

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of the)	DOCKET NO.	900314-EI
Appropriateness of Appliance)	ORDER NO.	24570
Sales by Investor-Owned utilities.)	ISSUED:	5/22/91
_____)			

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER

NOTICE OF PROPOSED AGENCY ACTION
ORDER CONCLUDING INVESTIGATION

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

At a service hearing held in Docket No. 891345-EI, Gulf Power Company's (Gulf) last rate case, certain concerns were brought to the Commission's attention about Gulf's sales of electric appliances. One of these concerns was the potential conflict of these practices with sections 366.80-.85, Florida Statutes, (Florida Energy Efficiency and Conservation Act or FEECA), which reflect the Commission's goal to reduce and control electric consumption. Therefore, pursuant to Order No.23088, issued June 18, 1990, the Commission opened Docket No. 900314-EI to investigate the appropriateness of appliance sales by electric utilities. This docket is intended to be generic to all investor-owned electric utilities, although Gulf is currently the only investor-owned utility engaged in sales of electric appliances.

The focus of this Docket is whether the sale of electric appliances by an electric utility is consistent with FEECA, or stated another way, can such sales be banned as conflicting with FEECA. The issue of a ban on appliance sales by utilities arises in the context of sections 366.80-.85, Florida Statutes, which provides at section 386.82(2) that:

The Commission shall adopt appropriate goals for increasing the efficiency of energy consumption . . . , specifically including

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goals designed to . . . reduce and control the growth rates of electric consumption and to reduce the growth rates of weather-sensitive peak demand.

Section 366.05(2), Florida Statutes, instructs public utilities which also sell appliances on the proper and separate accounting for such sales. Even though section 366.05(2) therefore implies the presumptive legality of appliance sales by utilities, a FEECA-based discrimination against sales of electric appliances could still be sustained as a reasonable discrimination rationally-related to the Legislature's goal of reducing the consumption of electric power. This would result from the harmonious statutory construction of both sections 366.05(2) and 366.82(2).

However, the ultimate fact-based test for the legality of such a ban would be whether implementing the ban would or could actually reduce electric power consumption. Since a ban would not be effective in reducing electric consumption because of the unlimited availability of electric appliances through alternate distribution channels, it would not be a means rationally-related to the Legislature's goal in enacting the FEECA.

The same conclusion would result under a First Amendment analysis if a ban were imposed to curb the "symbolic speech" arising from electric utility sales of electric appliances. In Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, 447 U.S. 557 (1980), the United States Supreme Court struck down a ban on advertising by electric utilities promoting the use of electricity because the relationship between the state's interest in energy efficiency and the ban was too tenuous and speculative.

Therefore, we conclude that a ban would not be an effective means rationally-related to the Legislature's goal of reducing electric power consumption.

Also, we find that if no protests are filed within the specified protest period, this docket shall be closed.

It is therefore,

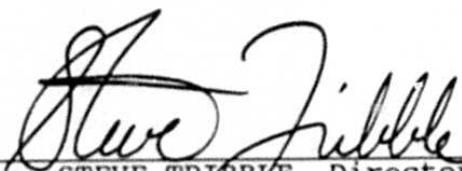
ORDERED by the Florida Public Service Commission that no action shall be taken to ban investor-owned utilities from selling electric appliances. It is further

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ORDERED that if no petition for a formal proceeding is timely filed, this investigation shall be concluded. It is further

ORDERED that this Order shall become final unless an appropriate petition for a 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 22nd day of MAY, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JLH

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 action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by

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Rule 25-22.036(7)(a) and (f), 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 June 12, 1991.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 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 sewer 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.