

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: December 3, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Prestwood, Draper)
Office of General Counsel (Jaeger)

CIP EAD
CSB
JA
JP

RE: Docket No. 080366-GU – Petition for rate increase by Florida Public Utilities Company.

AGENDA: 12/15/09 – Regular Agenda – Decision on Stipulation Prior to Hearing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: Draft FPUC Recommendation

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COMMISSION
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Case Background

This proceeding commenced on December 17, 2008, with the filing of a petition for a permanent rate increase by Florida Public Utilities Company (FPUC or Company). FPUC serves gas customers through two divisions: the Central Florida Division consisting of portions of Seminole, Marion and Volusia Counties, and the South Florida Division consisting of portions of Palm Beach, Broward and Martin Counties. Together, FPUC provides service to over 51,000 residential and commercial customers.

FPUC requested an increase in its retail rates and charges to generate \$9,917,690 in additional gross annual revenues. This increase would have allowed the Company to earn an overall rate of return of 8.74 percent with an 11.75 percent return on equity (range 10.75 percent

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to 12.75 percent). The Company based its request on a projected test year ending December 31, 2009, and requested that its petition for rate relief be processed under the Proposed Agency Action (PAA) procedure authorized by Section 366.06(4), Florida Statutes (F.S.)

FPUC also requested an interim rate increase in its retail rates and charges to generate \$984,054 in additional gross annual revenues. Based on FPUC's calculations, the increase would allow the Company to earn an overall rate of return of 7.66 percent, with a 10.25 percent return on equity, which was the minimum of what was then the authorized return on equity range of 10.25 percent to 12.25 percent.¹ The Company based its interim request on a historical test year ended December 31, 2007. The Commission granted the interim rate increase in Order No. PSC-09-0123-PCO-GU, issued March 3, 2009. The interim rates became effective for all meter readings made on or after 30 days from the date of the vote approving the interim increase.

Using the PAA procedure, the Commission issued PAA Order No. PSC-09-0375-PAA-GU (PAA Order) on May 27, 2009, in which it proposed a revenue increase of \$8,496,230, and an authorized return on equity of 10.85 percent, with a range of plus or minus 100 basis points. The PAA order did not require a refund of any revenues collected during the interim period. The PAA Order also approved new miscellaneous service charges.

However, before that PAA Order could become final, the Office of Public Counsel (OPC), who had intervened, filed its timely protest of that Order on June 17, 2009. In its protest, OPC listed 26 separate issues, but specifically noted that it was not protesting the test period, the quality of service, cost of capital, or cost of service and rate design sections. Also, FPUC timely filed its cross-petition on June 26, 2009, in which it raised two new issues, and further noted that rate case expense would have to be recalculated to reflect the cost of addressing OPC's protest. Pursuant to the protests noted above, the petition of FPUC was set for formal hearings in accordance with Rule 25-22.029, Florida Administrative Code (F.A.C.)

Pursuant to Section 366.06(4), F.S., FPUC implemented, subject to refund with interest, the rates and charges approved by the PAA Order. Pursuant to Order No. PSC-09-0588-PCO-GU, issued August 31, 2009, the revenues subject to refund with interest for both the interim rates and the implemented PAA rates are protected by a corporate undertaking guaranteed by Florida Public Utilities Company, the consolidated entity, in the amount of \$6,000,000.

On October 27, 2009, FPUC filed its Motion to Approve Stipulation and Settlement (Motion), in which FPUC requested that the Commission approve the Stipulation and Settlement which was attached and signed by both parties. The Motion, with the Stipulation and Settlement, is incorporated in this recommendation as Attachment A.

This recommendation addresses FPUC's Motion and the parties' Stipulation and Settlement agreement. The Commission has jurisdiction pursuant to Sections 366.06(2) and (4), and 366.07, F.S.

¹ See Order No. PSC-04-1110-PAA-GU, issued November 8, 2004, in Docket No. 040216-GU, In re: Application for rate increase by Florida Public Utilities Company.

Discussion of Issues

Issue 1: Should the Commission approve the Stipulation and Settlement which was entered into between OPC and FPUC for the purpose of settling this Docket?

Recommendation: Yes. Staff recommends that the Stipulation and Settlement (Settlement) entered into between OPC and FPUC be approved. (Prestwood)

Staff Analysis: As noted earlier, the Commission issued PAA Order No. PSC-09-0375-PAA-GU on May 27, 2009, in which it proposed a revenue increase of \$8,496,230, and an authorized return on equity of 10.85 percent, with a range of plus or minus 100 basis points. In its protest, OPC listed 26 separate issues, but specifically noted that it was not protesting the test period, the quality of service, cost of capital, or cost of service and rate design sections. FPUC's cross-petition raised two new issues, and further noted that rate case expense would have to be recalculated to reflect the cost of addressing OPC's protest.

The Settlement states that "OPC and FPUC agree that FPUC shall be entitled to increase its rates and charges so as to produce an additional \$7,969,000 in annual revenues." The Settlement would decrease the annual increase previously allowed by the PAA Order by \$527,230 while resolving all issues raised by OPC and FPUC. Also, the parties agree in the settlement that any issues associated with the recently approved merger of Chesapeake Utilities and FPUC will be resolved in the pending Chesapeake rate case (Docket No. 090125-GU) and applied to this docket. The settlement appears to propose a reasonable resolution to the protested issues, and its approval would obviate the need for additional hearings while minimizing the time and expenses to all parties.

Staff therefore recommends that the Settlement entered into between OPC and FPUC be approved.

Issue 2: Should FPUC be required to make a refund to its customers?

Recommendation: Yes. Staff recommends that FPUC refund the difference between the rates approved by the PAA Order and the rates resulting from the Settlement, with interest, in the form of a one-time refund on customer bills. FPUC should also be required to file a report with the Division of Economic Regulation 10 business days prior to the refund being made showing the detailed calculations of the actual refund. Once staff verifies that the refund is complete, the \$6,000,000 corporate undertaking guaranteed by Florida Public Utilities Company, the consolidated entity, may be released. No refund of any of the \$984,054 interim rate increase is warranted. (Draper, Prestwood)

Staff Analysis: The Settlement states that, “OPC and FPUC recognize that as a result of this Settlement, FPUC may be required to make a refund to customers. In the event the Commission requires a refund, OPC agrees that such refunds may be made over a period of time not to exceed six (6) months.”

FPUC implemented the rates and charges approved by the PAA Order on June 4, 2009.² On an annual basis, the amount of revenues from the Settlement is \$527,230 less than that of the PAA Order. FPUC should be required to refund the difference in the rates, plus interest, that have been collected since the PAA rates were implemented in June 2009 through the date the revised rates go into effect. The settlement would not require a refund of the interim rate relief that was granted before the PAA Order.

FPUC provided a calculation of the refund for the period June through November 2009. That refund amount is \$212,605 including interest. The final refund amount will change based on the addition of December 2009 and January 2010 in the calculation.

Staff recommends that FPUC refund the difference between the rates approved by the PAA Order and the rates resulting from the Settlement, with interest, in the form of a one-time refund on customer bills. FPUC stated that it agrees with this approach and can issue the one-time refund as a credit on customer bills in February 2010. Staff also recommends that FPUC be required to file a report with the Division of Economic Regulation 10 business days prior to the refund being made showing the detailed calculations of the actual refund. Once staff verifies that the refund is complete, the \$6,000,000 corporate undertaking guaranteed by Florida Public Utilities Company, the consolidated entity, should be released.

² As stated earlier, these rates were implemented subject to refund with interest pursuant to Section 366.06(4), F.S.

Issue 3: What are the appropriate rates that result from the Settlement?

Recommendation: The appropriate rates are shown in Attachment B. FPUC should file tariffs reflecting the rates shown in Attachment B. The revised rates should go into effect 30 days after the Commission vote, which under the current schedule would mean for meters read on or after January 14, 2010. The Company should provide notice of the final approved rates as required by Rule 25-22.0406(8), F.A.C. A copy of the notice should be submitted to staff for approval prior to its use. (Draper)

Staff Analysis: The proposed Settlement did not include revised rates. Staff requested that FPUC file revised rates and supporting documentation that implement the Settlement. FPUC provided, to OPC and staff, revised rates and supporting documentation on November 17, 2009. Staff reviewed the calculation and made a correction. FPUC agreed with staff's correction.

OPC's protest did not address the cost of service, rate design, or miscellaneous service charges (initial connect, disconnect, etc). Therefore, FPUC allocated the decrease in annual revenues that results from the stipulation (\$527,230) to the rate classes as a percentage of total revenues from sales achieved by each rate class. The resulting rates are shown in Attachment B. The miscellaneous service charges approved in Order No. PSC-09-0375-PAA-GU shall remain unchanged.

The revised rates should go into effect 30 days after the Commission vote, which under the current schedule would mean for meters read on or after January 14, 2010. FPUC should file tariffs reflecting the rates shown in Attachment B. The Company should provide notice of the final approved rates as required by Rule 25-22.0406(8), F.A.C. A copy of the notice should be submitted to staff for approval prior to its use.

As a result of the Settlement, a residential customer using 20 therms will see a \$0.39 reduction in the monthly bill when compared to a bill under the PAA rates.

Docket No. 080366-GU
Date: December 3, 2009

Issue 4: Should this docket be closed?

Recommendation: No. The docket should remain open until staff has approved the revised tariffs sheets and customer notices, and FPUC has provided staff with proof that it has made the appropriate refunds with interest. Once staff has verified all of the above actions are complete, this docket should be closed administratively. (Jaeger)

Staff Analysis: The docket should remain open until staff has approved the revised tariffs sheets and customer notices, and FPUC has provided staff with proof that it has made the appropriate refunds with interest. Once staff has verified all of the above actions are complete, this docket should be closed administratively.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 080366-GU
Date Filed: October 27, 2009

MOTION TO APPROVE STIPULATION AND SETTLEMENT

COMES NOW, Florida Public Utilities Company ("FPUC") and files this Motion to Approve Stipulation and Settlement and as basis states:

1. This docket was initiated by FPUC upon a petition filed with the Commission on December 17, 2008, wherein FPUC sought approval of an increase of \$9,917,960 in its base rates and charges. The petition was filed using the Proposed Agency Action ("PAA") process authorized by Section 366.06(4), Florida Statutes.

2. On May 27, 2009, after having reviewed and discussed the petition at a regularly scheduled agenda conference, the Commission issued Order No. PSC-09-0375-PAA-GU, authorizing FPUC to increase its rates and charges by \$8,496,230. Rates designed to realize this increase were implemented pursuant to the order.

3. On June 17, 2009, the Office of Public Counsel ("OPC") who had intervened in this docket on December 30, 2008, filed a protest of portions of the PAA Order. On June 26, 2009, FPUC filed a cross-petition and the Commission established a schedule for hearings.

4. As a result of discussions between OPC and FPUC, the parties have agreed to a settlement that resolves the protests. A copy of the settlement is attached as Attachment "A" hereto.

5. In the settlement, the parties agree among other items to an increase of \$7,969,000 in base rates and charges. Also the parties agree that any issues associated with the recently

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approved merger of Chesapeake Utilities and FPUC will be resolved in the pending Chesapeake rate case (Docket No. 090125-GU) and applied to this docket.

6. The Settlement represents an effort by both OPC and FPUC to resolve this docket. Undersigned counsel can represent that both parties fully participated in the formulation of the Settlement and both endorse approval of the Settlement. Approval would be in the best interests of the customers of FPUC.

7. This motion and Settlement are presented for review and approval of the Commission at the earliest opportunity. To this end, the Commission has a regular agenda scheduled November 10, 2009, and FPUC requests that this be taken up at that agenda if possible.

Respectfully submitted this 27th day of October, 2009.


NORMAN H. HORTON, JR.
MESSER, CAPARELLO & SELF, P.A.
Post Office Box 15579
Tallahassee, FL 32317

Attorneys for Florida Public Utilities Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by)
Florida Public Utilities Company's) Docket No. 080366-GU
Gas Division) Filed: October 27, 2009
_____)

STIPULATION AND SETTLEMENT

This Stipulation and Settlement is entered into between the Citizens of the State of Florida by the Office of the Public Counsel (OPC) and Florida Public Utilities Co. (FPUC) for the purpose of settling Docket No. 080366-GU.

Whereas on December 17, 2008, FPUC filed a petition with the Florida Public Service Commission (PSC) seeking approval of an increase of \$9,917,690 to its base rates and charges using the Proposed Agency Action (PAA) process authorized by Section 366.06(4), Florida Statutes; and

Whereas FPUC has provided minimum filing requirements (MFR's) as required by rules of the PSC as well as additional data requested by the PSC and OPC; and

Whereas OPC intervened in this docket on December 30, 2008, and has fully participated in the analysis and review of the petition; and

Whereas on May 27, 2009, the PSC entered Order No PSC-09-0375-PAA-GU authorizing FPUC to increase its rates and charges by \$8,496,230; and

Whereas on June 17, 2009, OPC filed a protest to portions of the PAA order pursuant to Section 120.57, F.S., and Rules 25-22-029 and 28-106.201, Florida Administrative Code; and

Whereas on June 26, 2009, FPUC filed a cross petition; and

ATTACHMENT "A"

Whereas as a result of the protests, the PSC has scheduled additional hearings on this request; and

Whereas both OPC and FPUC are desirous of resolving this request in a manner that minimizes the expenses to all parties; and

Whereas OPC and FPUC are in agreement as to the appropriate and reasonable disposition of this petition.

Now, Therefore, the Parties Agree as follows:

1) OPC and FPUC agree that FPUC shall be entitled to increase its rates and charges so as to produce an additional \$7,969,000 in annual revenues. Rates and charges to produce this revenue shall be developed in the same way the rates were developed for the PAA Order.

2) When the PAA was issued, there was a definitive agreement between FPUC and Chesapeake Utilities (Chesapeake) whereby Chesapeake would acquire FPUC. As a result, the PSC included a "look back" requirement in the order to allow a review of the rates and charges if the merger was approved. The parties acknowledge that Chesapeake has a petition for rate increase pending and, rather than resolving merger related issues in this docket, the parties agree that all merger related activities required or agreed to in Docket No. 090125-GU will be applied to this docket.

3) OPC and FPUC recognize that as a result of this Settlement, FPUC may be required to make a refund to customers. In the event the PSC requires a refund, OPC agrees that such refunds may be made over a period of time not to exceed six (6) months.

4) The parties recognize that this Settlement is subject to approval by the PSC and agree that neither party will advocate or support any change to the terms of this Settlement. Both

parties agree to endorse and support the Settlement before the PSC and any other administrative or judicial tribunal in any form.

5) Upon approval of the Settlement, each party's protests to the PAA Order are resolved and the docket will be closed.

6) The parties acknowledge that all issues not subject to OPC's protest and FPUC cross-protest have been resolved in accordance with the PAA Order.

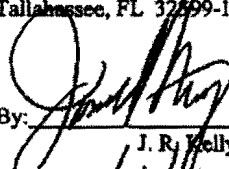
IN WITNESS WHEREOF the parties evidence their acceptance and agreement with the provisions of the Settlement by their signature.

FLORIDA PUBLIC UTILITIES COMPANY
P.O. Box 3395
West Palm Beach, FL 33402-3395

By: 
Norman H. Horton, Jr., Esq.

Date: 10/26/09

OFFICE OF PUBLIC COUNSEL
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

By: 
J. R. Kelly, Esq.

Date: 10/26/09

Docket No. 080366-GU
Date: December 3, 2009

Attachment A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Electronic Mail and/or U. S. Mail this 27th day of October, 2009 upon the following:

Ralph Jaeger, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Patricia Christensen
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison St., Room 812
Tallahassee, FL 32399-1400


NORMAN H. HORTON, JR.

**FLORIDA PUBLIC UTILITIES COMPANY
 PAA ORDER RATES AND SETTLEMENT RATES
 DOCKET NO. 080366-GU**

RATE CODE	RATE SCHEDULE	PAA Order Rates	Settlement Rates
RS	<u>RESIDENTIAL</u>		
	CUSTOMER CHARGE	\$11	\$11
	ENERGY CHARGE (cents/therm)	51.792	49.828
RS-GS	<u>RESIDENTIAL STANDBY GENERATOR SERVICE</u>		
	CUSTOMER CHARGE	\$21.25	\$21.25
	ENERGY CHARGE over 19.80 therms (cents/therm)	51.792	49.828
GS-1/GSTS-1	<u>GENERAL SERVICE 1</u>		
	CUSTOMER CHARGE	\$20	\$20
	ENERGY CHARGE (cents/therm)	40.000	39.136
GS-2/GSTS-2	<u>GENERAL SERVICE 2</u>		
	CUSTOMER CHARGE	\$33	\$33
	ENERGY CHARGE (cents/therm)	40.000	39.136
CS-GS	<u>COMMERCIAL STANDBY GENERATOR SERVICE</u>		
	CUSTOMER CHARGE	\$35.81	\$35.81
	ENERGY CHARGE over 39.53 therms (cents/therm)	40.000	39.136
LVS/LVTS	<u>LARGE VOLUME</u>		
	CUSTOMER CHARGE	\$90	\$90
	ENERGY CHARGE (cents/therm)	36.041	35.366
GLS/GLST	<u>GAS LIGHTING</u>		
	CUSTOMER CHARGE	n/a	n/a
	ENERGY CHARGE (cents/therm)	24.623	24.210
IS/ITS	<u>INTERRUPTIBLE</u>		
	CUSTOMER CHARGE	\$280	\$280
	ENERGY CHARGE (cents/therm)	23.484	23.080