

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: January 6, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Brown) *MCB*
Division of Economic Regulation (Baxter) *DPW*

RE: Docket No. 041307-EI – 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.

AGENDA: 01/18/05 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: 90-day deadline for disposition of petition – 01/31/05

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041307.RCM.DOC

Case 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. The Commission 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. The Commission 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 Commission 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 which is attached to this

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recommendation as Attachment A. A notice that the Commission received the petition was published in the November 24, 2004, Florida Administrative Weekly. No comments were filed. On December 28, 2004, after conversations with staff concerning the most efficient handling of its petition, Gulf sent a letter (Attachment B) requesting that the Commission defer a decision on the declaratory statement request in its petition, pending a decision on its rule waiver request. Gulf asserted that if the Commission approved its request for a rule waiver, the declaratory statement would not be necessary.

This is staff's recommendation to grant Gulf's petition for a waiver of this rule. In light of Gulf's recent letter, staff has not addressed Gulf's declaratory statement request at this time. The Commission has jurisdiction over this matter pursuant to sections 366.05 and 120.542, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Gulf's petition for a waiver of subparts (2), (3) and (4) of Rule 25-6.100 (2)(c), Florida Administrative Code?

Recommendation: Yes. The Commission should grant Gulf's petition for a rule waiver. (BROWN, BAXTER)

Staff Analysis: 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:

Variances 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 the Commission grants 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.

Staff agrees 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 Commission's approval of the FlatBill tariff that describes the set monthly calculation for FlatBill. Further, staff agrees 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, Staff recommends that the Commission grant Gulf's request for a waiver of subparts (1), (2) and (4) of Rule 25-6.100(2)(c), Florida Administrative Code. If the Commission grants the waiver petition, as Gulf states in its December 28, 2004, letter, the declaratory statement portion of its petition is moot.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (BROWN)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

(2) Refund of deposits. After a customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the utility shall refund the residential customer's deposits and shall, at its option, either refund or pay the higher rate of interest specified below for nonresidential deposits, providing the customer has not, in the preceding 12 months.

(a) Made more than one late payment of a bill (after the expiration of 20 days from the date of mailing or delivery by the utility).

(b) Paid with a check refused by a bank.

(c) Been disconnected for nonpayment, or at any time.

(d) Tampered with the electric meter, or

(e) Used service in a fraudulent or unauthorized manner.

(3) New or additional deposits. A utility may require, upon reasonable written notice of not less than thirty (30) days, a new deposit, where previously waived or returned, or additional deposit, in order to secure payment of current bills. Such request shall be separate and apart from any bill for service and shall explain the reason for such new or additional deposit, provided, however, that the total amount of the required deposit shall not exceed an amount equal to twice the average charges for actual usage of electric service for the twelve month period immediately prior to the date of notice. In the event the customer has had service less than twelve months, then the utility shall base its new or additional deposit upon the average actual monthly usage available.

(4) Interest on deposits.

(a) Each electric utility which requires deposits to be made by its customers shall pay a minimum interest on such deposits of 6 percent per annum. The utility shall pay an interest rate of 7 percent per annum on deposits of nonresidential customers qualifying under subsection (2) when the utility elects not to refund such deposit after 23 months.

(b) The deposit interest shall be simple interest in all cases and settlement shall be made annually, either in cash or by credit on the current bill. This does not prohibit any utility paying a higher rate of interest than required by this rule. No customer depositor shall be entitled to receive interest on his deposit until and unless a customer relationship and the deposit have been in existence for a continuous period of six months, then he shall be entitled to receive interest from the day of the commencement of the customer relationship and the placement of deposit. Nothing in this rule shall prohibit a utility from refunding at any time a deposit with any accrued interest.

(5) Record of deposits. Each utility having on hand deposits from a customer or hereafter receiving deposits from them shall keep records to show:

(a) The name of each customer making the deposit;

(b) The premises occupied by the customer;

(c) The date and amount of deposit; and

(d) Each transaction concerning the deposits such as interest payments, interest credited or similar transactions.

(6) Receipt for deposit. A non-transferable certificate of deposit shall be issued to each customer and means provided so that the customer may claim the deposit if the certificate is lost. Where a new or additional deposit is required under subsection (3) of this rule, a customer's cancelled check or validated bill coupon may serve as a deposit receipt.

(7) Refund of deposit when service is discontinued. Upon termination of service, the deposit and accrued interest may be credited against the final account and the balance, if any, shall be returned promptly to the customer but in no event later than fifteen (15) days after service is discontinued.

Specific Authority 366.05(1), 350.127(2) FS. Law Implemented 366.03, 366.041(1), 366.05(1), 366.06(1) FS. History--New 7-29-69, Amended 5-9-76, 7-8-79, 6-10-80, 10-17-83, 1-31-84, Formerly 25-6.97, Amended 10-13-88, 4-25-94, 3-14-99.

25-6.099 Meter Readings.

Each service meter shall be clearly marked to indicate the units measured. Unless special circumstances warrant, meters shall be read at monthly intervals on the approximate corresponding day of each meter-reading period.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.05(1) FS. History--Amended 7-29-69, 4-13-80, Formerly 25-6.99.

25-6.100 Customer Billings.

(1) Bills shall be rendered monthly and as promptly as possible following the reading of meters.

(2) By January 1, 1983, each customer's bill shall show at least the following information:

(a) The meter reading and the date the meter is read, in addition to the meter reading for the previous period. If the meter reading is estimated, the word "estimated" shall be prominently displayed on the bill

(b) 1. Kilowatt-hours (KWH) consumed including on and off peak if customer is time-of-day metered.

2. Kilowatt (KW) demand, if applicable, including on and off peak if customer is time-of-day metered.

(c) The dollar amount of the bill, including separately:

1. Customer charge.

2. Energy (KWH) charge, exclusive of fuel, in cents per KWH, including amounts for on and off peak if the customer is time-of-day metered, and energy conservation costs.

3. Demand (KW) charge, exclusive of fuel, in dollar cost per KW, if applicable, including amounts for on and off peak if the customer is time-of-day metered.

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ATTACHMENT A

4. Fuel cost in cents per KWH (no fuel costs shall be included in the base charge for demand or energy).
 5. Total electric cost which is the sum of the customer charge, total fuel cost, total energy cost, and total demand cost.
 6. Franchise fees, if applicable.
 7. Taxes, as applicable on purchases of electricity by the customer.
 8. Any discount or penalty, if applicable.
 9. Past due balances shown separately.
 10. The gross and net billing, if applicable.
 - (d) Identification of the applicable rate schedule.
 - (e) The date by which payment must be made in order to benefit from any discount or avoid any penalty, if applicable.
 - (f) The average daily KWH consumption for the current period and for the same period in the previous year, for the same customer at the same location.
 - (g) The delinquent date or the date after which the bill becomes past due.
 - (h) Any conversion factors which can be used by customers to convert from meter reading units to billing units. Where metering complexity makes this requirement impractical, a statement must be on the bill advising that such information may be obtained by contacting the utility's local business office.
 - (i) Where budget billing is used, the bill shall contain the current month's consumption and charges separately from budgeted amounts.
 - (j) The name of the utility plus the address and telephone number of the local office where the bill can be paid and any questions about the bill can be answered.
- (3) When there is sufficient cause, estimated bills may be submitted provided that with the third consecutive estimated bill the company shall contact the customer explaining the reason for the estimated billing and who to contact in order to obtain an actual meter reading. An actual meter reading must be taken at least once every six months. If an estimated bill appears to be abnormal when a subsequent reading is obtained, the bill for the entire period shall be computed at a rate which contemplates the use of service during the entire period and the estimated bill shall be deducted. If there is reasonable evidence that such use occurred during only one billing period, the bill shall be computed.
- (4) The regular meter reading date may be advanced or postponed not more than five days without a pro-ration of the billing for the period.
- (5) Whenever the period of service for which an initial or opening bill is rendered is less than the normal billing period, the charges applicable to such service, including minimum charges, shall be pro-rated except that initial or opening bills need not be rendered but the energy used during such period may be carried over to and included in the next regular monthly billing.
- (6) The practices employed by each utility regarding customer billing shall have uniform application to all customers on the same rate schedule.
- (7) Franchise Fees.
- (a) When a municipality charges a utility any franchise fee, the utility may collect that fee only from its customers receiving service within that municipality. When a county charges a utility any franchise fee, the utility may collect that fee only from its customers receiving service within that county.
- (b) A utility may not incorporate any franchise fee into its other rates for service.
- (c) For the purposes of this subsection, the term "utility" shall mean any electric utility, rural electric cooperative, or municipal electric utility.
- (d) This subsection shall not be construed as granting a municipality or county the authority to charge a franchise fee. This subsection only specifies the method of collection of a franchise fee, if a municipality or county, having authority to do so, charges a franchise fee.

Specific Authority 366.05(1), 366.04(2) FS. Law Implemented 366.03, 366.04(2), 366.041(1), 366.051, 366.06(1) FS. History—New 2-25-76, Amended 4-13-80, 12-29-81, 6-28-82, 5-16-83.

25-6.101 Delinquent Bills.

Bills shall not be considered delinquent prior to the expiration of twenty (20) days from the date of mailing or delivery by the utility.

Specific Authority 366.05(1) FS. Law Implemented 366.03, 366.05(1) FS. History—New 2-25-76.

25-6.102 Conjunctive Billing.

(1) Conjunctive billing means totalizing metering, additive billing, plural meter billing, conjunctive metering, and all like or similar billing practices which seek to combine, for billing purposes, the separate consumptions and registered demands of two or more points of delivery serving a single customer.

(2) A single point of delivery of electric service to a user of such service is defined as the single geographical point where a single class of electric service, as defined in a published rate tariff, is delivered from the facilities of the utility to the facilities of the customer.

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ATTACHMENT B
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December 28, 2004

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Re: Docket No. 041307-EI; 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.

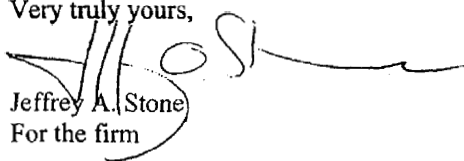
Dear Martha,

This letter follows a series of telephone conversations over the past several weeks regarding Gulf Power Company's petition in this matter dated November 1, 2004. The purpose of this letter is to document Gulf's request that the Florida Public Service Commission hold the petition's request for a declaratory statement in abeyance until after the Commission rules on the petition's alternative request for a rule waiver.

In Gulf's petition filed November 1, we asked for alternative remedies. First, we asked for a declaratory statement that the specified portions of Rule 25-6.100 Florida Administrative Code are not applicable to billings submitted pursuant to Gulf Power Company's FlatBill[®] rate schedule. In the alternative, we asked for waiver of subparts 1, 2 and 4 of Rule 25-6.100(2)(c), Florida Administrative Code with regard to billings submitted pursuant to the Company's FlatBill[®] rate schedule. Since Staff apparently believes the more appropriate remedy is the requested rule waiver, and since either remedy is sufficient to allow Gulf to proceed with its proposed FlatBill[®] rate, Gulf is hereby asking that its request for a declaratory statement be held in abeyance until after the Commission rules on the rule waiver request. If the requested rule waiver is granted, then the request for declaratory statement would be rendered moot and no further action by the Commission would be needed on Gulf's petition in this regard.

If there are any questions regarding the request made by Gulf in this letter, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,


Jeffrey A. Stone
For the firm