

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: June 30, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Slemkewicz)
Office of the General Counsel (Jaeger)

Handwritten initials and signatures:
ALM
CROSS
JS
SC
[Signature]

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

AGENDA: 07/13/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080366.RCM.DOC

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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 a 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, FPUC's petition was set for formal hearing 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, both the interim rate increase and the implemented PAA rate increase were held subject to refund and were 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 (Stipulation) which was attached and signed by both parties. The Stipulation was approved in Order No. PSC-09-0848-S-GU, issued December 28, 2009. Per the Stipulation, FPUC was authorized an annual rate increase of \$7,969,000 which was less than the previously authorized annual rate increase of \$8,496,230. The Stipulation provided for a refund of the actual difference. Based on a schedule² provided by FPUC, the actual amount of the refund was to be \$292,458, including interest, for the period June 4, 2009 through January 14, 2010. The refund

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.

² Document No. 00598-10, dated January 26, 2010

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was accomplished through a one-time credit on customer bills in February 2010. On April 7, 2010, FPUC filed a refund report³ showing that \$290,719 had actually been refunded.

This recommendation addresses the disposition of any unrefunded amounts. The Commission has jurisdiction pursuant to Sections 366.06(2) and (4), and 366.07, F.S.

³ Document No. 02571-10, dated April 7, 2010.

Discussion of Issues

Issue 1: Has FPUC completed its one-time refund of the difference between the PAA rates approved by Order No. PSC-09-0375-PAA-GU and the Stipulation rates approved in Order No. PSC-09-0848-S-GU? If not, what is the appropriate disposition of any remaining refund amount?

Recommendation: No, there is a remaining refund amount of \$1,739. The Commission should require FPUC to add the remaining refund amount of \$1,739 to its storm damage reserve. (Slemkewicz)

Staff Analysis: Per the Stipulation approved in Order No. PSC-09-0848-S-GU, FPUC was authorized an annual rate increase of \$7,969,000 which was less than the previously authorized annual rate increase of \$8,496,230. The Stipulation provided for a refund of the actual difference between the rate increases. Based on the schedule provided by FPUC, the amount to be refunded was \$292,458, including interest, for the period June 4, 2009, through January 14, 2010. The refund was accomplished through a one-time credit on customer bills in February 2010. Pursuant to FPUC's refund report, only \$290,719 was actually refunded. This results in a remaining refund amount of \$1,739 that is subject to further disposition.

Per Rule 25-7.091, F.A.C., the Commission has discretion concerning the method for disposing of any amounts that have not been refunded. The Commission has various alternatives concerning the disposition of any remaining refund amounts, including: (1) a direct cash refund to individual ratepayers, (2) a credit on the ratepayers' bills, (3) inclusion as a reduction of purchased gas adjustment costs, (4) an offset to certain expenses or regulatory assets, and (5) an increase to certain operating reserves such as environmental clean up or storm damage.

In evaluating the appropriate method for disposing any unrefunded amounts, staff takes into consideration the dollar amount, the administrative efficiency and cost of the disposition method, and the potential benefit to the ratepayers. The remaining \$1,739 refund is immaterial when compared to FPUC's customer base of over 51,000. In the rate case, a target level of \$1,000,000 was established for the storm damage reserve with an annual accrual of \$6,000. As of December 31, 2009, the storm damage reserve had a balance of \$792,204. At the current \$6,000 annual accrual rate, it will take the Company approximately 35 years to reach the \$1,000,000 target level assuming that no storm damage is incurred during that time. Staff believes that the appropriate method for disposing of the remaining \$1,739 refund amount is to increase FPUC's storm damage reserve by that amount. This disposition will benefit all of FPUC's ratepayers in the event that significant storm damage costs are sustained in the future.

In summary, FPUC has not completed the required refund. Due to the relatively immaterial nature of the \$1,739 remaining refund amount, staff is recommending the appropriate disposition method is to increase the storm damage reserve.

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Issue 2: Should this docket be closed?

Recommendation: Yes. At the conclusion of the protest period, if no protest is filed by a substantially affected person, this docket should be closed upon the issuance of a consummating order. In addition, the \$6,000,000 corporate undertaking guaranteed by Florida Public Utilities Company, the consolidated entity, should be released. (Jaeger, Slemkewicz)

Staff Analysis: At the conclusion of the protest period, if no protest is filed by a substantially affected person, this docket should be closed upon the issuance of a consummating order. In addition, the \$6,000,000 corporate undertaking guaranteed by Florida Public Utilities Company, the consolidated entity, should be released.