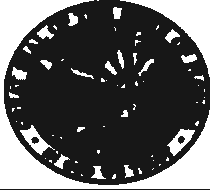


State of Florida
-M-E-M-O-R-A-N-D-U-M-



Public Service Commission

DATE: October 15, 1998

TO: DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: OFFICE OF GENERAL COUNSEL (VANDIVER) *R*

RE: DOCKET NO. 981216-EI - COMPLAINT BY MR. PAUL LEON AND MR. JOSEPH OLAZABAL AGAINST FLORIDA POWER AND LIGHT COMPANY

PSC-98-1385 FCF-EI

Attached is an order to be issued in the above docket. Please issue accordingly.

RDV/jb
Attachment

see!

RECEIVED
OCT 15 AM 8:59
H.E. OF TMS

VDRAR

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Mr. Paul Leon and Mr. Joseph Olazabal against Florida Power & Light Company regarding tariff for moving electric light poles.

DOCKET NO. 981216-EI
ORDER NO. PSC-98-1385-FOF-EI
ISSUED: October 15, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT BY PAUL LEON AND JOSEPH OLAZABAL
AGAINST FLORIDA POWER & LIGHT COMPANY

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.

CASE BACKGROUND

This dispute concerns Florida Power & Light Company's (FPL) tariff regarding relocation of electrical poles. The complainants are Mr. Paul Leon and Mr. Joseph Olazabal. Mr. Olazabal is currently building a residence on the property located at 2430 S. Miami Avenue, Coral Gables, Florida. Mr. Olazabal has been the owner of the property in question since 1994. The design of the house coupled with local government restrictions requires that FPL move an electrical pole that has been in place since 1968.

The FPL estimate to move the pole is \$6,894. The estimate includes moving the pole, the City street light attached to the

DOCUMENT NUMBER DATE

11517 OCT 15 98

FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-98-1385-FOF-EI
DOCKET NO. 981216-EI
PAGE 2

pole and FPL's electrical fixtures. The pole also supports a traffic signal and BellSouth telephone wires. Mr. Olazabal has obtained a price of approximately \$3,000 from a private contractor to move the traffic signal. BellSouth has not yet provided an estimate of the cost to relocate its facilities.

On September 14, 1998, our staff held an informal conference with the complainants and FPL, pursuant to Rule 25-22.032, Florida Administrative Code. The complainants and FPL appeared via video conference at the Commission's Miami office. Our staff appeared via video conference at the Tallahassee office. The parties were unable to reach a resolution of their dispute at the informal conference.

DISCUSSION

The tariff at issue reads as follows:

5.3 Relocation of Company's Facilities - When there is a change in the customer's operation or construction which, in the judgment of the company, makes the relocation of facilities necessary, or if such relocation is requested by the customer, the Company will move such facilities at the customer's expense to a location which is acceptable to the company.

Utility company tariffs have the force of law. Maddalena v. Southern Bell Telephone and Telegraph Company, 382 So. 2d 1246, 1248 (Fla. 4th DCA 1980).

The question here is whether the complainants solely benefit from this change. If this is so, then pursuant to the nondiscrimination provision of Section 366.03, Florida Statutes, the general body of ratepayers should not pay for the pole relocation. The complainants argue that the addition of a customer benefits the entire community; but we believe that additional load is not necessarily a public benefit per se. The principal reason for moving the pole and associated facilities is to accommodate the construction of the residence as presently designed.

This case is similar to facts contained in Order No. PSC-93-1029-FOF-EI, issued July 13, 1993. See 93 FPSC 7:363. In that case the new house the complainants were building lacked proper clearance from FPL facilities, and therefore the pole had to be moved. There the Commission stated:

ORDER NO. PSC-98-1385-FOF-EI
DOCKET NO. 981216-EI
PAGE 3

It has long been a Commission policy where practical to place additional costs on those customers who cause them, so other ratepayers who do not request special services such as facilities relocation are not required to subsidize those who do. In this case, only the complainants benefitted from the relocation of FPL's existing facilities. Therefore, we find that FPL acted properly in accordance with its tariff in billing the complainants for the work.

Order PSC-93-1029-FOF-EI at page 3.

The complainants were surprised by the estimated cost of the relocation, but FPL uses a standardized computer format to estimate relocation costs. The number of fixtures on this particular pole also add to the cost. Our staff reviewed the FPL estimate and found it to be reasonable. The complainants also questioned the time to complete the job (6-8 weeks) and FPL's demand that the cost be paid in a lump sum. FPL pledged to work with the complainants on the time question, but FPL's tariff has no provision that permits extended payments. The general body of ratepayers would have to pay the costs of such a program if it were available, including any carrying costs associated with the loan, and any additional billing and recordkeeping cost. We do not believe that we should impose these costs on ratepayers, when only the complainants will benefit.

Therefore, upon review of the facts and applicable law, we find that FPL properly applied its tariff to the instant case.

It is, therefore,

ORDERED by the Florida Public Service Commission that the complaint of Paul Leon and Joseph Olazabal against Florida Power & Light Company is dismissed. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDER NO. PSC-98-1385-FOF-EI
DOCKET NO. 981216-EI
PAGE 4

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 15th day of October, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DISSENT

Commissioner Garcia dissented from the Commission's decision in this case.

RDV

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of

ORDER NO. PSC-98-1385-FOF-EI
DOCKET NO. 981216-EI
PAGE 5

Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 5, 1998.

In the absence of such a petition, this order shall become effective 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 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.