

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement, or in the alternative, petition for waiver of Rule 25-6.100(2)(c), F.A.C., by Gulf Power Company. | DOCKET NO. 041307-EI
| ORDER NO. PSC-05-0083-PAA-EI
| ISSUED: January 24, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING PETITION FOR RULE WAIVER

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On May 12, 2004, Gulf Power Company (Gulf) filed a petition for authority to implement its proposed FlatBill rate schedule, an optional pricing program that offers residential and small commercial customers a fixed monthly electric bill regardless of kilowatt-hour (kWh) usage for 12 months. We approved the FlatBill program by Order No. PSC-04-1052-TRF-EI, issued October 27, 2004, in Docket No. 040442-EI, In re: Petition for authority to implement proposed FlatBill rate schedule by Gulf Power Company. We found that the program provided a valuable billing option for residential and small business customers who would benefit from predictable, level bills throughout the year.

As one of the conditions for approval of the Flatbill program, Gulf proposed to petition for a waiver of Rule 25-6.100, Florida Administrative Code, which prescribes certain requirements for customer billing. Gulf's petition, filed November 1, 2004, asks either for a declaratory statement that portions of Rule 25-6.100 are not applicable to billings under the FlatBill program, or for a waiver of portions of that rule. Specifically Gulf has asked for relief from subparts (1), (2) and (4) of subsection (2)(c) of the rule. The Commission published notice

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that it received the petition in the November 24, 2004, Florida Administrative Weekly. We have not received any comments regarding the petition.

On December 28, 2004, after conversations with our staff concerning the most efficient handling of its petition, Gulf sent a letter requesting that we defer a decision on the declaratory statement request in its petition, pending a decision on its rule waiver request. Gulf asserted that if we approved its request for a rule waiver, the declaratory statement would not be necessary. That is the case. As explained below, we approve Gulf's petition for a rule waiver, and the request for declaratory statement is moot. We have jurisdiction over this matter pursuant to sections 366.05 and 120.542, Florida Statutes.

DECISION

Section 120.542, Florida Statutes, generally provides that a person subject to an administrative agency's rules may petition for a variance or waiver of the rules under certain circumstances. Section 120.542(2), Florida Statutes, provides a two-pronged test for determining when waivers and variances from agency rules shall be granted:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Rule 25-6.100(2)(c) of the customer billing rule requires that the customer's bill must separately list a series of specific charges and fees, including the customer charge, the energy charge in cents per kWh, and the fuel cost in cents per kWh. According to Gulf, the purpose of the rule is to provide a customer receiving electric service based on monthly electricity usage a statement of the specific charges that make up the monthly bill in order to verify the calculation of the amount the customer owes. Gulf asserts that Rule 25-6.100(2)(c) implements section 366.05(1), Florida Statutes, which grants the Commission the power to prescribe the service rules and regulations to be observed by each utility. The requirements of the rule are stated in mandatory terms, and there are no exceptions incorporated in the rule. Therefore, Gulf's bills issued under its new FlatBill pricing program would be subject to the rule's requirements unless we grant a waiver of those requirements.

As Gulf explains in its petition, the FlatBill rate schedule will offer eligible residential and small commercial customers the opportunity to pay a fixed monthly electric bill regardless of actual kWh usage for 12 months. The customer's bill will contain a single line item charge in lieu of all customer charges, energy charges, and cost recovery clause charges that would otherwise be applicable under either the Residential or General Service rate schedules. The only

information the customer will need to verify the correct billing amount is the set monthly amount set out in the FlatBill offer to the customer. A bill under the FlatBill rate schedule will not change from one month to another based on usage. Gulf explains that there is no reasonable way to comply with the rule under the Flatbill pricing program, and any attempt to restructure a bill issued under the program to comply with the rule would be misleading to the customer. Gulf contends that compliance with the rule for billing under the FlatBill program would not accomplish the purpose of the rule, which is to assist customers in verifying the accuracy of their bills. Breaking out charges on a monthly basis based on usage would not result in a calculation that matched a customer's monthly bill under the FlatBill rate schedule. Gulf states that application of the rule under these circumstances would not be fair to customers because it would produce inaccurate and misleading billing information, just the opposite of what the rule intended. Gulf also states that compliance with the rule would create hardship for Gulf as well, because it could increase customer inquiries and complaints.

We agree that a waiver of the identified subparts of the Commission's customer billing rule for bills issued to customers participating in Gulf's FlatBill program is reasonable and appropriate under section 120.542, Florida Statutes. The purpose of the relevant underlying statute, section 366.05, to set appropriate service rules and regulations for utilities, is accomplished by the approval of the FlatBill tariff that describes the set monthly calculation for FlatBill. Further, we agree that application of Rule 25-6.100(2)(c) to the FlatBill program would be unfair to the FlatBill customers and to Gulf, because it would hinder those customers' ability to understand their bills, not improve it. For these reasons, we grant Gulf's request for a waiver of subparts (1), (2) and (4) of Rule 25-6.100(2)(c), Florida Administrative Code.

It is therefore,

ORDERED by the Florida Public Service Commission that the Petition of Gulf Power Company for waiver of subparts (1), (2) and (4) of Rule 25-6.100(2)(c), Florida Statutes, for electric bills issued under its FlatBill program is granted. It is further

ORDERED that this Order approving Gulf Power Company's rule waiver petition shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of January, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 14, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.