

LAW OFFICES
McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

LYNWOOD F. ARNOLD, JR.
JOHN W. BAKAS, JR.
HARRY LEE COE, IV
LINDA DARNEY HARTLEY
C. THOMAS DAVIDSON
STEPHEN O. DECKER
LINDA E. JORGE
VICKI GORDON KAUFMAN
JOSEPH A. MCGLOTHLIN
JOHN W. MCWHIRTER, JR.
RICHARD W. REEVES
FRANK J. RIEF, III
DAVID W. STEEN
PAUL A. STRANKE

100 NORTH TAMPA STREET, SUITE 2800
TAMPA, FLORIDA 33602-5126

MAILING ADDRESS: TAMPA
P.O. BOX 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0866

FAX (813) 221-1854

CABLE GRANDLAW

PLEASE REPLY TO:
TALLAHASSEE

March 21, 1997

TALLAHASSEE OFFICE
117 N. GADSDEN
TALLAHASSEE, FLORIDA 32301
TELEPHONE (904) 222-2525
FAX (904) 222-5606

HAND DELIVERED

Blanca S. Bayo, Director
Division of Records and Reporting
101 E. Gaines Street
Tallahassee, Florida 32301

Re: In re: City Gas Company of Florida's Petition for
Waiver of Penalty -- Docket No. 970360-GU

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and sixteen copies of the City Gas Company of Florida's Petition for Waiver of Penalty in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Yours truly,


Joseph A. McGlothlin

JAM/jei

Enclosures

DOCUMENT NUMBER-DATE

03051 MAR 21 97

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: City Gas Company of Florida's
Petition for Waiver of Penalty.

) Docket No. 970360-GU
)
)
) Filed: March 20, 1997

**CITY GAS COMPANY OF FLORIDA'S
PETITION FOR WAIVER OF PENALTY**

Pursuant to Rule 25-22.0.36, F.A.C., City Gas Company of Florida (City Gas) hereby files, its petition for waiver of penalty and states the following:

1. City Gas is a natural gas distribution company lawfully doing business in the State of Florida. Its regulated operations are subject to the jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes.

2. City Gas Company's principal place of business in Florida is:

City Gas Company of Florida
955 East 25th Street
Hialeah, Florida 33013

3. All notices, pleadings, orders and process in this matter should be served upon the undersigned and upon the following:

Michael A. Palecki
City Gas Company of Florida
955 East 25th Street
Hialeah, Florida 33013

4. City Gas has a substantial interest in this matter by virtue of the facts set forth below in paragraph 6.

5. Rule 25-7.0131, Florida Administrative Code, sets forth the requirements for filing regulatory assessment fees pursuant to Section 350.113 and 366.14, Florida Statutes. Under Rule 25-7.0131, regulatory assessment fees are due January 30 for

DOCUMENT NUMBER-DATE

03051 MAR 21 5

FPSC-RECORDS/REPORTING

the period that covers the last six months of the previous calendar year.

6. City Gas Company's regulatory assessment fee/for the last six months of 1996 in the amount of \$114,929.79 was due to be filed on January 30, 1997. This fee was not filed due to excusable neglect by personnel. The inadvertent failure to timely file this fee was caused in part by the massive effort involved in changing over to year 2000 compliant, multi-functional accounting and financial software. NUI Corporation, of which City Gas is a part, is in the process of installing a new, sophisticated computer software. The single system will be used across the entire company. This means that the existing Human Resources benefits data system; the payroll computer system; the accounts payable system; the purchasing system; the asset management system; and the project costing system are all being replaced at the same time. The company is attempting to meet a goal of completing the changeover by April 1, 1997. The enormity of the undertaking has monopolized the time of numerous NUI employees as well as consultants. As a result of the ongoing changeover there was a delay in receiving the data necessary to complete the return. Because of these problems and an unusually heavy workload on January 30, 1996, the above-described fee was not mailed or delivered to the Florida Public Service Commission even though it had been prepared for delivery.

7. Rule 25-7.0131 provides that if the fee is sent certified mail, the date of the receipt is the postmark date. The fee sent certified mail by City Gas was postmarked January 31, 1997; one day late. On February 20, 1997, City Gas received a letter (a copy of which is attached as Exhibit "A") stating that due to its having postmarked the fee one day late, a penalty and interest totalling \$6,895.80

was owed.

8. Based upon these facts, City Gas requests that the Commission exercise its discretion to waive or reduce this penalty.

9. The instant case is very similar to the matter the Commission ruled upon in regard to GTE Florida, Inc. ("GTE"), (Docket No. 941196-TL - 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). In that matter, GTE's regulatory assessment fee was due to be filed on a Saturday. GTE hand-delivered the fee the following Monday. The Commission Staff took the initial position that, although delivery of the fee was obviously not possible on the Saturday in question, the fee could have been mailed on that day, and that a letter postmarked and mailed on that day would have complied with the rule. GTE asked the Commission to declare that no penalty was due. It also argued that the Commission had considerable discretion in this area, and cited numerous cases in support of the general proposition that penalties of various kinds can be waived.

10. The Commission ruled that GTE had "substantially complied with the requirements of Rule 25-4.0161, F.A.C. . . .", by delivering the fee on the date following the Saturday even though, technically speaking, it was due to be filed on Saturday (Order No. PSC-95-0364-FOF-TL, p. 3).

11. The instant case is also similar to a more recent case wherein the Commission waived the penalty based on a finding of excusable neglect. In re: Petition for Declaratory Statement, or Alternatively, for Waiver of Penalty Imposed for

Late Payment of Regulatory Assessment Fees by BellSouth Telecommunications, Inc.,

Order No. PSC-96-0569-FOF-TL, 96 F.P.S.C. 5; 4 (1996), BellSouth alleged that its fees were not mailed on time because of "an unusually heavy workload" and "a number of illnesses that resulted in absences of office personnel."

12. In this case, it is true that City Gas did not postmark the fee and accompanying form on the due date. It is also true that, as in the BellSouth example, the oversight was the result of extraordinary circumstances. City Gas did have the form postmarked early the following morning.


13. This late filing represents an isolated incident, and City Gas has always been prompt in its past filings of this fee. The amount of the fee as set forth in the February 20, 1997 letter is in excess of \$6,800.00. City Gas respectfully submits that this is simply an inequitable result under the circumstances. in the filing of the fee.

14. Rule 25-7.0131 provides that, upon good cause shown, the Commission may grant an extension of the payment deadline of 30 days. In the event of an extension of 30 days is granted, the penalty for late payment is 0.75% rather than 5%. While of course City Gas did not submit a request for an extension prior to January 30, City Gas asks the Commission to take into account both the discretion contemplated by the rule and the existence of good cause in determining whether it should require the payment of \$6,895.80 for a delay of one day under the circumstances.

In this case, given the fact that this fee was actually postmarked the following morning, along with all the other equitable considerations, City Gas submits that the

Commission should find that any tardiness is excusable under the circumstances, and so minimal that it would be inequitable to assess a penalty of \$6,895.80. City Gas submits that, even if a technical violation occurred, the Commission should exercise its considerable discretion in this area to either waive the penalty or to reduce it to a nominal amount that corresponds to the minimal degree of tardiness in payment.

WHEREFORE, City Gas respectfully requests the entry of an Order finding the penalty should be waived because the one day delay was the result of excusable neglect.


Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (904) 222-2525

Attorneys for City Gas Company
of Florida