

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Emergency complaint by) DOCKET NO. 941165-PU
Peoples Gas System, Inc. against) ORDER NO. PSC-95-1418-S-PU
Tampa Electric Company for) ISSUED: November 21, 1995
providing unauthorized)
incentives for electric water)
heating appliances.)
_____)

The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER
GRANTING JOINT MOTION FOR
APPROVAL OF STIPULATION

BY THE COMMISSION:

On September 7, 1994, Tampa Electric Company (TECO) notified the Commission that TECO was initiating three new research and development (R & D) programs. The new programs were to provide: 1) a new EPRI/E-Tech heat pump water heater, free of charge, to customers willing to try the new water heating device; 2) a \$200 incentive to customers and a \$100 incentive to contractors willing to install an electric water heater on TECO's Electric Water Heating with Prime Time load management program; and 3) a \$300 incentive to homeowners willing to install electric water heating with a heat recovery unit.

On November 1, 1994, Peoples Gas System, Inc. (Peoples) filed a complaint, pursuant to Rule 25-22.036 (5), Florida Administrative Code, alleging that TECO was providing unauthorized incentives to customers to choose electric water heating appliances rather than alternative water heating technologies. In particular, Peoples alleged that TECO's incentive program was aimed directly at undermining Peoples' existing, Commission-approved, Residential Home Builder energy conservation program in the Meadow Pointe Subdivision in Tampa, Florida. Peoples claimed that in initiating this incentive program, without Commission approval, TECO was violating Section 366.06 (1), Florida Statutes, and Commission Rules 25-9.001, 25-9.004, and 25-9.005, Florida Administrative Code. Peoples also

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

alleged that TECO was violating the Florida Energy Efficiency and Conservation Act (FEECA), Section 366.81, Florida Statutes, by encouraging customers to choose electric water heating appliances rather than more efficient water heating technologies, such as gas or solar.

On November 23, 1994, TECO filed an answer to Peoples' complaint, along with a counter-complaint. TECO alleged that the three programs were R & D programs initiated in an effort to determine the commercial viability of efficient, electric alternatives to gas water heating and for which the Company was not seeking cost recovery. As such, the Company argued that it was not necessary to get Commission approval for the programs. In addition, TECO counter-claimed that Peoples Gas was using false and misleading advertising to promote gas over electricity, and that Peoples' conservation programs were no longer cost-effective.

On February 23, 1995, TECO and Peoples filed a Joint Motion for Continuance. In the motion, the companies requested that the Commission continue the hearing in this docket and suspend all interim filing deadlines, with the exception of TECO's responsive pleading to Peoples' Motion for Reconsideration. Thereafter, the parties requested that all further activities in this docket be held in abeyance for the duration of the continuance. TECO agreed to suspend the three pilot programs at issue in this case. The parties also agreed to withdraw all testimony filed in this docket and withdraw all testimony challenging each other's advertising in Docket No. 950002-EG.

In addition, the parties agreed to hold meetings in a good-faith effort to reach a settlement on the underlying issue of competition between these two companies. As a result of those discussions, the parties filed a Joint Motion for Approval of Stipulation on October 12, 1995. A copy of the Stipulation is attached to and incorporated in this Order as Attachment A. The motion and stipulation are addressed herein.

The main issues in this docket have been: 1) whether TECO has provided unauthorized incentives for electric water heating in violation of Section 366.06(1), Florida Statutes, and Rules 25-9.001, 25-9.004, and 25-9.005, Florida Administrative Code; 2) whether Peoples has used false advertising or promotional materials to promote gas over electricity; and 3) whether Peoples has improperly implemented or altered a Commission-approved conservation program in the Meadow Pointe subdivision. The stipulation adequately addresses each of these areas of conflict.

The parties agree that TECO may, subject to Commission approval, establish R & D programs, conservation programs, or promotional programs, as long as such programs are not directed strictly to areas where natural gas is available. The parties have also agreed to stop running advertising comparing the benefits of gas and electricity, in areas where TECO's and Peoples' service areas overlap. Advertising that compares the end-use benefits of either product will be permitted when directed toward existing or prospective customers of the advertiser, or to any person requesting such information. Upon request by the other party, the advertiser will provide supporting documentation, methodologies and computations serving as bases for any advertisement. This stipulation will not, however, oblige either TECO or Peoples to have any advertising preapproved by the other.

In addition, both companies agree that other forums exist in which issues concerning the cost-effectiveness and appropriateness of Peoples' conservation programs and the interpretation of the Florida Energy Efficiency and Conservation Act may be adequately addressed. These other forums include the successor dockets to Docket No. 941104-EG, the gas cost-effectiveness docket, and Docket No. 950002-EG, the conservation cost-recovery docket. The parties cite to Order No. PSC-95-0018-FOF-PU and Amendatory Order No. PSC-95-0018A-FOF-PU, issued in this docket on January 5, 1995, and January 10, 1995, respectively, wherein we stated that advertising concerns would be addressed in Docket No. 950002-EG, and issues relating to the cost-effectiveness of Peoples' conservation programs would be removed to the successor dockets to Docket No. 941104-EG. The parties agree that this stipulation will not serve as a waiver to any objections that could be made by either party to the standing of the other in future proceedings. In addition, counsel for both parties have assured us that this provision is not intended to bind the Commission in determining the scope or the framing of the issues in other dockets.

The agreement will have an initial term of one year from the date of our approval. It will then remain in effect until a date 60 days after either party gives written notice of termination to the other party and to this Commission. Upon such notice, the parties agree to engage in good-faith negotiations before initiating proceedings before the Commission.

This agreement reasonably and effectively resolves all issues raised in this proceeding or acknowledges the availability of other proceedings, if necessary, to resolve these issues. Further, the agreement encourages negotiation between the

ORDER NO. PSC-95-1418-S-PU
DOCKET NO. 941165-PU
PAGE 4

parties. We believe the agreement is in the public interest, and also saves the time and resources of the parties and this Commission. We, therefore, grant the Joint Motion for Approval of Stipulation.

Based on the foregoing, it is hereby

ORDERED that Joint Motion for Approval of Stipulation filed by Peoples Gas System, Inc. and Tampa Electric Company is granted. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 21st day of November, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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ORDER NO. PSC-95-1418-S-PU
DOCKET NO. 941165-PU
PAGE 5

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/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 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Peoples Gas System, Inc. against Tampa Electric Company.)	DOCKET NO. 941165-PU
)	FILED: October 12, 1995
)	


JOINT MOTION FOR APPROVAL OF STIPULATION

Peoples Gas System, Inc. ("Peoples") and Tampa Electric Company ("Tampa Electric") jointly move the Commission to enter an order approving the attached Stipulation in order to make the Stipulation effective and thereby resolve this docket in accordance with the provisions of the Stipulation.


WHEREFORE, Peoples and Tampa Electric respectfully move the Commission for entry of an order approving the attached Stipulation.

DATED this 12th day of October, 1995.

Respectfully submitted,


 ROBERT SCHEFFEL WRIGHT
 Landers & Parsons
 Post Office Box 271
 Tallahassee, FL 32302
 (904) 681-0311

ATTORNEY FOR PEOPLES GAS SYSTEM, INC.


 LEE L. WILLIS
 JAMES D. BEASLEY
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 Post Office Box 391
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 (904) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

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FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Joint Motion for Approval of Stipulation and attached Stipulation, filed on behalf of Peoples Gas System, Inc. and Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 12th day of October, 1995 to the following:

Mr. Robert Scheffel Wright*
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Post Office Box 271
Tallahassee, FL 32302

Ms. Mary Elizabeth Culpepper*
Staff Counsel
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Manager, Energy Utilization
Peoples Gas System, Inc.
Post Office Box 2562
Tampa, FL 33601-2562



ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Peoples Gas)
System, Inc. against Tampa) DOCKET NO. 941165-PU
Electric Company.) FILED: October 12, 1995

**STIPULATION OF
PEOPLES GAS SYSTEM, INC.
AND TAMPA ELECTRIC COMPANY**

This Stipulation is entered into by and between Peoples Gas System, Inc. ("Peoples") and Tampa Electric Company ("Tampa Electric") for the purpose of resolving, without prejudice, certain issues raised in this proceeding; to acknowledge that certain other issues addressed in this proceeding may be appropriately resolved in other proceedings before the Commission; and to avoid the time, expense and uncertainties associated with further protracted litigation in this docket.

BACKGROUND

This proceeding was commenced on November 1, 1994 with the filing of Peoples' Complaint raising various issues regarding three pilot water heater programs Tampa Electric had adopted. The programs were entitled New EPRI/E-Tech Heat Pump Water Heater Program, Electric Water Heating with Prime Time Program and Electric Water Heating with Waste Heat Recovery Unit Program.

On November 23, 1994 Tampa Electric filed its Answer along with a two count Counter Complaint challenging certain of Peoples' advertising practices and rebate practices. Subsequently, Tampa Electric voluntarily suspended the three pilot water heating

programs pending further action by the Commission.

After engaging in considerable discovery, the parties on February 23, 1995 filed a Joint Motion for Continuance so that they could conduct meetings in a good faith effort to reach a settlement on the issues that had arisen between the two companies. The Joint Motion for Continuance was granted by Commission Order No. PSC-95-0305-PCO-PU issued March 3, 1995.

During the continuance Tampa Electric and Peoples have met on a number of occasions to discuss the pending issues and have entered into this Stipulation as a means of resolving this docket. Accordingly, Peoples and Tampa Electric stipulate and agree as follows:

STIPULATION

1. Tampa Electric may establish research and development programs, conservation programs, or promotional programs, subject to the Commission's approval, where applicable, so long as such programs are not targeted solely at areas where natural gas is available.

2. The parties have also disputed various aspects of each other's comparative advertising of energy services provided by electricity and natural gas. To resolve these disputes, the parties agree that they shall refrain from purchasing advertising in general circulation media, including magazines, newspapers, billboards, radio and television, directed at the public generally, that compares the relative attributes or costs of natural gas and electricity for any end use. However, any party may use such

general circulation media to advertise, without direct cost comparisons, the benefits and merits of using natural gas (in the case of Peoples) and electricity (in the case of Tampa Electric). Each party may continue to communicate comparisons between its products and services and those of others directly to its existing or prospective customers or to any other persons requesting such comparative information; permissible direct communications shall be deemed to include direct mailings.

3. The supporting documentation, methodologies and computations used by a party as the basis of assertions made in any advertising, direct mail, or promotional material will be provided to the other party upon reasonable request and within a reasonable time after publication. There shall be no obligation on either party to have any advertising preapproved by the other party.

4. Certain of the issues raised in the Complaint and the Counter Complaint relate to the cost-effectiveness and appropriateness of Peoples' existing conservation programs as well as how the Florida Energy Efficiency and Conservation Act should be interpreted and applied. The parties recognize and agree that there exist other forums and venues in other dockets and proceedings before the Commission, such as the gas cost-effectiveness methodology docket, Docket No. 941104-EG, the successor dockets to Docket No. 941104-EG as provided in Amendatory Order No. PSC-95-0018A-POF-PU and the conservation cost recovery Docket No. 950002-EG, where these issues may be adequately addressed by the parties and resolved by the Commission. Subject

to the provisions of Order No. PSC-95-0018-FOF-PU issued in this docket on January 5, 1995 and the Amendatory Order of the same number issued January 10, 1995, this agreement shall not be construed as a waiver by either party of any objections that it may make to the standing of the other party to participate in any future proceedings.

5. In view of the foregoing, Peoples and Tampa Electric agree to dismiss, without prejudice, their Complaint and Counter Complaint, respectively, and to withdraw all other pending pleadings, motions, memoranda, and discovery in this docket.

6. Neither party to this Stipulation concedes the validity of the argument or positions urged by the other party. However, upon the Commission's approval of this Stipulation, this docket should be closed.

7. This Stipulation is subject to the jurisdiction of and shall be enforced by the Florida Public Service Commission to the extent of its jurisdiction. The effectiveness of this Stipulation and the obligations of the parties hereunder, with the exception of paragraph 8, are contingent upon this Stipulation being approved in its entirety by the Commission. Each party's obligations pursuant to this Stipulation shall only apply and be enforceable within those geographic areas where their respective service areas overlap.

8. The parties agree to jointly request and support Commission approval of this Stipulation.

9. The parties hereto shall not seek reconsideration or judicial appeal of the Commission's approval of this Stipulation.

10. This agreement shall have an initial term of one year from the date it is approved by the Commission and shall continue thereafter for an additional period to a date 60 days after either party gives written notice of termination to the other and to the Commission. The parties agree that upon such notice, and before initiating any proceedings before the Commission, they will enter into good faith negotiations to resolve any issues arising under this agreement.

DATED this 12th day of October, 1995.



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