

**Ruth Nettles**

---

**From:** KIRBY.KIMBERLY [KIRBY.KIMBERLY@leg.state.fl.us]  
**Sent:** Tuesday, March 17, 2009 10:52 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Jennifer Brubaker; nhorton@lawfla.com; Charles Rehwinkel  
**Subject:** E-Filing (Docket No. 080366-GU)  
**Attachments:** Citizens' Response to FPUC Objections and Motion for Protective Order 3-17-09

Electronic Filing

a. Person responsible for this electronic filing:

Charles J. Rehwinkel, Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
(850) 488-9330  
[rehwinkel.charles@leg.state.fl.us](mailto:rehwinkel.charles@leg.state.fl.us)

b. Docket No. 080366-GU

In re: Petition for rate increase by Florida Public Utilities Company's Gas Division.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 4 pages.

e. The document attached for electronic filing is **Citizens' Response to Florida Public Utilities Company ("FPUC" or "Company") Objections and Motion for Protective Order.**

Thank you for your attention and cooperation to this request.

Kimberly D. Kirby  
Assistant to Charles J. Rehwinkel  
Associate Public Counsel  
Office of Public Counsel  
Telephone: (850) 488-9330  
Fax: (850) 488-4491

3/17/2009

DOCUMENT NUMBER-DATE

02276 MAR 17 8

FPSC-COMMISSION CLERK

---

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for rate increase by  
Florida Public Utilities Company's  
Gas Division /

Docket No. 080366-GU

Filed: March 17, 2009

**Citizens' Response to Florida Public Utilities Company  
("FPUC" or "Company") Objections and Motion for Protective Order**

The Citizens of the State of Florida, through the Office of Public Counsel ("OPC" or "Citizens") files their response to Florida Public Utilities Company's ("FPUC" or "Company") Objection and Motion for Protective Order ("Motion") as follows:

FPUC asks this commission to block discovery at a critical decision making time for both the Commission and the customers. The basis for the request is that the PAA is not – in the Company's opinion – intended to allow intervenor discovery before the Agency takes proposed action.

The Motion is completely without merit. FPUC has cited no authority or precedent for denying the Public Counsel full participation rights as of the time of intervention. As noted by the company they have sought to process the requested rate increase via the Proposed Agency Action (PAA) process.

What is not mentioned is that the request is for a \$10 million annual increase. Also not mentioned is that included in the request -- just through the PAA process only -- is \$850,000 in proposed rate case expense which is double what was allowed in the 2004 FPUC PAA rate case. See, Order No., PSC-04-1110-PAA-GU at 26. The amount is also \$100,000 more than what the much larger Peoples Gas System requested in the full-blown file-and-suspend case pending in Docket No. 080318-EI.

DOCUMENT NUMBER-DATE

02276 MAR 17 8

FPSC-COMMISSION CLERK

The Public Counsel has intervened by statutory right and has every right to appear before the Commission and advocate on behalf of the customers before the Commission votes to issue a PAA Order that could place the customers in the jeopardy of choosing between an excessively increasing rate case expense amount and an unjustified \$10 million rate increase.

The Public Counsel has appeared countless times at Agenda conference seeking modification of proposed resolution to requests and recommendations for inclusion in PAA orders. We are not aware of any time the Commission has denied our right to conduct discovery once a request for an increase in rates has been filed and the customers rights are in jeopardy.

The Office of Public Counsel has identified several significant issues in the company's request. Administrative efficiency and the Commissioners time would likely be better served if these issues were explored in discovery and then shared with the Company and staff in an informal setting rather than airing them out laboriously at the PAA Agenda Conference.

To suggest that rates must go into effect before these issues can be explored and preliminarily tested through the discovery process appears to be unwarranted and an effort to keep the customers quiet before the Commission votes. This has never been the policy of the Florida Public Service Commission or its staff.

The Citizens also object to the tolling of the time to respond to discovery. As the company's objection is not grounded on any precedent, there is no reason for the Company to forestall answering discovery while the PAA vote deadline approaches.

**WHEREFORE**, Citizens request that the Company's Motion be denied and that the Commission promptly issue an Order directing that discovery by the OPC proceed.

J. R. Kelly  
Public Counsel



Charles J. Rehwinkel  
Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
(850) 488-9330  
rehwinkel.charles@leg.state.fl.us

Attorney for the Citizens  
of the State of Florida

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Office of Public Counsel Response to Florida Public Utilities Company's ("FPUC" or "Company") Objections and Motion for Protective Order has been furnished by electronic mail and U.S. Mail to the following parties on this 17<sup>th</sup> Day of March, 2009.

Jennifer Brubaker  
Office of the General Counsel  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Norman H. Horton, Jr.  
Messer, Caparello & Self, P.A.  
2618 Centennial Place  
P. O. Box 15579  
Tallahassee, FL 32317-5579

Ms. Cheryl Martin  
Controller  
Florida Public Utilities Company  
P.O. Box 3395  
West palm Beach, FL 33402-3395



Charles J. Rehwinkel  
Associate Public Counsel