

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Conservation Cost Recovery	)	DOCKET NO. 890002-EG
Clause.	)	ORDER NO. 22309
	)	ISSUED: 12-13-89
	)	

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The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 JOHN T. HERNDON

ORDER DENYING FPL'S MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Florida Power and Light Company (FPL) seeks reconsideration of Order No. 21317 (issued June 2, 1989) in which we disallowed certain of FPL's advertising expenses from recovery through the Energy Conservation Cost Recovery (ECCR) clause.

As set forth in Order No. 21317, these expenses were disallowed because the advertising in question did not comply with our previously issued guidelines defining acceptable conservation advertising, and because FPL failed to demonstrate that the ads convey useful conservation information. In addition, the advertisements in question over-enhanced the utility's image, and some of the ads encouraged additional energy use rather than promoting conservation.

In its motion for reconsideration FPL argues that it presented substantial evidence, including market research, which supported the conservation theme of the advertisements, and that we were bound by said evidence since our Staff's testimony to the contrary was "not competent or substantial." We disagree with FPL.

In the instant docket, samples of advertisements were introduced as exhibits, and we were able to evaluate the advertisements in order to determine for ourselves whether the ads conveyed sufficient conservation information. FPL's argument that we are bound by the testimony of its market research expert, which was contrary to our own determination,

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is not well taken. As we stated in Order No. 21317:

Market research cannot be substituted for the judgment of this Commission regarding appropriate conservation advertising. To do so would invite debate by competing "advertising experts" who will testify that a particular campaign is or is not effective. It is nether acceptable nor desirable to cede regulatory judgment to advertising specialists. (Order No. 21317 at p.7)

Although we will fairly consider market research presented by FPL or other parties, market research is not determinative. This Commission may accept or reject such evidence as appropriate under the particular circumstances of each case. In the instant case, FPL's evidence was insufficient to overcome our own conclusions drawn from the ads themselves.

We have considered and rejected each of the arguments made by FPL in this motion for reconsideration. Throughout its motion FPL has reargued factual issues which were fully considered during our initial determination of this matter and which were resolved adversely to FPL's position. FPL's motion fails to state a proper ground for reconsideration in that it does not assert a mistake or misapprehension that if viewed correctly would have led us to reach a different result.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the motion for reconsideration filed by Florida Power & Light Company in this docket is denied. It is further

ORDERED that this docket be closed after the time has run in which to file a notice of appeal, if such action is not taken.

BY ORDER of the Florida Public Service Commission,  
this 13th day of DECEMBER, 1989.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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by: Kay Flynn  
Chief, Bureau of Records

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NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance 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.