

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Determination of whether) DOCKET NO. 940349-GU
Florida should adopt standards) ORDER NO. PSC-94-0570-PHO-GU
for gas utilities from Federal) ISSUED: May 13, 1994
Energy Policy Act of 1992,)
related to integrated resource)
planning and conservation and)
demand management)
_____)

Pursuant to Notice, a Prehearing Conference was held on May 9, 1994, in Tallahassee, Florida, before Commissioner Julia Johnson, as Prehearing Officer.

APPEARANCES:

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On behalf of Gulf Power Company.

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FPSC-RECORDS/REPORTING

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PREHEARING ORDER

I. CASE BACKGROUND

On October 24, 1992 the Energy Policy Act (the Act) of 1992 became law. The Act amended the Public Utility Regulatory Policies Act of 1978 (PURPA), the 1935 Public Utility Holding Company Act of 1935 (PUHCA) and enacted many new laws addressing energy conservation, competition and deregulation. The Act required numerous policy determinations by the state utility regulatory agencies. Among these determinations are a consideration of Integrated Resource Planning and Investments in Conservation/Demand Management for Natural Gas utilities with annual sales of 100,000,000 therms or more.

This docket was opened to enable the Florida Public Service Commission to make the required determinations with respect to Integrated Resource Planning and Investments in Conservation/Demand Management for Florida's Natural Gas Utilities prior to the October 24, 1994 deadline imposed in the Act. Currently, only Peoples Gas System, Inc. exceeds the 100,000,000 therm annual sales threshold. A hearing on this matter is set for May 18 and 19, 1994.

At the Prehearing Conference on May 9, 1994, all parties agreed to a stipulated resolution of the issues identified in this Prehearing Order. On May 11, 1994, a written stipulation reflecting that agreement was filed with the Division of Records and Reporting. Therefore, the case will be presented to the Commission as a stipulation.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as

confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) will be prefiled. All testimony which will be prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all

parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

IV. ORDER OF WITNESSES

Direct

<u>Witness</u>	<u>Appearing For</u>	<u>Subject Matter/Issues #</u>
Jeffrey M. Householder	CGC	Gas IRP 1,2,3
Sam Sessa	CUC	Mr. Sessa will testify that the FPSC should not mandate the application of criteria contained in Section 115 of the Energy Policy Act of 1992 to gas utilities.
Hugh M. Grey, III	PGS	1
Vernon I. Krutsinger	PGS	1
Francis J. Sivard	PGS	1,2
John E. Currier	TECO	Proper focus of federal standards contained in the Energy Policy Act of 1992 (EPAct)

Rebuttal

Rebuttal testimony, if any, is due on May 16, 1994

V. BASIC POSITIONS

CGC: The Commission should not impose the gas IRP standards of the National Energy Policy Act of 1992 on gas utilities at this time. There are currently market forces at work which require gas utilities to adopt aspects of IRP without the need for a formal administrative process. These include open access and FERC Order 636. In addition, as documented by the NARUC "Primer on Gas Integrated Resource Planning", the drawbacks of gas IRP may well outweigh its benefits. Finally, the Commission has already embarked on an orderly consideration of IRP issues. It should continue with this logical progression. (Householder)

CUC: Please see our positions on the issues herein below.

PGS: The Commission should not adopt the Integrated Resource Planning standard for gas utilities (the "Gas IRP standard") nor the Investment in Conservation and Demand Management standard ("the Gas CDM standard") for gas utilities as described in the Energy Policy Act of 1992. The Gas IRP standard would likely impose significant costs on Peoples Gas System and its customers, with little if any demonstrable benefits resulting from compliance with the standard. The Investment in Conservation and Demand Management standard appears to be unnecessary because current Commission ratemaking and revenue determination procedures are adequate. Moreover, Peoples does not support adoption of a new federal statutory ratemaking standard that may contain mandatory elements and the full implications of which are not yet known.

TECO: In considering the federal standards of EAct the Commission's focus should be on increasing the overall efficiency and cost-effectiveness of both electricity and natural gas production and use -- not simply expanding natural gas usage in order to achieve electric DSM objectives. Conservation of natural gas should be encouraged consistent with the Public Utility Regulatory Policies Act of 1978, as amended by EAct, and the express intent of the Florida Legislature in Section 366.81, Florida Statutes.

STAFF: The stipulation of the parties attached to this prehearing order provides that at this time the Commission should not adopt the integrated resource planning standard of the Energy Policy Act of 1992. The stipulation also provides that at this time the Commission should not adopt the investment in conservation and demand management standard of the Energy Policy Act. Staff agrees with the provisions of the stipulation, and recommends that the Commission approve it in its entirety.

VI. ISSUES AND POSITIONS

***ISSUE 1:** Should the Commission adopt the following policies from the Energy Policy Act of 1992 as retail policies for natural gas utilities with annual sales in excess of 100,000,000 therms per year?

INTEGRATED RESOURCE PLANNING - Each gas utility shall employ, in order to provide adequate and reliable service to its gas customers at the lowest system cost (an integrated resource plan). All plans or filings of a State regulated gas utility before a State regulatory authority to meet the requirements of this paragraph shall (A) be updated on a regular basis, (B) provide the opportunity for public participation and comment, (C) provide for methods of validating predicted performance, and (D) contain a requirement that the plan be implemented after approval of the State regulatory authority.

***ISSUE 2:** Should the Commission adopt the following policies from the Energy Policy Act of 1992 as retail policies for natural gas utilities with annual sales in excess of 100,000,000 therms per year?

INVESTMENTS IN CONSERVATION AND DEMAND MANAGEMENT.--The rates charged by any state regulated gas utility shall be such that the utility's prudent investments in, and expenditures for, energy conservation and load shifting programs and for other demand-side management measures which are consistent with the findings and purposes of the Energy Policy Act of 1992 are at least as profitable (taking into account the income lost due to reduced sales resulting from such programs) as prudent investments in, and expenditures for, the acquisition or construction of supplies and facilities. This objective requires that (A) regulators link the utility's net revenues, at least in part, to the utility's performance in implementing cost-effective programs promoted by this section; and (B) regulators ensure that, for purposes of recovering fixed costs, including its authorized return, the utility's performance is not affected by reductions in its retail sales volumes.

***ISSUE 3:** **SMALL BUSINESS IMPACTS** - If the Florida Public Service Commission implements any of the standards described in paragraphs one or two above, the Commission must -

(1) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply,

installation, or servicing of energy conservation, energy efficiency, or other demand-side management measures, and

(2) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

How should the Commission address these considerations?

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Exhibit ____	(VIK-1):		Summary of Peoples Gas System's Energy Conservation Programs.
Exhibit ____	(VIK-2):		Peoples Gas System - Conservation Program Status Summary.
Exhibit ____	(VIK-3):		Peoples Gas System - Estimated Demand and Energy Savings from Residential Gas Use
Exhibit ____	(VIK-4):		<u>Gas IRP Review</u> , January/February 1994.
Exhibit ____	(VIK-5):		Differences Between Gas and Electric Utility Industries.
Exhibit ____	(VIK-6):		Article on Gas IRP by Commissioner Ruth Kretschmer and Illinois Gas IRP Statutes.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

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IX. PENDING MOTIONS

None.

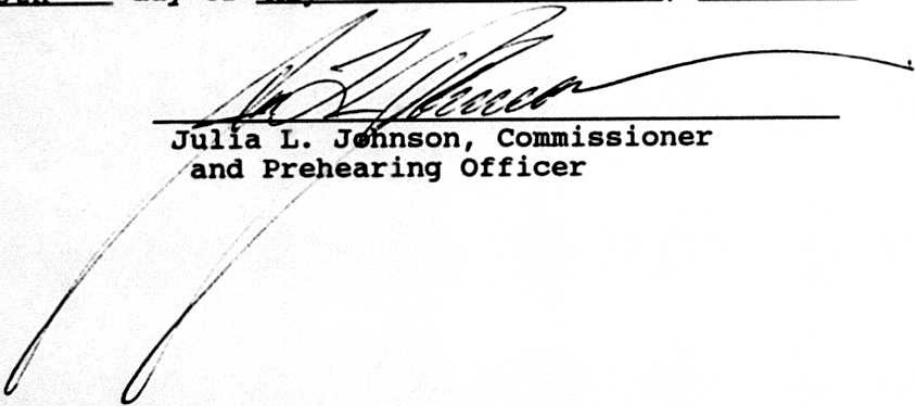
X. RULINGS

The Motions to Intervene filed by Tampa Electric Company, Florida Power Corporation, Florida Power and Light Company and Gulf Power Company are granted. Peoples Motion to File Supplemental Exhibit is granted.

It is therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 13th day of May, 1994.



Julia L. Johnson, Commissioner
and Prehearing Officer

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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.

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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 wastewater 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of whether)	DOCKET NO. 940349-GU
Florida should adopt standards)	FILED: May 10, 1994
for gas utilities, from Federal)	
Energy Policy Act of 1992,)	
related to integrated resource)	
planning and conservation and)	
demand management.)	

STIPULATION

City Gas Company of Florida, Peoples Gas System, Inc., Chesapeake Utilities Corporation, Florida Power and Light Company, Tampa Electric Company and Gulf Power Company (collectively the "Parties"), by and through their undersigned counsel, hereby stipulate and agree to resolve all issues contained in Order No. PSC-94-0478-PCO-GU, which constitutes all issues in this docket as follows:

1. At this time, the Commission should not adopt the integrated resource planning (IRP) standard set forth in Section 115 of the Energy Policy Act of 1992 for gas utilities. The gas utilities have submitted testimony to the effect that currently, the expected incremental benefits to the gas utilities and their customers of adopting this standard do not appear to exceed the expected incremental administrative costs.

2. At this time, the Commission should not adopt the investment in conservation and demand management standard set forth in Section 115 of the Energy Policy Act of 1992 for gas utilities. Currently, there are Commission forums in which these matters can be addressed.

3. In view of the above stipulation, the parties further stipulate that the Commission need not address small business impact considerations.

Each of the provisions set forth in paragraphs 1 through 3 above have been negotiated as essential, interdependent components to a comprehensive settlement of all issues in this proceeding and, therefore, collectively constitute a single stipulation among the Parties. As such, the Parties agree that if this stipulation is not approved by the Commission in its entirety, it shall be null and void and of no binding effect on the Parties. The Parties further agree that this stipulation is for settlement purposes only, shall have no precedential value, and shall be without prejudice to the right and opportunity of any party to raise, defend or otherwise litigate any issues or positions as to matters of policy or fact in any appropriate proceeding before the Commission. It is anticipated that the Commission will open a docket to consider, among other things, the appropriate goals for natural gas conservation and demand side management programs.

Dated: May 9, 1994

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TAMPA ELECTRIC COMPANY

BY  _____

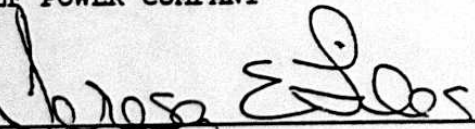
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