

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by July 14, 2006, by Peoples Gas System.

DOCKET NO. 060199-GU  
ORDER NO. PSC-06-0379-PAA-GU  
ISSUED: May 8, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING WAIVER OF RULE 25-7.045(8)(a),  
FLORIDA ADMINISTRATIVE CODE

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.

Background

Peoples Gas Company (Peoples or the company) filed its last depreciation study on April 2, 2001, with an effective date of January 1, 2002. Rule 25-7.045(8)(a), Florida Administrative Code, requires gas utilities to file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by this Commission. In accordance with this Rule, Peoples' next depreciation study was due on or before April 3, 2006.

On March 8, 2006, Peoples filed a petition for a waiver of the filing deadline imposed by Rule 25-7.045, Florida Administrative Code, and asked for an extension of its depreciation study filing date until July 14, 2006, and succeeding depreciation studies by July 14 at least every five years thereafter.

Pursuant to Section 120.542(6), Florida Statutes, notice of Peoples' petition was submitted to the Secretary of State for publication in the March 24, 2006, Florida Administrative

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Weekly. No comments concerning the petition were filed and the time for filing such has expired.

We have jurisdiction pursuant to Sections 120.542, 350.115, and several provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06.

#### Rule Waiver

Section 120.542(2), Florida Statutes, provides that waivers and variances from agency rules shall be granted:

. . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

The company seeks a waiver of Rule 25-7.045(8)(a), Florida Administrative Code, to extend the filing date for the current depreciation study until July 14, 2006, and to file the succeeding studies every five years thereafter. The company states that the granting of this waiver will enable it to comply in the future with Rule 25-7.045(8)(a), Florida Administrative Code, in a timely, cost effective, and accurate manner based upon the required fiscal year data.

Peoples asserts that Rule 25-7.045, Florida Administrative Code, implements a number of Florida Statutes including Sections 350.115 and 366.06(1). Section 350.115, Florida Statutes, gives this Commission authority to “prescribe by rule uniform systems and classification of accounts for each type of regulated company and approve or establish adequate fair and reasonable depreciation rates and charges.” Section 366.06(1), Florida Statutes, gives the Commission authority to:

. . . investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and to keep a current record of the net investment of each public service, and to keep a current record of the net investment of each public utility company, and such property which value, as determined by the Commission, shall be used for rate making purposes and shall be the money honestly and prudently invested by the public utility company in such property . . . less accrued depreciation . . . .

Peoples contends that its requested rule waiver serves the purpose of these underlying statutes by providing the data required by the rule on a cost effective basis. We agree with Peoples' analysis of underlying statutes and believe that granting the waiver will satisfy the purposes of these statutes.

We believe that the company has adequately demonstrated that application of the rule would create a substantial economic hardship since its fiscal year coincides with the calendar year, which ends December 31. The additions and retirements to plant-in-service and depreciation reserves critical to a comprehensive depreciation study for the year ended December 31, 2005, are not available until after the year end. Peoples has limited accounting staff who are responsible for plant accounting, depreciation studies, year-end closing throughout the year, preparation of regulatory reports for the U.S. Department of Transportation and this Commission, internal reporting data, and uniform statistical and annual reports. The company's current staff was able to handle its workload until the implementation of the Sarbanes-Oxley Act which created intensified audits of the books after year-end closing requirements. The preparation required for the depreciation studies occurs during Peoples' busiest period of the year and would hinder them from producing a depreciation study which is in compliance with our rule. The limited staff and the increase in their workload following each year end will impose an ongoing substantial hardship within the meaning of Section 120.542(2), Florida Statutes.

The extension of time requested by Peoples is reasonable and provides no hardship to our staff or other utilities in scheduling future depreciation studies. As Peoples noted, this will allow the preparation of future depreciation filings by its limited plant accounting staff to be in accordance with our rules. For these reasons, Peoples' request to submit its depreciation study no later than July 14, 2006, and succeeding depreciation studies by July 14 at least every five years thereafter is hereby granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Peoples Gas Company's request for waiver of Rule 25-7.045(8)(a), Florida Administrative Code, is granted. It is further

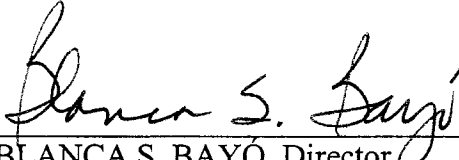
ORDERED that Peoples Gas Company shall submit its depreciation study no later than July 14, 2006. It is further

ORDERED that Peoples Gas Company shall submit its succeeding depreciation studies by July 14 at least every five years thereafter. It is further

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

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

By ORDER of the Florida Public Service Commission this 8th day of May, 2006.

  
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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

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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 that is available under Section 120.57, 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 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 29, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.