

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Peace River/) DOCKET NO. 911152-EI
Manasota Regional Water Supply) ORDER NO. PSC-92-0734-FOF-EI
Authority for a Formal Hearing) ISSUED: 07/28/92
Regarding Paragraph 8 of Proposed)
Facilities Rental Agreement with)
Florida Power and Light Company)
)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
BETTY EASLEY

ORDER APPROVING TARIFF

On November 19, 1991, the Commission received a Petition for Formal Administrative Hearing from the Peace River/Manasota Regional Water Supply Authority. The petition alleged that paragraph 8 of Florida Power and Light Company's Facilities Rental Agreement tariff violated Article X, section 13 of the Florida Constitution and section 768.28, Florida Statutes, because it required Peace River/Manasota and other local governmental units to contract to indemnify and hold FPL harmless from any liability arising from the lease of the company's facilities. Peace River/Manasota requested that we modify FPL's tariff by deleting the indemnification/hold harmless clause.

Customers who wish to rent distribution facilities from FPL in addition to the facilities required for standard service are required to complete a Facilities Rental Agreement (Agreement) that outlines the terms and conditions of the rental. Florida Power and Light Company's present facilities rental agreement contains language which indemnifies the utility from any liability for damages that result from the lease of its facilities, whether or not the damages resulted from the company's own negligence.

When Peace River/ Manasota Regional Water Supply Authority challenged this provision of the facilities rental agreement, the utility reviewed its requirements and determined that the indemnification clause was not required for the protection of the general body of ratepayers. As a result of that review and determination, FPL submitted a revised tariff sheet that simply removes the entire paragraph containing the indemnification language. The parties filed a Joint Motion for Approval of Second Revised Tariff Sheet No. 9.751 and Dismissal of Petition on May 19, 1992.

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The language FPL removed from the facilities rental tariff has no effect on rates, tariffs, or administration of the rental contract. The language was apparently designed to provide protection for the utility, but if FPL does not believe the language is needed, we agree that it may be deleted. We approve the proposed tariff revision and we acknowledge the parties' voluntary dismissal of Peace River/Manasota's petition.

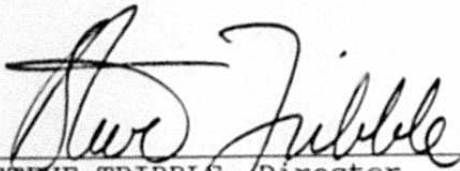
Since the proposed change has no effect on rates, the change may be effective upon approval. If a timely protest to the tariff revision is filed, the tariff will remain in effect pending the outcome of the protest. It is therefore

ORDERED by the Florida Public Service Commission that the Joint Motion for Approval of Second Revised Tariff Sheet No. 9.751 and Dismissal of Petition by Peace River/Manasota Regional Water Supply Authority and Florida Power and Light Company is approved. It is further

ORDERED that this docket may be closed if no protest or notice of appeal is timely filed. It is further

ORDERED that the tariff revision will remain in effect pending the outcome of any protest.

By ORDER of the Florida Public Service Commission this 28th day of July, 1992.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MCB:bmi

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

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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 Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), 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 August 18, 1992.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

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 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 date this Order becomes final, 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.