

State of Florida



Public Service Commission

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RECORDS AND REPORTING

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DATE: APRIL 22, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF APPEALS (HELTON) *max DES*
 DIVISION OF ELECTRIC AND GAS (KUMMER) *cal*
 DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *JDT*
BH

RE: DOCKET NO. 990409-EM - PETITION BY OSCEOLA COUNTY TO INITIATE RULEMAKING TO AMEND RULE 25-9.0525, F.A.C., MUNICIPAL SURCHARGE ON CUSTOMERS OUTSIDE MUNICIPAL LIMITS.

AGENDA: 5/4/99 - REGULAR AGENDA - DECISION ON PETITION TO INITIATE RULEMAKING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: MAY 4, 1999 - PETITIONER HAS WAIVED 30-DAY STATUTORY DEADLINE SET OUT IN 120.54(7)(A) SO THAT THE COMMISSION CAN CONSIDER THE PETITION AT THE MAY 4, 1999, AGENDA CONFERENCE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\990409RE.MAH

CASE BACKGROUND

On March 31, 1999, Osceola County, Florida (Osceola County or petitioner), petitioned the Commission to initiate rulemaking to amend Rule 25-9.0525, Florida Administrative Code, pursuant to Section 120.54(7), Florida Statutes, and Rules 25-40.001 and 28-103.006, Florida Administrative Code. By letter dated April 8, 1999, petitioner waived the 30-day statutory deadline for answering petitions to initiate rulemaking as set out in Section 120.54(7), Florida Statutes.

Rule 25-9.0525(1) allows 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

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charged by the municipality within its corporate limits." Osceola County seeks an amendment to this rule that would provide:

[A]ny municipal surcharge imposed by a public utility on customers outside of the corporate limits being served by the public utility shall be reduced or dropped off in favor of a duly adopted public service tax, authorized by Section 166.231, Florida Statutes, and levied by the County having jurisdiction over the unincorporated area within which the surcharge is being imposed.

Petition at 1-2.

The Orlando Utilities Commission (OUC) filed a Notice of Interested Party status on April 6, 1999. Among other things, the purpose of this notice was to inform the Commission that Osceola County has served notice on OUC that the petitioner intends to file with the Commission a complaint against OUC and the City of St. Cloud (the city).

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the petition by Osceola County to initiate rulemaking proceedings to amend Rule 25-9.025, Florida Administrative Code, relating to the imposition of municipal surcharges on customers outside of city limits?

RECOMMENDATION: No, the Commission should deny Osceola County's petition to initiate rulemaking.

STAFF ANALYSIS: Rule 25-9.0525 provides in pertinent part:

[A] municipal electric utility may impose on those customers outside of its corporate limits a surcharge equal to the public service tax charged by the municipality within its corporate limits. To be equal to the tax, the surcharge shall apply to the same base, at the same rate, in the same manner and to the same types of customers as the tax. The surcharge shall not result in a payment by any customer for services received outside of the city limits in excess of that charged a customer in the same class within the city limits, including the public service tax.

Rule 25-9.0525(1), Florida Administrative Code.

This rule implements the Commission's rate structure jurisdiction over municipal electric utilities. Section 366.04(2)(b), Florida Statutes. The Commission has previously explained its rationale for the policy set out in the rule:

The Public Service Commission did not regulate municipal electric rate structures at the time that many cities had the option to adopt a utilities tax. A city could establish what appeared to be, as a practical matter, equal charges on utility bills inside and outside the city by adopting a utilities tax within the city and an equal surcharge outside the city. Alternatively, a city could, in fact, establish equal charges on electrical use simply by raising all rates equally inside and outside the city. With no constraint on the choice of options, some cities chose to adopt a utilities tax and an equal surcharge.

Where a municipality charges an out-of-city surcharge equal to its in-city utilities tax, a rate differential still exists. The surcharge is a charge for electric utility service, while the utilities tax is simply a tax. In such a case, a municipality could eliminate the rate differential simply by eliminating the tax and the surcharge and charging equally inside and outside the city. However, certain municipalities, who may have pledged their utility tax revenues to pay bond indebtedness, may not have this option. We find that, as a matter of policy, we should not require cities to go through this exercise, when the net cost to the ratepayer would be the same.

City of Tallahassee v. Florida Public Service Commission, 441 So. 2d 620, 624 (Fla. 1983)(quoting the Commission's order). The Florida Supreme Court has expressly stated that the Commission's allowance of such a surcharge is not unduly discriminatory. Id.

Osceola County seeks to have the Commission change its policy so that if a county lawfully imposes a public service tax on its residents in unincorporated areas, the equalization surcharge imposed by a municipal electric utility must be reduced or eliminated. The amendment sought by Osceola County ignores the statutory authority and rationale for Rule 25-9.0525. First, the Commission has no jurisdiction over public service taxes imposed by charter counties pursuant to Section 166.231, Florida Statutes. The act of a municipal electric utility collecting and remitting a public service tax on behalf of a county government is not within

the Commission's rate structure jurisdiction. See 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, Order No. 20121, 88 F.P.S.C. 10:88, 90 (1988). Second, a utility owned and operated by a municipality can set only its public service tax and electric rates. Such a municipal utility has no control over a public service tax imposed by a charter county. A county's ability to impose a public service tax is therefore irrelevant to the provisions of Rule 25-9.0525. Third, the purpose of the rule is to ensure that residents of unincorporated areas pay municipal electric utilities the same amount for electric service as do residents within the city limits. As discussed in the Commission's order quoted above, instead of imposing a surcharge on county customers, a municipal electric utility could eliminate the public service tax and equalization surcharge and simply charge all customers the same rate. If a municipal utility chose to change its rate structure in this manner, a charter county could still impose the public services tax authorized by Section 166.231, Florida Statutes. If this were the case, Osceola County's suggested amendment would not fix its perceived problem.

It seems that the catalyst behind Osceola County's petition is its complaint against OUC and the city.¹ As Osceola County alleged in its petition, OUC now operates and manages the city's municipal utility. In this capacity, OUC serves the unincorporated areas in Osceola County and collects from Osceola County residents an eight percent surcharge that is equal to the city's eight percent public service tax. In addition, Osceola County has imposed an eight percent public service tax on residents in the unincorporated areas. Thus, OUC collects both the equalization surcharge and Osceola County's public service tax from customers that live outside the city limits. OUC also serves unincorporated areas in neighboring Orange County. However, OUC discontinued any equalization surcharges it collected from county residents in Orange County after Orange County adopted its public service tax. Osceola County alleges this practice is discriminatory.

Section 120.54, Florida Statutes, rulemaking proceedings are not designed to resolve complaints between adverse parties. If Osceola County has a complaint against OUC and the city, as Osceola

¹ A chronology that sets out the issues between Osceola County, OUC, and the city is attached. This chronology is derived from Osceola County's petition and staff's personal knowledge.

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County has stated it does, the complaint should be resolved in a forum designed to resolve disputed issues. Rulemaking proceedings are not such forums since records are not built with sworn testimony taken under the rules of evidence. Nor do rulemaking proceedings result in findings of fact or law that would resolve a dispute.

For the reasons discussed above, staff recommends Osceola County's petition to initiate rulemaking to amend Rule 25-9.0525 be denied. Moreover, the Commission has previously determined that it has no jurisdiction over the imposition of a public service tax by county governments, even if it causes customers in unincorporated areas to pay a higher electric bill. In re: Petition of Robert A. Sarles for Declaratory Statement concerning 10% Surcharge by Gainesville Regional Utilities - City of Gainesville, Order No. PSC-94-1110-FOF-EM, 94 F.P.S.C. 9:201 (1994).

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If the Commission accepts staff's recommendation in Issue 1, this docket should be closed.

Chronology of events concerning the issues between Osceola County, Orlando Utilities Commission and The City of St. Cloud since 1991.

Orange County		
Year	Event	Effect on rates
Pre-1991	OUC serves both inside and outside city limits and collects a municipal tax on bills inside city and an equal county surcharge on bills outside city	Bills are equal for comparable customers inside and outside the city
1991	Orange County adopts a utility tax applicable to OUC customers outside the city limits.	County customer see higher bills because they pay both OUC surcharge and county tax
Post 1991	OUC voluntarily drops county surcharge for customers paying Orange County utility tax	Bills are equal for comparable customers inside and outside the city

Osceola County		
Year	Event	Effect on Rates
Pre 1997	The City of St. Cloud Utility serves both inside and outside city limits and collects a municipal tax on bills inside city and an equal county surcharge on bills outside city	Bills are equal for comparable customers inside and outside the city
1997	OUC and City of St. Cloud enter into management agreement based on a percentage of revenues received by St. Cloud utility including all utility taxes	Bill are same with respect to taxes but overall rates are reduced in steps to equal OUC's lower rates.
1998	Osceola County adopts a county municipal tax applicable to customers of St. Cloud utility outside the city limits	County customer see higher bills because they pay both St. Cloud's county surcharge and county tax
	Osceola County requests OUC (as ST. Cloud's billing agent) to drop county surcharge equal to St. Cloud's municipal tax but OUC declines	County bills remain higher than comparable city bills.
1999	Osceola County files petition to initiate rulemaking to require municipal utilities to drop county surcharge if county imposes a utility tax	If approved, the rule change would make bills for comparable customers the same inside and outside the city.