

Refund of deposit. After a customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the utility shall refund the residential customer's deposits and shall, at its option, either refund or pay the higher rate of interest specified above for nonresidential deposits . .

. .

The Renaissance states that it has maintained a satisfactory payment record for over 192 months, meeting the requirements of the Rule. The Renaissance further maintains that it is a customer of residential character, presenting none of the ordinary risks associated with a commercial enterprise. Consequently, The Renaissance argues that it is entitled to the return of its deposit under Rule 25-7.83(6), F.A.C.

We note that in Order No. 19365, issued on May 24, 1988, in Docket No. 860106-PU, we studied the issue of customer deposits and the appropriate billing treatment of commonly-owned areas of condominium associations, cooperative apartments, and homeowner associations. While these customers had been treated as commercial, we determined that their utility service is residential in nature and directed that they should be reclassified accordingly. However, we noted that reclassification could lead to a dramatic rate increase in some cases, with possible damage to the customer due to rate shock. We therefore ordered that these customers be given a choice between remaining commercial or switching to a residential classification.

Peoples states that the complainant is classified as a commercial customer, as admitted by The Renaissance itself on the face of its complaint. This is consistent with the provisions of Peoples' tariff and the applicable rules of the Commission. Peoples further states that pursuant to Commission Order No. 19365, it notified the appropriate customers in July of 1988 of their option to elect either residential or commercial status. At that time, complainant was classified as commercial and did not then, or at any time after, request that Peoples reclassify The Renaissance as a residential customer.

We note that Peoples' current residential rate is slightly higher than the current commercial rate. We also note that the standard for a motion to dismiss is that the motion should be granted if, even assuming the complainant's allegations are true,

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the complainant has no cause of action upon which relief can be granted.

We find that the complaint of The Renaissance does not state a cause of action upon which relief can be granted. The Renaissance is a commercial customer, admitting in its own complaint to its commercial classification. The Renaissance has chosen not to avail itself of the residential classification under which it could demand the return of its deposit while subsequently paying higher rates. Consequently, The Renaissance is not entitled under Rule 25-7.083(6), F.A.C., to demand the return of its deposit. Therefore, The Renaissance does not have a cause of action and we find that its complaint should be dismissed.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Peoples Gas System's Motion to Dismiss is granted. It is further

ORDERED that The Renaissance of Pompano Beach's complaint is hereby dismissed. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission this 28th day of June, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
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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.

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 July 19, 1993.

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.