such occurred, however, the undersigned has decided that treating the "as billed" kWhs for these months as true and correct figures is more reasonable than any alternative.

[9]/ This dollar amount was arrived at by multiplying the known cost of one kilowatt-hour, which is approximately 8.8 cents ($8,930.97 ÷ 101623) times the amount of un-metered usage (45238 kWhs).

[10]/ The figure of 4440 kWhs was based on the assumption that Callard had used 148 kWhs per day throughout the August 2002 billing cycle. See paragraph 35 in the text, supra. FPL multiplied 148 kWhs/day times 30 days to arrive at an estimate of 4440 kWhs for the month of August 2002.

[11]/ As well, the average of these EAUs is 28994——an amount reasonably close to the number of kWhs (27658) the undersigned has determined reasonably reflects Callard's true average annual usage.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.