

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Determination of Utility)	DOCKET NO. 900678-GU
Responsible for Payment of Final)	ORDER NO. 24159
True-Up amounts for Energy)	ISSUED: 2/25/91
Conservation Cost Recovery (ECCR))	
and Purchased Gas Adjustment)	
(PGA) for Southern Gas Company,)	
in light of purchase of assets)	
of Southern Gas by Peoples Gas)	
System, Inc., effective 3/21/90.)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 BETTY EASLEY
 FRANK S. MESSERSMITH
 MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER REQUIRING PEOPLES GAS SYSTEM, INC.
TO PAY TRUE-UP AMOUNTS

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.

The assets of Southern Gas Company (Southern) were purchased by Peoples Gas System, Inc., (Peoples Gas) effective March 21, 1990. When filing its data for Energy Conservation Cost Recovery (ECCR) and Purchased Gas Adjustment (PGA), Peoples provided information filings for calculation of the final true-up of both recovery accounts for Southern as of March 20, 1990. On August 27, 1990, Docket 900678-GU was opened to determine the utility responsible for payment of final true-up amounts for Energy Conservation Cost Recovery (ECCR) and Purchased Gas Adjustment (PGA) for Southern Gas in light of the purchase of Southern's assets by Peoples Gas and to determine the appropriate amount of the final true-ups.

Peoples Gas is responsible for payment of Energy Conservation Cost Recovery and Purchase Gas Adjustment final true-up amounts based on recovery accounts as of March 20, 1990. When Peoples Gas

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ORDER NO. 24159
DOCKET NO. 900678-GU
PAGE 2

purchased the assets of Southern it adopted the rates, regulations, and classifications of Southern, and thus, is responsible for any true-up amounts that were owed pursuant to those rates, regulations, and classifications. Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and use the rates, classifications and regulations of the former operating company (unless authorized to change by the Commission), and shall, within ten (10) days, issue and file a notice adopting, ratifying, and making its own all rates, rules, classifications and regulations of the former operating utility on file with the Commission and effective at the time of such change of ownership or control. (emphasis added)

When a utility adopts its predecessor owner's rates, rules, classifications, and regulations, it also adopts the corresponding obligations which in this case include Southern's Energy Conservation Cost Recovery and Purchase Gas Adjustment true-up obligations. A purchaser utility cannot expect to adopt only the beneficial aspects of its predecessor's rates, rules, classifications, and regulations.

Peoples Gas asserted that its purchase contract provided that They did not assume any of Southern's liabilities arising out of events that occurred prior to the closing date. The closing date was March 21, 1990 and true-up amounts were based on calculations as of March 20, 1990. Thus, People's Gas contended that based on this contractual provision, it was not responsible for Southern's March 20, 1990, Energy Conservation Cost Recovery and Purchase Gas Adjustment true-up obligations.

We reject the contentions of People's Gas. Utilities cannot unilaterally abrogate Commission rules by contractual provisions. Rule 25-9.044(1), Florida Administrative Code, has the force and effect of law and should be enforced over any private arrangement between utilities. Furthermore, we believe that we should not

ORDER NO. 24159
DOCKET NO. 900678-GU
PAGE 3

become involved in situations where we are forced by utilities to interpret commercial contracts. Such a matter is not within our scope of authority and should be left to the civil courts.

We find that Peoples Gas and Southern cannot abrogate Commission rules by contract, and thus, Peoples Gas is responsible for payment of Energy Conservation Cost Recovery and Purchase Gas Adjustment final true-up amounts based on recovery accounts as of March 20, 1990. If People's Gas believes that Southern has breached its purchase contract, that is a matter that should be resolved by the civil courts.

We also find that the appropriate amount of Energy Conservation Cost Recovery and Purchased Gas Adjustment final true-ups is \$100,847. As of March 20, 1990 there was a ECCR overrecovery of \$45,580 and a PGA overrecovery of \$55,367. Thus, the total amount of \$100,847 is owed to and should be refunded to the former ratepayers of Southern, which is now the Sarasota division of Peoples Gas.

Peoples Gas should also follow the refund methodology as prescribed by Rule 25-7.091, Florida Administrative Code. For the purposes of this refund, we order Peoples Gas to follow the methodology for refunds consistent with the Commission's adopted rules.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Peoples Gas System, Inc., pay Energy Conservation Cost Recovery and Purchase Gas Adjustment final true-up amounts of \$100,847.00 which are based on recovery accounts as of March 20, 1990. It is further

ORDERED that Peoples Gas System, Inc., follow the refund methodology as prescribed by Rule 25-7.091, Florida Administrative Code, in determining the true-up amount for which they are responsible. It is further

ORDERED that if no hearing is requested, this docket should be closed upon receipt, by the Florida Public Service Commission, of the final refund report as described in Rule 25-7.091(7), Florida Administrative Code..

ORDER NO. 24159
DOCKET NO. 900678-GU
PAGE 4

ORDERED that this Order shall become final 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. It is further

ORDERED that this docket be closed if no petition for formal proceeding is timely filed.

By Order of the Florida Public Service Commission, this
25th day of FEBRUARY, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 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

ORDER NO. 24159
DOCKET NO. 900678-GU
PAGE 5

file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by 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 March 18, 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.