

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Peoples Gas System, Inc. ) DOCKET NO. 941324-GU  
Petition for Approval of Load ) ORDER NO. PSC-95-0348-FOF-GU  
Profile Enhancement Rider to ) ISSUED: March 13, 1995  
Rate Schedule RS, SGS, GS, GSLV- )  
1, GSLV-2 and GTSLV-2 )  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER DENYING INTERVENTION AND  
APPROVING LOAD PROFILE ENHANCEMENT RIDER

BY THE COMMISSION:

Peoples Gas System, Inc.'s (Peoples or the Company) present rate schedules GS, GSLV-1 and GSLV-2, contain special conditions designed to assist in promoting the addition of off-peak seasonal natural gas load. Under the special conditions, if at least 75% of the load occurs during April through October, a 15% discount on the Non-Gas Energy Charge shall apply for usage during the off-peak season of April through October.

The rationale for approval of the present special conditions was that the net effect of the additional therm sales would assist the Company in adding load to its system, improve its load factor and therefore postpone future rate cases or reduce overall rate increases. Unfortunately, these special conditions have not had their intended effects because the 75% requirement was too stringent. Only five customers are served under the present off-peak rate.

Interest in new gas technology applications such as gas-fired air-conditioning, desiccant cooling, refrigeration, and cogeneration appears to be strengthening, due to improved economic conditions and continued emphasis on increasing energy efficiency.

As a result of increased interest in new gas technology applications and the apparent lack of success of the presently approved special conditions, Peoples filed this petition for approval of modifications to its natural gas tariff.

On February 3, 1995, Tampa Electric Company (TECO) filed a Motion for Leave to Intervene, a Request for Suspension, and a Request for a Hearing in this docket. This matter was originally scheduled to appear on the Commission's February 7, 1995, agenda. Because of the proximity of TECO's filing and the scheduled agenda conference, the Commission decided to defer this matter to the February 21, 1995, agenda conference in order to allow Peoples Gas an opportunity to respond to TECO's filing. On February 9, 1995, TECO filed a Memorandum in Support of its Motion for Leave to Intervene. Peoples Gas filed its Response to Tampa Electric's Motion for Leave to Intervene on February 10, 1995.

#### I. Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, persons seeking to become parties in a proceeding must demonstrate that they are entitled to participate as a matter of constitutional or statutory right or pursuant to Commission rule, or that their substantial interests are subject to determination or will be affected through the proceeding.

TECO argues that it has a "personal stake" in the outcome of this proceeding and should be allowed to intervene. TECO alleges that this rider will eventually require Peoples to expand its pipeline capacity and will force Peoples to raise its rates. TECO adds that this will create a need for Peoples to add pipeline capacity, which would, as a result, push Peoples residential rates upward. TECO argues that this proposed rider will effect its rates, as well. If Peoples is able to increase its summer load, TECO might have to increase its rates to compensate for a possible loss of its load. TECO also states that this proposed rider demonstrates that Peoples ". . . clearly intends to affect Tampa Electric's relationship with its customers."

Peoples argues that any potential economic injury that TECO might suffer as a result of the implementation of this proposed rider is not of sufficient immediacy to warrant TECO's intervention in this proceeding. Peoples notes that this proposed rider might even benefit TECO to the extent that it might reduce TECO's summer peak demand, thereby allowing TECO to reduce summer purchased power costs. Peoples adds that even if TECO is not benefitted by this rider, the net adverse effects of the rider upon TECO will be negligible. Peoples claims that TECO's interest is not the type of

interest this proceeding was designed to protect, because it is purely economic in nature. Peoples states that TECO's Motion for Leave to Intervene, Request for Suspension, and Request for a Hearing fail the test for standing set forth in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981).

TECO responds that the facts in Agrico are distinguishable. TECO asserts that Chapter 366 clearly addresses TECO's right to intervene in this docket to initiate further investigation of Peoples' petition. TECO states that the situation in Agrico was different because in that case the applicable statute did not specifically address the issue concerned.

TECO's interpretation of the Agrico case and its principles appears flawed. Although TECO is correct in stating that Chapter 366, Florida Statutes, specifically addresses the fairness of rates and charges of a utility, Chapter 366 does not specifically grant competitor utilities standing to intervene in this type of proceeding. Since no specific statute, constitutional provision, or rule authorizes TECO's intervention, TECO must demonstrate that its substantial interests will be effected by the outcome of this matter, as provided by Section 25-22.036, Florida Administrative Code.

Under the two pronged Agrico test for "substantial interest", the petitioner must show: 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing; and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482.

With respect to the first prong of the Agrico test, TECO alleges that the proposed rider will, eventually, require Peoples to increase its pipeline capacity, which, in turn, will force Peoples to raise its residential rates. TECO also asserts that any increase in capacity by Peoples Gas will have an adverse effect on TECO's rates. TECO cites Couch Construction Co. v. Department of Transportation, 361 So. 2d 184 (Fla. 1st DCA 1978), in its argument that TECO and Peoples are in constant competition to provide services in the areas where their territories overlap. TECO claims a substantial interest in testing the validity of Peoples' support for the Load Profile Enhancement Rider (LE) in order to insure that TECO is being given fair consideration in its "bid" for customers.

TECO has not satisfied the first prong of the Agrico test. TECO is only speculating what might happen if the rider is implemented. Speculation as to future economic detriment is too

remote to establish standing. International Jai-Alai Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, at 1225, 1226 (Fla. 3rd DCA 1990). See also Village Park Mobile Home Association, Inc., v. State, Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987) (speculations on the possible occurrence of injurious events is too remote to warrant inclusion in the administrative review process). The manner in which TECO is or is not affected by the implementation of the rider depends ultimately upon intervening factors and consumer reactions. Also, the Couch case is easily distinguished. Couch addressed the Department of Transportation's procedures for submitting bids for Department contracts. Bid procedures are extensively covered by Section 337.11, Florida Statutes. Section 337.11 also deals specifically with the procedure for filing a protest and it directly addresses who may not have standing to protest such proceeding. Chapter 366, Florida Statutes, does not contain similar provisions.

Failure to satisfy one prong of the Agrico test is sufficient to find that TECO does not have standing. TECO, however, also fails to satisfy the second prong of the test.

The second prong of Agrico requires TECO to demonstrate that the injury it will sustain if this rider is implemented is of the type this proceeding is designed to protect. TECO argues that its economic and service oriented interests are "integrally tied" to the proceeding. TECO states that Peoples' rider will "directly displace" TECO's electric sales in the overlapping areas served by both companies, thereby affecting TECO's relationship with its customers. TECO argues that it has a "personal stake" in this proceeding similar to that of the landowners in Gregory v. Indian River County, 610 So. 2d 547 (Fla. 1st DCA 1992, reh'ing denied January 22, 1993).

Peoples contends that TECO's interest in this proceeding is of a purely economic nature. Peoples states that under Agrico a purely economic interest is not sufficient to establish standing unless the applicable statute was designed to protect such an interest. See Florida Medical Center v. Department of Health and Rehabilitative Services, 484 So. 2d 1292, 1294 (Fla. 1st DCA 1986). Peoples argues that this is a "routine" tariff proceeding governed by statutory sections that do not provide for consideration of competitive economic interests. Competitive economic interests are not within the "zone of interest" of this proceeding.

TECO's alleged competitive economic injury is insufficient to satisfy the second prong of the Agrico test. TECO's argument amounts to a claim that it should be protected from competitive

pressure that might have an effect on TECO's growth. This is not what this proceeding is designed to do. Even if Peoples is trying to affect TECO's relationship with its customers as TECO alleges, TECO's interests are not affected in a manner sufficient to establish standing.

The Commission recognized that competition does not create standing in Order No. PSC-94-0114-FOF-TI, issued in Docket No. 930396-TI, on January 31, 1994.<sup>1</sup> There the Commission said:

The targeting of customers of one company by another is what economic competitors do. This is precisely the sort of economic injury that fails to form the basis of standing under ASI and Agrico Chemical.

TECO has attempted to distinguish the ASI case, ASI, Inc. v. Florida Public Service Commission, 334 So. 2d 594 (Fla. 1976) by arguing that ASI pertained to the issuance of permits "as of right", while approval of Peoples' rider is not something done "as of right". We disagree. Like ASI, TECO "...has no legally recognized right in being free from competition." Id. at 596. The right to intervene based upon economic competition must be clearly outlined in the governing statute. Fla. Society of Ophthalmology v. St. Board of Optometry, 532, So. 2d 1279 (Fla. 1st DCA 1988) rev. denied, 542 So. 2d 1333 (Fla. 1989).

TECO also argues that it should be allowed to intervene in this docket because Peoples was allowed to intervene in the conservation goals proceedings for the electric utilities, and Peoples has filed a complaint against TECO concerning TECO's water heater pilot programs (Docket No. 941165-PU). TECO argues that these situations are somewhat similar and, therefore, it should be allowed to intervene in this docket.

Peoples contends that the situations are very different. Peoples asserts that it was allowed to intervene in the electric utilities' conservation goals docket because those proceedings have "clear implications for Peoples' implementation of its own Commission-approved conservation programs". Peoples contends that its complaint against TECO's water heater pilot programs is different because TECO's pilot programs are an attempt to harm Peoples' implementation of its Commission-approved conservation programs and discriminatory against gas applications, in violation of the Florida Energy Efficiency and Conservation Act, Section 366.81, Florida Statutes.

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<sup>1</sup>An IXC certification application

The conservation goals docket was intended to address, among other things, the various possible conservation benefits of natural gas alternatives to electricity. As such, the gas utilities' interests were more directly tied to those proceedings. Also, the proceedings in the conservation goals docket were likely to affect more than just the gas utilities' economic interests. The proceedings in that docket were likely to affect how the gas utilities would implement their own conservation programs.

In Peoples' complaint against TECO (Docket No. 941165-PU), Peoples claims that TECO's alleged actions may interfere with Peoples' implementation of its conservation programs. Peoples' intervention in the aforementioned dockets is an insufficient reason to grant TECO's Motion to Intervene in this docket.

Based on the foregoing, TECO's Petition for Leave to Intervene, Request for Suspension, and Request for Hearing in this docket are denied.

## II. Load Profile Enhancement Rider

Prompted by the interest in new gas technology applications, such as gas-fired air conditioning, desiccant cooling, refrigeration, and cogeneration in Florida, Peoples filed revised tariff sheets. If approved, these tariff sheets will govern service of Peoples' distribution system.

Peoples current load profile reflects a significant degree of seasonal variation. As a result, the Company's ability to acquire the most cost effective interstate pipeline transportation capacity and longer term gas supply contracts is limited. When a local distribution company (LDC) must negotiate for larger quantities of gas in the winter and less in the summer, the pricing and terms are generally less favorable. A more uniform load profile would permit the Company to contract for pipeline capacity and gas supplies in a more cost effective manner, which would lower overall gas costs.

As an example, Peoples contract for firm pipeline capacity with Florida Gas Transmission Company (FGT) requires 1,555,208 therms per day in the winter and 641,850 therms per day in the summer. If summer load is increased over time as a result of the Load Profile Enhancement Rider, a more uniform and improved load profile would be established, providing the Company the ability to contract for pipeline capacity and gas supplies in a more cost effective manner.

To improve the Company's load profile and provide an appropriate rate for new summer-intensive gas applications, Peoples proposes to offer a Load Profile Enhancement Rider (LE) tariff provision to its customers. Rider LE would provide for incremental load served under the above rate schedules to be charged at a rate equal to 40 percent of the otherwise applicable Non-Gas Energy Charge or Transportation Charge, plus all otherwise applicable charges for such service. The rates would continue until the Company's next general rate case filing, at which time the Company expects to propose new rate schedules which would eliminate the need to continue the availability of Rider LE.

To qualify for the Load Profile Enhancement Rider LE, the customer's incremental consumption must result in a net increase greater in total during the months of April through October than during the months of November through March. Incremental service to non-residential customers may require separate metering to assure that the rates provided by Rider LE are applied only to eligible incremental, summer-intensive gas load.

If this tariff is approved, Peoples projects that the cumulative incremental load during the summer period will increase by 2,606 therms per day and 29,445 therms per day, by the end of the first and fifth years, respectively.

Peoples anticipates that the majority of Rider LE customers will be existing customers or customers located on existing mains. Any main extensions required to initiate service under Rider LE would be subject to the Company's main extension tariff provision. There will be no additional advertising or personnel costs associated with Rider LE. Peoples will make customers and potential customers aware of the rider's availability through normal, routine customer communications.

Accordingly, the Load Profile Enhancement Rider LE is approved for the following reasons:

- . to encourage an increased interest in new gas technology applications.
- . to provide Peoples Gas with the ability to contract for gas on more favorable terms, which should ultimately lower gas prices.
- . to enable Peoples Gas to achieve a more uniform and improved load profile.

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. to enable Peoples Gas to contract for pipeline capacity and gas supply in a more cost effective manner.

Based on the foregoing, it is therefore

ORDERED that Tampa Electric Company's Motion for Leave to Intervene is, hereby, denied. It is further

ORDERED that Tampa Electric Company's Request for Suspension and Request for Hearing are disposed of as moot requests. It is further

ORDERED that Peoples Gas System, Inc.'s Load Profile Enhancement Rider to Rate Schedules RS, SGS, GS, GSLV-1, GSLV-2 and GTSLV-2 is approved as set forth in the body of this order. It is further

ORDERED that this Load Profile Enhancement Rider shall become effective February 21, 1995. It is further

ORDERED that if a protest is filed in accordance with the requirements set forth below, the tariff shall remain in effect pending resolution of the protest. It is further

ORDERED that if no protest is filed in accordance with the requirements set forth below, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 13th day of March, 1995.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-488-8371.

( S E A L )  
BC

DISSENT

Chairman Clark and Commissioner Deason dissent from the decision in Issue 1.



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 Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 3, 1995.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

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 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 wastewater 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 date this Order becomes final, 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.