

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

In the Matter of:

DOCKET NO. 110308-GU

REQUEST BY PEOPLES GAS SYSTEM TO  
MODIFY TARIFF SHEET 5.701 TO ADD  
SECTIONS ENTITLED "LIMITS OF  
COMPANY'S RESPONSIBILITIES" AND  
"CONTINUITY OF SERVICE."

---

PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 5

COMMISSIONERS  
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER ART GRAHAM  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, February 14, 2012

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

DOCUMENT NUMBER-DATE

00921 FEB 17 2012

FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

## P R O C E E D I N G S

1  
2           **CHAIRMAN BRISÉ:** Moving on to Item Number 5,  
3 Docket Number 110308.

4           **MS. KUMMER:** Commissioners, Connie Kummer  
5 with staff. Item 5 is a proposed tariff revision by  
6 Peoples Gas to add language limiting liability under  
7 specified circumstances. This language is consistent  
8 with that found in IOU electric tariffs, but PGS is the  
9 first gas company to include it. The case law is  
10 described in the recommendation which supports the  
11 reasonableness of this type of language in a regulated  
12 utility's tariff. Staff is available for questions,  
13 and Mr. Ansley Watson is here representing Peoples Gas.

14           **CHAIRMAN BRISÉ:** Thank you very much.  
15 Commissioner Brown.

16           **COMMISSIONER BROWN:** Thank you, Mr. Chairman.  
17 Good morning, Mr. Watson. It's nice to see  
18 you here.

19           **MR. WATSON:** It's nice to see you.

20           **COMMISSIONER BROWN:** I have a couple of  
21 questions regarding the proposed language in the  
22 tariff. Under Section 8, continuity of service, I was  
23 trying to understand what termination of gas service  
24 was referencing, and what instances does the utility  
25 foresee that?

1           **MR. WATSON:** Termination of gas service would  
2 mean that the customer is cut off either for nonpayment  
3 of -- well, primarily for nonpayment of a bill.

4           **COMMISSIONER BROWN:** Okay.

5           **MR. WATSON:** The problem becomes that  
6 sometimes -- companies make mistakes, both utilities  
7 and other business enterprises. I mean, that's simply  
8 a fact. Concerns other than public utilities, however,  
9 have not dedicated their investments to public service.  
10 They also are not regulated in terms of their rates,  
11 what they can charge for whatever goods or services  
12 they are selling. They are not regulated with respect  
13 to the terms and conditions of sale of whatever product  
14 or service they are selling.

15           So the whole gist of this provision, which  
16 has been approved by numerous commissions around the  
17 country and by this Commission, is to limit the  
18 liability in cases of circumstances beyond the control  
19 of the utility or situations where there is simple as  
20 opposed to gross negligence. The rationale being that  
21 it keeps the general body of ratepayers rates lower  
22 than they would be all other things being equal.

23           **COMMISSIONER BROWN:** Thank you.

24           And the reason why I asked that is because I  
25 wanted kind of a distinction between interruption of

1 service versus termination of service and how the  
2 utility derived or interpreted that provision. And  
3 also, since we are talking about limiting liability for  
4 ordinary negligence, I was looking at the last sentence  
5 or the last few words regarding failure to warn of  
6 interruption of gas service. And, again, we're talking  
7 about ordinary negligence, not gross negligence. And  
8 would the company be willing to clarify that the  
9 limitation of liability for notice is for emergency or  
10 force majeure events?

11 **MR. WATSON:** Well, I think the force majeure  
12 is actually covered in the lead in to this continuity  
13 of service provision --

14 **COMMISSIONER BROWN:** Agreed.

15 **MR. WATSON:** -- where it says arising from  
16 causes beyond its control. Force majeure basically  
17 means that it is beyond the control of the person  
18 affected to control the situation: Hurricanes, other  
19 acts of God, things of a similar nature. So I think  
20 that is covered.

21 Emergency to me -- and I noticed that it's  
22 used up in Section 7 -- to me is a loosey-goosey term.  
23 I think it is always going to involve an issue of fact  
24 as to whether a certain circumstance meets the  
25 definition, and then you have the question of whose

1 definition of what constitutes an emergency. And the  
2 whole purpose of this provision is to limit not only  
3 the liability in these types of situations, but also  
4 the likelihood that the utility is going to get sued  
5 and have to defend. Because whether there is liability  
6 or not, if the utility has to defend it, that is an  
7 additional cost that is going to have to be borne by  
8 the ratepayer.

9           **COMMISSIONER BROWN:** And I understand that.  
10 I took the liberty of looking at the other electric  
11 utilities' tariffs and a water utility and none of  
12 those tariffs have that hold harmless language with  
13 regard to notices. And so it kind of struck me that  
14 although it is mirroring TECO's language, but Peoples  
15 Gas is asking for being held harmless for mere notice,  
16 which is why I proposed possibly considering  
17 circumstances of including emergency or exigent force  
18 majeure circumstances. Because, again, you are  
19 limiting this to ordinary negligence, and I don't  
20 foresee why that would fall -- why that would be  
21 problematic.

22           **MR. WATSON:** Well, your first question dealt  
23 with a distinction between termination of service and  
24 interruption of service, interruption or curtailment of  
25 service. Curtailment is certainly a term that I have

1       been exposed to the entire time I have been doing  
2       Peoples Gas's work, which is some 30-plus years, and  
3       interruption, you have interruptible service. Peoples  
4       is a local distribution company dependent on its gas,  
5       the gas that flows into its system in Florida coming  
6       from interstate pipelines. So if there is a break on  
7       an interstate pipeline, if there is some other force  
8       majeure event, if you will, that effects the interstate  
9       pipeline, Peoples may have to react in a manner to keep  
10      gas flowing anywhere on its system and avoid relighting  
11      10 to 20,000 residential customers. It may have to --  
12      it may have to actually interrupt the service in one  
13      place to avoid a more disastrous circumstance in  
14      another location. And it would be those types of  
15      events. But when you use the term emergency, again,  
16      even though it's used in the provision above this, it  
17      does lead to an issue of fact as to what constitutes an  
18      emergency.

19               **COMMISSIONER BROWN:** But also the preface of  
20      the provision says events arising from causes beyond  
21      its control, which I think would fall within that  
22      purview. Again, I just have some pause when the  
23      company is asking for being held harmless, exonerated  
24      from liability for other matters for noticing its  
25      customers when there's an interruption of gas service.

1 And I don't know if there is some language that would  
2 be acceptable. I just don't see the other IOUs  
3 proposing similar language or using similar language.  
4 And I addressed it with staff. If staff has some  
5 recommendations, I would be happy to listen to them.

6 MS. BROWN: Well, Commissioner Brown, I just  
7 wanted to -- I think we want to bring to your attention  
8 the fact that we have some rules in effect that govern  
9 to some extent the circumstances for notice. We have  
10 Rule 25-7.048 called continuity of service, which  
11 imposes an obligation on the utility to make reasonable  
12 efforts to prevent interruptions of service, and  
13 Subsection 2 says when the service is necessarily  
14 interrupted or curtailed for the purpose of working on  
15 the system, it shall be done at a time which will cause  
16 the least inconvenience to consumers, and all such  
17 planned interruptions shall be preceded by adequate  
18 notice to all affected customers. So we're operating  
19 under that governing restraint. So this limitation of  
20 liability, to my mind, tries to address other  
21 circumstances than what they are required to under the  
22 rule.

23 Also, with respect to disconnection of  
24 service for customers, we have rules on that. That's  
25 Rule 25-7.089, refusal or discontinuance of service by

1 a utility. That would be termination of service for  
2 failure to pay bills. It's a rather long rule, so I  
3 won't go into it, but that also affects the utilities'  
4 operations with respect to notice. So I don't know if  
5 that helps you any, but it does give some context to  
6 the utilities' obligations in that regard.

7 **COMMISSIONER BROWN:** And I appreciate you  
8 providing that, Ms. Brown. And some of the other  
9 utilities have some more -- tempered their language to  
10 include similar language that addresses those rules.  
11 For example, Progress' language includes the company  
12 shall attempt to notify in advance, except in cases of  
13 emergency, those customers of the company who may be  
14 effected. In addition, Gulf Power has language  
15 regarding interruption or failure, they shall restore  
16 service to normal as quickly as practicable. So I just  
17 felt that Peoples Gas's language, which mirrors TECO's  
18 language, is a little bit -- it can be interpreted in a  
19 way to encompass other scenarios.

20 **MR. WATSON:** Commissioner Brown, I don't have  
21 the entire Peoples tariff here with me, but there are  
22 other provisions in the tariff that do require or that  
23 do indicate a commitment on the part of the company to  
24 notify customers if they are going to be interrupted or  
25 curtailed. They would give as much notice as is



1 reasonably practicable under the circumstances. So I  
2 guess you'd have to look at the two tariff provisions  
3 in tandem and see that one may modify the other.

4 **COMMISSIONER BROWN:** Thank you. If any other  
5 Commissioners have any thoughts on it I would be  
6 interested in hearing them.

7 **CHAIRMAN BRISÉ:** Commissioner Balbis.

8 **COMMISSIONER BALBIS:** Actually I just have a  
9 follow-up question. You mentioned a situation where if  
10 the utility makes a mistake and disconnects the  
11 customers service, just an example would be if a  
12 utility did not receive payment, move forward with the  
13 disconnection process when, in fact, the customer did  
14 pay and can provide documentation that they paid,  
15 et cetera. According to this Section 8 you are asking  
16 for removing any liability, and I would assume cost for  
17 initiation or reconnection of service. So in my  
18 example Peoples Gas would charge the customer to  
19 reconnect the service that they disconnected  
20 incorrectly?

21 **MR. WATSON:** I do not think the company would  
22 charge a reconnect charge, which there is one in the  
23 tariff, if it had made a mistake or was not aware that  
24 payment had been made of a bill that had been scheduled  
25 for termination, on an account that had been scheduled

1 for termination. There are reconnect charges when  
2 service has been turned off for nonpayment, but I think  
3 that the company recognized that it was its simple  
4 negligent mistake in failing to know that that check  
5 had come in in payment of the bill on the account that  
6 they would not charge the reconnect charge.

7 **COMMISSIONER BALBIS:** But according to this  
8 section, you could charge the reconnection charge,  
9 correct?

10 **MR. WATSON:** I think what this section is  
11 designed to prevent is the customer suing the company  
12 for whatever damages to the customer may have flowed  
13 from the termination of service, the cutoff of the gas  
14 service.

15 **COMMISSIONER BALBIS:** Okay. Thank you.

16 **CHAIRMAN BRISÉ:** Commissioner Brown.

17 **COMMISSIONER BROWN:** Thank you.

18 And I know that a 60-day suspension is not  
19 until March 18th. I would like to see the entire  
20 tariff in its entirety to get a little bit more  
21 comfort. At this point I'm not very comfortable,  
22 Commissioners, voting on this particular language.  
23 What troubles me is the notice provision, the lack --  
24 being held harmless for merely notifying its customers  
25 of interrupted service. If the company is not willing

1 to put -- and, again, this is ordinary negligence, not  
2 intentional negligence. It seems that the company is  
3 not willing to budge on the language, and I would be  
4 willing -- I would be interested to entertain to look  
5 at the tariff in more of its entirety. I think they  
6 have a deadline of March 18th, and I was wondering if  
7 there's a push on this, if the company would be willing  
8 for us to look at this a little bit more carefully.

9 **MR. WATSON:** We have no objection to that at  
10 all. And I don't have authority to modify this  
11 language here today, so it would also give the company  
12 time to consider your suggestion for modifying the  
13 failure to warn of interruption of gas service portion  
14 of this continuity of service provision. So we would  
15 waive the 60 day or whatever day requirement that is  
16 currently in effect and wait for this item to be put  
17 back on the agenda. And if we come up with a change  
18 that we think may satisfy your concerns, we would  
19 certainly submit it within that time frame.

20 **COMMISSIONER BROWN:** I appreciate that. And,  
21 Staff, procedurally what would the correct motion be  
22 then, to defer the item?

23 **MS. BROWN:** Yes.

24 **MS. HELTON:** If I could make a suggestion,  
25 perhaps y'all could vote to suspend the tariff and then

1 that would give adequate time for staff to work with  
2 the company to see if they could come up with some  
3 language to bring back to you and would not force them  
4 coming back before March the 18th.

5 **COMMISSIONER BROWN:** Okay.

6 **CHAIRMAN BRISÉ:** Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
8 You jumped right in on me there.

9 I would move at this time that we suspend the  
10 tariff, that we request that the company work with our  
11 staff along the lines of the discussion that we have  
12 had today, and I would also ask that this matter then  
13 come back before us before the end of March.

14 **COMMISSIONER GRAHAM:** Second.

15 **CHAIRMAN BRISÉ:** All right. It is moved and  
16 seconded.

17 Any further discussion?

18 All right. Seeing none, all in for say aye.

19 (Unanimous affirmative vote.)

20 **CHAIRMAN BRISÉ:** Any opposed? None.

21 Very good. This motion carries.  
22  
23  
24  
25

1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )  
4

5 I, JANE FAUROT, RPR, Chief, Hearing Reporter  
6 Services Section, FPSC Division of Commission Clerk, do  
7 hereby certify that the foregoing proceeding was heard  
8 at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I  
10 stenographically reported the said proceedings; that  
11 the same has been transcribed under my direct  
12 supervision; and that this transcript constitutes a  
13 true transcription of my notes of said proceedings.

14 I FURTHER CERTIFY that I am not a relative,  
15 employee, attorney or counsel of any of the parties,  
16 nor am I a relative or employee of any of the parties'  
17 attorney or counsel connected with the action, nor am I  
18 financially interested in the action.

19 DATED THIS 17th day of February, 2012.  
20

21  
22  
23  
24  
25  


JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
(850) 413-6732