

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of new Tariff Sheets 22A and 22B to add provisions for "Limits of Company Responsibilities", "Limitation of Damages", and "Access to Premises", by Florida City Gas.

DOCKET NO. 130039-GU
ORDER NO. PSC-13-0139-TRF-GU
ISSUED: March 25, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER APPROVING TARIFF ADDITIONS

BY THE COMMISSION:

DECISION

On February 1, 2013, Florida City Gas ("City Gas" or "Company") filed a petition requesting Commission approval of new tariff sheets that add provisions to (1) limit company responsibility, (2) limit company liability, and (3) access customer premises. The proposed provisions mirror the language already contained in other utilities' tariffs. We have jurisdiction in this matter pursuant to Sections 366.03, 366.04, and 366.06, Florida Statutes.

The Company requests our approval of new Tariff Sheet Nos. 22A and 22B. City Gas explains that the intent of the additions is to better clarify the Company's liability in situations outside the Company's control and provisions governing access to customer premises.

The proposed section on Tariff Sheet No. 22A, titled Limits of Company Responsibilities, exempts the utility from responsibility for damages sustained on the customer's side of the meter including any damage due to any equipment or appliances installed by the customer on the customer's side of the point of delivery. The proposed section also relieves the Company from liability for naturally occurring or other impurities in the gas delivered to the customer. Additionally, the Company is relieved of liability for interruption of service in an emergency or other system operating conditions which justify such interruption. Finally, the proposed section specifically removes any obligation of the Company to inspect gas piping or appliances of a customer.

The proposed second section on Tariff Sheet No. 22A, titled Limitation of Damages, imposes limits on damage recovery by the customer and requires the customer to hold harmless

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and defend the Company for damages from the customer's use of natural gas provided by the Company or negligent acts or omissions by the customer.

In reviewing the proposed City Gas tariff, our staff found that the proposed limitations of liability are consistent with the tariffs of all regulated natural gas and electric companies in Florida. It has long been held that a regulated utility has the right to limit its liability, as the cost to defend against unlimited liability could result in significantly higher rates to all customers. In Landrum v. Florida Power & Light Company, 505 So. 2d 552, 554 (Fla. 1987), and cases from around the country cited therein, the Florida Supreme Court stated:

It is well established that a limitation of liability contained in a tariff is an essential part of the rate, and that the consumer is bound by the tariff, regardless of his knowledge or assent thereto. . . . Therefore, a tariff validly approved by the Public Service Commission, including a limitation of liability for ordinary negligence, resulting in the interruption of the regular supply of electric service is valid.

On April 2, 2012, we approved two tariff modifications requested by Peoples Gas System ("PGS") which established limits to the utility's liability under certain specified conditions.¹ The first change approved for PGS exempts the utility from responsibility for damages sustained on the customer's side of the meter and limits the utility's responsibilities for impurities in gas delivered to the customer. The second change states that the utility is not liable due to service interruptions caused by conditions beyond the utility's control.

With regard to impurities in delivered gas, in Order No. PSC-12-0172-TRF-GU we found that:

PGS, like other distribution utilities in the state, has no control over the characteristics of the gas it delivers to its customers from the interstate pipelines. The Federal Energy Regulatory Commission (FERC) has established standards for some of the more important characteristics of gas, and these characteristics are measured by the pipeline delivering the gas to PGS.

We note that the language limiting liability in City Gas's proposed addition is substantially similar to the PGS tariff revisions which were recently approved by this Commission.²

The second proposed tariff sheet addition addresses the customer's responsibility to provide an acceptable location for the Company's meter and access to the customer's premises for subsequent operation, inspection, and maintenance. This requirement is the Company's implementation of Rule 25-7.060, Florida Administrative Code. Subparagraph (1) of the Rule states, "The customer shall furnish a convenient, accessible and safe place in which the meter

¹ See Order No. PSC-12-0172-TRF-GU, issued April 2, 2012, in Docket No. 110308-GU, In re: Request by Peoples Gas System to modify Tariff Sheet 5.701 to add sections entitled "Limits of Company's Responsibilities" and "Continuity of Service."

² Id.

can be installed, operated and maintained.” We note that the location and access requirements for the utility’s equipment are consistently stated in tariffs of every regulated gas and electric utility in Florida.

Consistent with our prior practice and legal precedent, and in light of the information above, we hereby approve the proposed tariff additions.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the tariff additions requested by Florida City Gas are hereby approved as set forth in the body of this Order. It is further

ORDERED that the tariff sheets shall become effective as of March 5, 2013. If a protest is filed within 21 days of issuance of the Order, the tariff shall remain in effect with any charges held subject to refund pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 25th day of March, 2013.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), 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.

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 Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files 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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 15, 2013.

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 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.