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MEMORANDUM

APRIL 16, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF AUDITING & FINANCIAL ANALYSIS (HOLROYD, LEE)
DIVISION OF ELECTRIC & GAS (MILLS) *MM*
DIVISION OF LEGAL SERVICES (CRUZ-BUSTILLO) *SCB RUE*

RE: DOCKET NO. 980256-GU - SOUTH FLORIDA NATURAL GAS COMPANY
- REQUEST FOR WAIVER OF RULE 25-7.045 (8) (a) FLORIDA
ADMINISTRATIVE CODE BY SOUTH FLORIDA NATURAL GAS CO.

AGENDA: 04/28/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - *JOJ*
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: STATUTORY DEADLINE FOR DECISION 6/30/98

SPECIAL INSTRUCTIONS: S:\PSC\AFA\WP\980256.RCM

CASE BACKGROUND

South Florida Natural Gas Company (Company) filed its last depreciation study on December 21, 1992 with an effective date of January 1, 1993. Rule 25-7.045(8) (a), Florida Administrative Code, requires gas companies to file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission. In accordance with this Rule, the Company's next depreciation study was due on or before December 21, 1997.

In a letter dated January 23, 1998, the Company submitted a request "for an extension to file their depreciation study which was due in December 1997," required by Rule 25-7.045(8) (a), Florida Administrative Code. The hard copy of this letter could not be located, consequently, the Company was asked by Staff to send another copy of this letter by facsimile. Staff determined that the Company's initial letter did not adequately address the issues that are required to be answered by Section 120.542, Florida Statutes, before an agency can determine whether a waiver or variance can be granted. A Notice of Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly March 6, 1998. No public comments were received. A letter was sent to the Company dated March 12, 1998, requesting additional information necessary for processing the request for waiver. The Company responded by letter dated April 1, 1998.

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DISCUSSION OF ISSUES

ISSUE 1: Should South Florida Natural Gas Company's request for a waiver of Rule 25-7.045(8)(a), Florida Administrative Code, be granted?

RECOMMENDATION: Yes. The Commission should grant the Company's waiver request for an extension of time to file its depreciation studies no later than May 31, 1998. (HOLROYD, CRUZ-BUSTILLO)

STAFF ANALYSIS: As stated in the case background, in a letter dated January 23, 1998, the Company submitted a request "for an extension to file their depreciation study which was due in December 1997," required by Rule 25-7.045(8)(a), Florida Administrative Code. Rule 25-7.045(8)(a), Florida Administrative Code, requires that:

Each company shall file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission.

In this case, the Company's last depreciation study was filed on December 21, 1992, with an effective date of January 1, 1993. Therefore, the new filing date for the requisite study was December 21, 1997.

Section 120.542(1), Florida Statutes, provides a two pronged test for determining when waivers and variances from agency rules 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 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. (Emphasis added).

In response to Staff's inquiry, by letter filed April 1, 1998, the Company states that the waiver it seeks - of Rule 25-7.045(8)(a), Florida Administrative Code - is "temporary" and the request for "extension [is only] until May 31, 1998." Furthermore, the Company asserts that the request "should not affect the duties of the Commission."

I. Achieves Purpose of Underlying Statute

In accordance with the above referenced statute - Section 120.542(1), Florida Statutes - Staff believes that the Company has adequately demonstrated that the purpose of the underlying statute

- Section 350.115, Florida Statutes - will be achieved by this extension. The underlying purpose of the statute is to provide sufficient information permitting the Commission to establish adequate, fair and reasonable depreciation rates. The initial proposed implementation date for the new depreciation rates is January 1, 1998. This requested extension will not affect that initial proposed implementation date, nor the Commission's duties. The reason the requested waiver will not affect the duties of the Commission is because so long as the study is filed before June 30, the initial proposed implementation date will remain the same - no matter how much time the Commission chooses to utilize in evaluating the study and issuing its order. Rule 25-7.045(8)(b), Florida Administrative Code, provides that:

A utility proposing an effective date of the beginning of its fiscal year shall submit its depreciation study no later than the mid-point of that fiscal year.

In this case, the Company's "mid-point" is July 1, 1998. The implementation date, therefore, shall remain the same. Accordingly, the filing of the required study on or before May 31, 1998, will allow the purpose of the underlying statute to be achieved.

II. Demonstrating Substantial Hardship

Staff believes that the Company has also adequately demonstrated that the Company has endured a substantial hardship - within the meaning of Section 120.542, Florida Statutes. The Company asserts that as a consequence of their "recent acquisition by Southern Union Company", its employees have spent a "substantial amount of time to integrate the acquisition." Moreover, the Company claims that a "substantial [amount of] time has been incurred on the preparations of South Florida Natural Gas Company's Annual FERC filing."

Accordingly, because the Company has met both statutory requirements for the granting of a waiver, Staff recommends that the Company's request should be granted.

III. Timeliness of Waiver Request

The Company did not submit its request until approximately 33 days after the due date for the study. Thus, the question arises as to whether the Commission should deny the waiver based upon the Company's failure to timely request a waiver. As stated earlier, herein, the requested extension resulted as a consequence of the Company enduring a substantial hardship which the Company asserts prevented them from complying with the filing deadline of December 21, 1997. Staff believes that the Commission should not deny the requested waiver based upon the Company's failure to timely file - for two reasons. First, Staff believes that the Company has

adequately demonstrated that it endured a substantial hardship. And second, the requested waiver would not affect the initial proposed implementation date, nor the Commission's duties. Again, as outlined earlier, the reason the requested waiver would not affect the Commission's duties is because so long as the study is filed before June 30 [as the Company proposes] the initial proposed implementation date will remain the same - no matter how much time the Commission chooses to utilize in evaluating the study and issuing its order. For these reasons, Staff believes that the Commission should not deny the requested waiver based upon the Company's failure to timely file.

Finally, Staff believes that the Company has adequately demonstrated that it endured a substantial hardship which prevented the Company from complying with the filing deadline of December 21, 1997. Staff, therefore, recommends that the Company be granted the waiver and be ordered to submit its study no later than May 31, 1998.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person, whose substantial interests are affected by the Commission's proposed agency action, timely files a protest within 21 days of the issuance of this order, this docket should be closed. (HOLROYD, CRUZ-BUSTILLO)

STAFF ANALYSIS: If no person, whose substantial interests are affected, files a timely request for a Section 120.57, Florida Statutes, hearing within 21 days of the issuance of this order, no further action will be required and this docket should be closed.