

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Robert A.) DOCKET NO. 940647-EM
Sarles For Declaratory Statement) ORDER NO. PSC-94-1110-FOF-EM
concerning 10% Surcharge by) ISSUED: September 12, 1994
Gainesville Regional Utilities -)
City of Gainesville.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION
ORDER DISMISSING 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 June 15, 1994, Robert A. Sarles (Sarles) filed a petition for a declaratory statement requesting an order "declaring that the rate structure of the Gainesville Regional Utilities violates the provisions of Florida Public Service Commission Rule 25-9.0525, by causing a discriminatory impact on Gainesville Regional Utility electric subscribers who reside in the unincorporated area." Because Sarles alleged that the utility's rates are discriminatory and because the issue raised in his petition concerns all customers living outside the city limits and not just the petitioner in his particular circumstances, we shall treat the matter as a complaint rather than as a request for a declaratory statement.

Gainesville Regional Utilities (GRU) is a municipal utility that provides electric, gas, water, and sewer service to the City of Gainesville (Gainesville or the city) as well as to residents living outside the city limits in Alachua County (the county). Sarles is a GRU residential customer that lives outside

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Gainesville's city limits, within the unincorporated area of the county.

Gainesville levies a city utility tax on city residents that is 10% of their electric charge. GRU customers residing outside the city limits pay a 10% surcharge on their electric bill. City residents do not pay the surcharge and customers living outside the city limits do not pay the city utility tax. In addition, customers living outside the city limits pay a 10% county utility tax imposed by Alachua County. Sarles argues that the 10% surcharge imposed by GRU on customers living outside the city limits has a discriminatory impact because it causes them to pay 10% more for electric service than do customers residing within the city limits.

Rule 25-9.0525(1), Florida Administrative Code, permits municipal electric utilities to impose a surcharge on customers living outside its corporate limits as long as the surcharge is "equal to the public service tax charged by the municipality within its corporate limits." The GRU surcharge is applied to the same base, at the same rate, in the same manner, and to the same types of customers as the city utility tax. The surcharge does not result in customers living outside the city limits paying more for electricity than do customers who live within the city limits. We find, therefore, that the 10% surcharge assessed by GRU complies with the requirements of Rule 25-9.0525. Furthermore, the Florida Supreme Court has found that Rule 25-9.0525 "results in equal overall charges to both residents and non-residents." Polk County v. Florida Public Service Commission, 460 So. 2d 370, 373 (Fla. 1984). Such a surcharge is not "unduly discriminatory." City of Tallahassee v. Florida Public Service Commission, 441 So. 2d 620, 624 (Fla. 1983).

GRU customers residing outside Gainesville's city limits do pay 10% more for electric service than do customers living within the city limits. This result, however, is not due to discriminatory practices on the part of GRU. The utility's customers living in the unincorporated area pay more for electricity because of the 10% tax levied by Alachua County. Neither GRU nor this Commission has jurisdiction over the county utility tax. Accordingly, the fact that GRU collects and then passes on the county utility tax to Alachua County is not within our "rate structure" jurisdiction. In re: Petition of Carlton Hooks, Individually, and Silver Sands Civic Association for review of rate structure of the Utilities Commission of New Smyrna Beach and the City of New Smyrna Beach, 88 Fla. Pub. Service Comm'n Rep. 10:88, 90 (Docket No. 880627-EM; Order No. 20121, Oct. 6, 1988) (Order Dismissing Petition).

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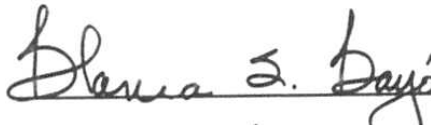
We find that the 10% surcharge that customers living in the unincorporated area of Alachua County pay to GRU complies with Rule 25-9.0525 and is not discriminatory. Because GRU has not violated Rule 25-9.1525, this complaint shall be dismissed.

It is, therefore,

ORDERED by the Florida Public Service Commission that the complaint filed by Robert A. Sarles is dismissed for the reasons discussed above. It is further

ORDERED that this Order shall become final and effective 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" as set forth below.

By ORDER of the Florida Public Service Commission, this 12th day of September, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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

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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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 3, 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 substantially 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.