

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for ) DOCKET NO. 941233-GU  
determination that regulatory ) ORDER NO. PSC-95-0496-FOF-GU  
assessment fees were timely ) ISSUED: April 19, 1995  
submitted or, in the )  
alternative, other appropriate )  
relief, by PEOPLES GAS SYSTEM, )  
INC. )  
\_\_\_\_\_ )

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING REQUEST FOR RULING

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.

CASE BACKGROUND

Section 350.113, Florida Statutes, establishes the "Florida Public Service Regulatory Trust Fund." Each natural gas public utility regulated under Chapter 366, Florida Statutes, is required to pay to the Commission a specified fee based on revenues within 30 days following the end of each 6-month period ending June 30th and December 31st. Peoples Gas System, Inc. (Peoples) is a natural gas public utility regulated under Chapter 366, Florida Statutes, within the meaning of Section 350.113, Florida Statutes.

DOCUMENT NUMBER-DATE

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PROC-REGULATORY/REPORTING

Section 350.113, Florida Statutes, further provides that:

The commission shall provide each regulated company with written notice of the date that payment of the fee is due at least 45 days prior to such date. If any regulated company fails to pay the required fee by such date, the commission shall estimate the amount of fee due from such information as it may be able to obtain from any source and shall add 5 percent of such amount to the fee as a penalty if the failure is for not more than 30 days... The commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company.

Rule 25-4.0161(5)(b), Florida Administrative Code, establishes the interest as 12 percent per annum.

July 30, 1994, fell on a Saturday. Monday, August 1, 1994, Peoples transmitted by certified mail a check payable to the Public Service Commission for \$449,316.10. This is the full amount of its regulatory assessment fee for the six-month period ended June 30, 1994.

On September 19, 1994, the Chief of the Commission's Bureau of Fiscal Services (Fiscal), advised Peoples that, because the envelope in which the fee was enclosed was postmarked after July 30, 1994, Peoples' payment of the fee was late, and that penalty and interest charges were assessed in the total amount of \$26,958.97. This figure included a penalty of \$22,465.81 (5% of the fee previously submitted by Peoples) plus interest of \$4,493.16 (1% of the fee).

On September 28, 1994, Peoples' Executive Vice President responded to the letter stating that the instructions to Form PSC/EAG-3 did not specify that when the July 30 due date falls on a Saturday that it cannot be postmarked the next business day.

On November 23, 1994, Peoples filed a Petition For Determination That Regulatory Assessment Fees Were Timely Submitted Or, In The Alternative, Other Appropriate Relief. Peoples contended that its fee was timely filed and asks us to rule that no penalties are warranted in this case.

DECISION

Besides the mandate of Section 350.113, Florida Statutes, a specific statutory provision prescribes the payment of regulatory assessment fees by natural gas utilities. Section 366.14, Florida Statutes states:

.... shall pay to the commission, within 30 days following the end of each 6-month period, a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. (emphasis added)

Florida Administrative Code, Rule 25-7.0131, sets forth the procedure for filing the regulatory assessment fees and repeatedly emphasizes the due date and consequences for failure to timely pay the fee:

- (1) As applicable and as provided in s. 350.113, F.S., s. 364.336, F.S., and s. 366.14, F.S., each company shall remit a fee based upon its gross operating revenue ...
- (2) Regulatory assessment fees and the applicable regulatory assessment fee return form are due... on July 30 for the preceding period or any part of the period from January 1 until June 30. Commission Form PSC/EAG 3, PSC/EAG - or PSC/EAG- (Rev. - - - ) are incorporated into this rule by reference... Each company shall have up to and including the due date in which to submit the applicable form and:
  - (a) Remit the total amount of its fee, or
  - (b) Remit an amount which the utility, municipal, or gas district estimates is its full fee, or
  - (c) Seek and receive from the Commission a 30-day extension of its due date.

- (5) The delinquency of any amount due to the Commission from the company pursuant to the provisions of s. 350.113, F.S., and this rule, begins with the first day after any date established as the due date either by operation of this rule or by an extension pursuant to this rule.
- (a) A penalty, as set out in s. 350.113, F.S., shall apply to any such delinquent amounts.
- (b) Interest at the rate of 12 percent per annum shall apply to any such delinquent amounts.

Form PSC/EAG 3 advises that envelopes containing fee payments must be postmarked on or before the due date to avoid penalty and interest charges. Peoples' cashier check for the assessment fee was postmarked after the due date. Form PSC/EAG 3 informs regulated utilities that if July 30 or January 30 falls on a Sunday, the envelopes may be postmarked on July 31 or January 31, respectively, without penalty. July 30, the assessment regulatory fee due date, fell on a Saturday. Peoples did not request an extension prior to the due date. Peoples' assessment regulatory fee, however, was not late.

On March 7, 1995, we found GTEFL's regulatory assessment fee payment to be timely submitted; the same arguments apply to the case at hand. Request for Ruling, or in the Alternative, Petition for Declaratory Statement or other Appropriate Action Regarding Penalty Imposed by Florida Public Service Commission for Late Payment of Regulatory Assessment Fees by GTE Florida Incorporated, Docket Number 941196-TL.

Our interpretation of Florida Administrative Code, Rule 25-7.0131, extends the time for remittance (mailing) of regulatory assessment fees to the following Monday when the last day of the prescribed time period falls on a Saturday. This interpretation is consistent with the present position of Florida Courts concerning the inclusion or exclusion of Saturdays, in the computation of statutory time periods.

We have interpreted, for some years, Rule 25-7.0131 to exclude the last day of the time period if that day falls on a Sunday, and we have not assessed a fine if fees are postmarked on Monday. That interpretation was consistent with Florida law on the subject, because for many years Florida Courts adhered to the rule that Sunday would be excluded as the last day of a statutory time period, unless a statute expressly provided that it should be included.

Using the rule of statutory construction that statutes and rules must be construed so as to avoid absurd results, we held that the statutory time period would be extended to the next secular or business day when the last day of the period fell on a Saturday. We recognize the impracticalities of performing most procedural acts set forth by statute on a Saturday, Sunday or a holiday. Accordingly, absent a clear statutory mandate dictating a different result, we decline to ascribe to Section 350.114, Florida Statute, or Rule 25-7.0131, Florida Administrative Code, an intent that a regulatory assessment fee filed or postmarked on Monday, when the due date falls on a Saturday, as late.

Also, Florida Civil Procedure, Rule 1.090(a), Florida Administrative Code, Rule 25-22.028(5), and the Florida Department of Revenue's rules serve as examples concerning the treatment of Saturdays, Sundays, and holidays. We believe that our current interpretations of time periods for filing regulatory assessment fees reflect the current state of the law.

Rule 25-7.0131, Florida Administrative Code, is silent as to the appropriate procedure when the due date falls on a Saturday. We believe Rule 25-7.0131, Florida Administrative Code, permits a utility to file or postmark its regulatory assessment fee and report on Monday, when the due date is a Saturday, Sunday or holiday. Peoples has complied with the requirement of Rule 7.0131, Florida Administrative Code, and Section 350.113, Florida Statutes. Therefore, we grant Peoples' request for ruling that its January through June 1994, regulatory assessment fee was timely paid.

Given the determination that Peoples' payment was timely and that the application of statutory penalties and interest is not appropriate, Peoples' Alternative Petition for Declaratory Statement is moot.

Based on the foregoing, it is

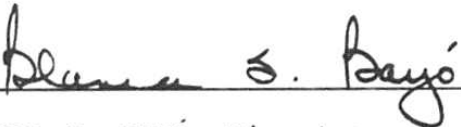
ORDERED by the Florida Public Service Commission that Peoples' Request for Ruling that its January through June, 1994, regulatory assessment fee payment was timely is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

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ORDERED that in the event this Order becomes final, this Docket should be closed.

By ORDER of the Florida Public Service Commission, this 19th day of April, 1995.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

LW

Dissents:

Commissioner Deason and Commissioner Garcia dissent from the decision in this Order.

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 action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by

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Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 May 10, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 and effective on the date described above, any party substantially 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 effective date of this order, 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.