

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Kathleen)
Newman against Florida Power and) DOCKET NO. 931199-EI
Light Company regarding electric) ORDER NO. PSC-94-0276-FOF-EI
rates for home day care) ISSUED: March 9, 1994
providers.)
_____)

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING COMPLAINT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

On September 10, 1993, Kathleen Newman called the Florida
Public Service Commission's Division of Consumer Affairs and
complained that Florida Power & Light Company (FPL) had placed her
account on a commercial rate. She indicated she provided a home
day care service. She also said FPL had billed her a deposit of
\$215 since deposits were required on commercial accounts.

On September 27, 1993, the Florida Public Service Commission
(PSC) received a letter from Senator John McKay on behalf of
Kathleen Newman. Senator McKay wrote that "Mrs. Newman operates a
50-hour-a-week day care business in her home. FPL wants to bill at
a commercial rate for this household/business. Mrs. Newman does
not believe that her household should be forced to pay the
commercial rate for the remainder of the week (118 hours)."
Senator McKay asked that the PSC investigate the matter.

The Division of Consumer Affairs asked FPL to respond to Ms.
Newman's concerns. FPL responded that "[a]lthough the Newmans live

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FOSC-REGULATORY/REPORTING

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at this same address, the day care center is a commercial enterprise which requires the appropriate commercial rate. Commercial accounts also require a security deposit based on two months average billing."

The Commission staff (staff) responded to FPL by asking the company to verify that the customer in question had a business license in order to determine whether she was operating a business. By letter dated November 12, 1993, the company indicated that FPL had not determined whether a license had been issued for Mrs. Newman's daycare business, and "the existence of a license is not relevant to the determination of the appropriate rate schedule for application to Mrs. Newman's service." The company also asked to meet with staff to discuss the rate schedule application. Staff discussed the matter with FPL on November 18, 1993.

Mrs. Newman reported that she has kept children in her home for 13 years. She had placed a small sign in her yard advertising her business. This sign had been in her yard for about one year before FPL recognized that the residential rate schedule was no longer applicable. Mrs. Newman said she was licensed by HRS as a home daycare provider but was not required by the county to have a business license. Staff discovered that counties normally do not require a business license for home daycare service, but cities often do. Mrs. Newman maintains that other home daycare providers in Manatee County do not pay commercial rates.

By letter to Mrs. Newman dated November 19, 1993, staff advised Mrs. Newman that she could request an informal conference on the complaint, but that staff was willing to proceed without this step and would proceed directly to agenda conference if she preferred. Mrs. Newman responded by letter received on December 3, 1993 that she would like the matter to proceed directly to agenda conference.

The matter was docketed, and FPL responded formally on January 11, 1993, restating its previous position that the General Service rate was correct for Mrs. Newman.

The primary issue in this docket is whether Florida Power & Light Company properly classified the account of Mrs. Newman, who is a home-day care provider, as a general service commercial customer.

FPL's tariff defines "Residential" as service "supplied exclusively for domestic purposes in individually metered dwelling units . . ." (Second Revised Sheet No. 4.010, Miscellaneous, Classes of Customers) (emphasis added). FPL's Twenty-fifth Revised

Sheet No. 8.201, for Residential Service, states that it applies for service for ". . . all domestic purposes individually metered dwelling units . . ."

"Commercial Service" is defined

as service used for commercial and professional activities in establishments and for purposes not otherwise classified for rate purposes, including: airports, banks, billboards, boarding houses, churches, clubs, commercial buildings, freight terminals, garages, hospitals, hotels, master-metered apartment houses, office buildings, parking lots, passenger stations, personal service establishments, restaurants, rooming houses, schools, self service laundries, signs, stores, theaters and the like. (FPL's Second Revised Sheet No. 4.010) (emphasis added)

It is undisputed that Mrs. Newman provides an in-home day care service. In her letter to the Commission, she stated that the average in-home day care provider operates approximately 50-60 hours per week. Since FPL's tariff provides that residential classification is based on electric service provided exclusively for residential use, we find that FPL properly applied its general service commercial tariff to Mrs. Newman.

We have opened a docket into the generic investigation into the appropriate rate schedule for home-based businesses. (Docket No. 940204-EU)

We find that the customer shall remain on the General Service rate schedule pending our investigation of the proper application of the residential and commercial rates to in-home businesses. FPL has complied with its tariff in billing Mrs. Newman as a commercial customer. She shall therefore remain on the GS rate schedule pending the investigation of the proper application of the residential and commercial rates to in-home businesses. During the agenda conference on February 15, 1994, FPL agreed to provide a refund of the commercial deposit to Mrs. Newman.

There has been no showing that FPL has enforced its tariff in a discriminatory manner. FPL made its determination because the customer had a sign in her yard advertising her business. This does not seem to be an unreasonable basis for a determination of commercial status. Certainly, FPL does not have an obligation to investigate or spy on customers to determine whether they are operating a business in their homes. When an individual holds

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himself or herself out as a business, the utility's application of its commercial rate is reasonable.

Accordingly, we find that the customer shall remain on the General Service rate schedule pending the investigation of the proper application of the residential and commercial rates to in-home businesses.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company properly classified the account of the complainant, Mrs. Newman, as a general service customer. The complaint by the customer is hereby denied. It is further

ORDERED that the complainant shall remain on the General Service rate schedule pending the Commission's investigation of the proper application of the residential and commercial rates to home-based business. FPL has agreed to refund the customer's commercial deposit. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 9th day of March, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
DLC:bmi

by: Kay Flynn
Chief, Bureau of Records

Commissioners Clark and Johnson dissented from the Commission's decision that the complainant remain on the General Service rate schedule pending the Commission's investigation.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 30, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.