

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Protests by Natural Gas Utilities of Application of Regulatory Assessment Fee Rule during Period of January-June 1990.)	DOCKET NO. 910031-GU
)	ORDER NO. 24394
)	ISSUED: 4/19/91

The following Commissioners participated in the disposition of this matter:

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

ORDER SETTING PROTESTS FOR INFORMAL HEARING
 AND PERMITTING AFFECTED PARTIES TO FILE BRIEFS

BY THE COMMISSION:

Several natural gas utilities have protested the Commission's application of its regulatory assessment fee rule for the assessment period of January through June, 1990. The following circumstances gave rise to the utilities' protest:

In 1989 the Legislature adopted section 366.14, Florida Statutes, which provided, for the first time, that municipals and gas districts were to be assessed the cost of the Commission's safety regulation. Section 366.14 set a limit of 0.25 percent of gross operating revenues for fees assessed municipals and gas districts, and it also raised the limit for regulatory assessment fees charged investor owned gas utilities to 0.5 percent of gross operating revenues.

On the basis of the Commission's projected costs of operation for 1990 and the utilities' projected revenues for that period, Docket No. 891203 was opened to amend Rule 25-7.0131, Florida Administrative Code to raise regulatory assessment fees for the gas industry. Commission staff held a workshop on the proposed fee increases on September 20, 1989. On the basis of the information received at the workshop, staff recommended that the Commission increase assessment fees to fund the Commission's projected operating budget for the 1990 fiscal year, and to adhere to the legislative directive of section 350.113(3), Florida Statutes, that

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regulatory fees should ". . . to the extent practicable, be related to the cost of regulating such type of regulated company." Staff proposed an assessment fee rate of 1/4 of one percent for gas municipals and gas districts, and an assessment fee increase for investor-owned utilities from 1/8 of one percent to 3/8 of one percent.

The Commission approved the proposed increases on December 5, 1989. The Notice of Rulemaking was published in the Florida Administrative Weekly on December 22, 1989, with a hearing date set for January 29, 1990, if a hearing was requested. The gas municipals and districts did request a hearing and contested the revenue figures the staff had used to calculate the fee rate for them. The investor-owned utilities did not participate in the rulemaking hearing.

At the hearing the utilities and staff agreed that the assessment rate should be lowered for municipals and gas districts on the basis of revised revenue figures presented at the hearing. The rate for investor-owned utilities remained at 3/8 of one percent. The hearing officer recommended that the Commission adopt a rate of .1919 percent for municipals and districts and a rate of 3/8 of one percent for investor-owned utilities. The Commission did so at its Agenda Conference on March 20, 1990. Rule 25-7.0131 became final on April 25, 1990.

Section 366.14, Florida Statutes, and Rule 25-7.0131(2), Florida Administrative Code, provide that regulatory assessment fees will be paid by the utilities in January and July based on gross operating revenues for the preceding 6 month period. In July of 1990, when the investor-owned utilities paid their regulatory assessment fees, several companies paid assessment fees at the rate of 1/8 of one percent for January through April 25, when the rule was final, and 3/8 of one percent for the remaining five days in April and the months of May and June. Some companies paid the entire amount at the increased rate, but informed the Commission that they did so under protest.

In August, Commission staff advised the utilities by letter that their assessment fee payments should have been calculated at the three-eighths of one percent rate for the entire January to June period. Those utilities that had paid a lesser amount were assessed a penalty. Five utilities protested the application of the 3/8 of one percent rate for the entire period. They were City Gas Company of Florida, Florida Public Utilities Company, Miller Gas Company, Peoples Gas System, and St. Joe Natural Gas Company.

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The utilities object to the manner in which the Commission applied the assessment fee rate for the first six months of 1990. They claim that the old rate of 1/8 of one percent should have applied to the period from January 1 through April 24, before the amendment to the rule was final, and the new rate should have applied to the period from April 25 to June 30, after the new rate was final. The utilities state that they did not recover assessment fees from their customers at the increased rate for the period between January 1 and April 25.

There do not appear to be any material factual issues to be resolved in this case. The issue is a legal and policy one:

Should the January-June 1990 regulatory assessment fees due from investor owned natural gas utilities be calculated at the rate of 3/8 of one percent of gross operating revenues for the entire six-month period?

We consider it appropriate to address this issue by means of an informal hearing under the provisions of section 120.57(2), Florida Statutes. That section provides that where there are no disputed factual matters, persons affected by an agency's action shall be given the opportunity, upon reasonable notice, to provide a written statement challenging the action of the agency and the grounds upon which the agency has chosen to justify its action. We will therefore permit affected parties, including those investor-owned natural gas utilities that have not specifically protested the Commission's application of the assessment fee rule, to file briefs informing us of the substantive bases of their objections to the Commission's action.

The grounds upon which the Commission has applied its regulatory assessment fee rule in this case are that section 366.14, Florida Statutes and Rule 25-7.0131, Florida Administrative Code provide that within 30 days following the end of each 6 month period(July 30 for the January-June period, and January 30 for the July-December period) a utility shall remit regulatory assessment fees based upon gross revenues collected for the entire 6 month period, even though the percentage rate at which the fees are assessed may change during the 6 month period. Also, because the regulatory assessment fee is not a rate or a tax, no prohibitions against retroactivity are applicable to it.

The Commission recently approved true-up recovery of the portion of the regulatory assessment increase attributable to energy conservation cost recoveries in Docket No. 910002-EG. The same true-up recovery will be appropriate in the purchased gas cost

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recovery proceeding (Docket No. 910003-GU) with respect to that portion of the assessment increase attributable to gas cost recoveries.

Investor-owned natural gas utilities may file their briefs in this case on or before May 20, 1991. The utilities are not constrained to limit the content of their briefs to a response to the specific grounds set forth above. The utilities should also provide a schedule of their gross operating revenues for January 1, 1990 through April 24, 1990, and for April 25, 1990 through June 30, 1990. The information will provide the data necessary to determine any additional collections or any refunds that may be due to the utilities when we make our decision in this matter without the need for interrogatories or other discovery.

Now therefore, it is

ORDERED by the Florida Public Service Commission that this cause is set for an informal hearing under the provisions of section 120.57(2), Florida Statutes. It is further

ORDERED that investor-owned natural gas utilities are permitted to file briefs in this cause in the manner set forth in the body of this order.

By ORDER of the Florida Public Service Commission, this
19th day of APRIL, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MCB

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

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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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.