

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Generic Investigation) DOCKET NO. 940204-EU
into Appropriate Rate Schedule) ORDER NO. PSC-94-1411-FOF-EU
for Home-Based Businesses.) ISSUED: November 17, 1994
_____)

The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER AFFIRMING GENERAL SERVICE COMMERCIAL
RATE SCHEDULE FOR HOME-BASED BUSINESSES

Docket 931199-EI addressed a customer complaint concerning Florida Power & Light's (FPL) application of the General Service (GS) rate to a residential home in which commercial activity (home-daycare) was operating. The Commission found that FPL's application of the Commercial rate was appropriate according to the existing tariffs. However, by Order No. PSC-94-0273-FOF-EI, the Commission ordered staff to initiate an investigation into the proper rate classification for a home-based business. The investigation had three goals: (1) request clarification of the sales tax exemption for residential use from the Department of Revenue (DOR); (2) investigate what criteria a utility should use to determine if usage at a particular location meets the strict definition of residential use; and (3) determine if the criteria employed by a utility is uniformly applied to all customers.

The investor-owned electric utilities (IOUs), the DOR, the Department of Health and Rehabilitative Services (HRS), and the state daycare associations participated in an informal workshop. Presentations were made by the investor-owned utilities and the DOR outlining their respective positions. After the workshop, position papers were filed by some of the participants.

The utilities have a fiduciary responsibility to the DOR to collect and remit the state sales tax on commercial electric usage. Tax on Sales, Use and Other Transactions, Section 212.08(7)(j), Florida Statutes, specifically exempts the sale of electric utilities to residential households from application of the sales tax. However, this section also provides that if "any part of the

DOCUMENT NUMBER-DATE

11606 NOV 17 94

FPC-RECORDS/REPORTING

utility or fuel is used for a nonexempt purpose, the entire sale is taxable." (emphasis added) The DOR has provided the Commission with a strict interpretation of these statutes. DOR advised that if any portion of electric service at a residential location is used for commercial endeavors, the entire bill is subject to the sales tax. The DOR is not concerned with the nomenclature assigned to any particular utility rate, only that the utilities collect sales tax when applicable. Therefore, the IOU's must make a good faith effort to identify commercial use and charge the appropriate tax, including identification of home-based businesses.

Existing utility tariff language is compatible with the aforementioned statutes. Currently, under the residential tariff an IOU will supply "Residential" electric service if that service is "supplied exclusively for domestic purposes in individually metered dwelling units...." There is consistency in the tariff language used by IOU's, most municipalities, and cooperatives setting forth the criteria for applicability of the "residential" rates. The advent of the home-based businesses represents a type of service that does not clearly fit into either the RS or GS rate schedule. This is because a home-based business consumes electricity for both residential purposes and commercial purposes behind a single meter.

Cost of service studies performed by IOU's have consistently shown that there is very little cost difference between residential (RS) and small commercial (GS) use - in fact, GS tends to be less costly to serve than RS. To avoid customers artificially claiming business use to take advantage of a lower commercial rate, the Commission opted some years ago to set rates for the two classes equally. Energy rates are designed on the combined classes, although there may be a slight difference in customer charges to reflect different billing requirements. Tariffs are designed on cost, not tax considerations.

There is, however, a difference in the total monthly bills between the two classes due to the sales tax. The primary dollar difference between a monthly RS electric bill and the GS electric bill is the state sales tax that is applied to the GS bill. The existing GS rate classification is a cost-effective means for IOUs to identify and bill commercial customers subject to sales tax. Therefore, we reaffirm our finding that for IOU's the GS commercial rate schedule is the appropriate schedule for home-based businesses.

One of the concerns addressed at the workshop was whether the utilities had the ability to administer the residential tariff in a fair and non-discriminatory manner if all home-daycare providers

had not been identified and moved to a GS rate. This same concern may be translated to other home-based businesses. We agree that it is difficult, if not impossible, for a utility to identify all home-based businesses without policing or investigating all of the activity that transpires inside a customer's home.

In general, a utility identifies home-based businesses by incorporating methods into their everyday course of business. These methods include the use of utility personnel such as meter readers, customer service and marketing personnel. Field personnel, who are in the field for a meter reading, a high bill complaint or an audit request are trained to look for obvious signs that a home is being used for business purposes. An example is a customer who has placed a sign in the yard advertising a business. Customer service representatives are also trained to be alert for indicators, such as: 1) customers who change an account to a business name from an individual name, 2) requests for commercial deposit information from a residential customer, or 3) customers disconnected for non-payment who complain about harm to business. Once a utility suspects business activity in a residence, the utility further investigates the residence to determine if a business exists. If the utility determines that a business does exist, the customer is then assigned to the proper commercial rate and tax classification.

The utilities believe that these methods for identifying home-based businesses represent an appropriate activity level for enforcing the RS and GS tariffs. We find that the present methods used to identify home-based business are reasonable and nondiscriminatory. The methods are practical and are easily incorporated into the utilities' primary function of providing electricity to the meter. We do not believe it is prudent to require utilities to incur substantial additional costs when the problem is not with rates but with taxation issues. Any incremental ratemaking equity that might be gained by identifying every home-based business that exists within the state would be negligible and more than offset by the additional costs of undertaking this monumental task.

The DOR, as the state agency responsible for enforcing tax statutes, will make the final determination whether a suspected home-based business has residential or commercial status for taxing purposes. The DOR has agreed to work with the utilities to assist them in addressing problems or concerns they encounter in administering the sales tax to home-based businesses. The agency has suggested the use of an affidavit signed by the customer attesting that all electrical energy use within the home is for noncommercial purposes only. Supposedly, the use of such an

affidavit will limit utility liability for uncollected sales tax revenues in the event commercial use is uncovered, unless such use was obvious; for example, the account was incorrectly coded. While this appears to be a reasonable approach, it is our belief that the ultimate decision as to the use of an affidavit is best made by the individual utility. If any utility has concerns with the issue of determination of applying sales tax to customers' electric usage, we encourage them to seek assistance from the DOR.

HRS voiced concern about the effect on home-daycare providers if the utilities were to begin policing the activity that occurs inside the home by checking HRS license registries. HRS fears that even the threat of such activity by the utilities will send a perverse signal to both current and potential home-daycare providers and undermine HRS's ability to ensure proper licensing and background checks on child care providers. We are sympathetic to HRS's concerns. But, such concerns can not control the application of utility tariffs. DOR has emphasized that the utilities have a fiduciary responsibility to collect sales tax on electric service to any commercial enterprise as defined in Chapter 212. As previously mentioned, the primary difference between the RS and GS rate schedule is the application of the state sales tax to commercial usage. It is not within the Commission's legislated powers to change sales tax applicability.

There is nothing to prevent a home-daycare business or any home-based business from petitioning DOR for a specific exemption from the sales tax. Upon granting of such tax-exempt status, the utility can then flag that particular account as non-taxable in the same manner as it does charitable entities not subject to taxes. It is, however, the customer's responsibility to establish the tax-exempt status from the appropriate taxing authority and present written authorization to the utility. Therefore, we recommend that HRS either seek assistance from the DOR in obtaining a special exemption for home-daycare providers or prevail upon the legislature to make a statutory change to Chapter 212. Because it is not within our jurisdiction, or the utilities ability, to grant any tax exemptions, all future complaints regarding sales tax liability shall be directed to the DOR.

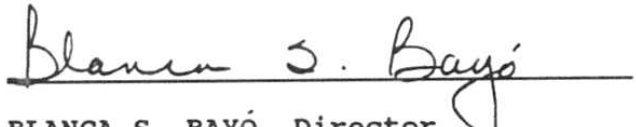
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the General Service Rate is the appropriate rate to be applied to home-based businesses. It is further

ORDERED that future complaints regarding sales tax liability shall be directed to the Department of Revenue. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 17th
day of November, 1994.


BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SLE

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 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 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.