

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Public Utilities Company.

DOCKET NO. 080366-GU
ORDER NO. PSC-10-0455-PAA-GU
ISSUED: July 16, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER
DISPOSING OF REMAINING REFUND AMOUNTS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

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 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

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of 10.25 percent to 12.25 percent.¹ The Company based its interim request on a historical test year ended December 31, 2007. By Order No. PSC-09-0123-PCO-GU, issued March 3, 2009, we granted the interim rate increase. 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, we issued PAA Order No. PSC-09-0375-PAA-GU (PAA Order) on May 27, 2009, in which we proposed to grant 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, 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. By Order No. PSC-09-0848-S-GU, issued December 28, 2009, we approved the Stipulation. Pursuant to 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. The refund was accomplished through a one-time credit on customer bills in February 2010, and FPUC provided a refund report dated April 7, 2010.

This Order addresses the disposition of any unrefunded amounts. We have jurisdiction pursuant to Sections 366.06(2) and (4), and 366.07, F.S.

Disposition of Any Remaining Refund Amount

Pursuant to 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

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.

between the rate increases. By schedule dated January 26, 2010, FPUC showed that the amount to be refunded was \$292,458, including interest, for the period June 4, 2009, through January 14, 2010. However, by its final refund report, FPUC showed that only \$290,719 was actually refunded. This results in a remaining refund amount of \$1,739 that is subject to further disposition.

Pursuant to Rule 25-7.091, F.A.C., we have discretion concerning the method for disposing of any amounts that have not been refunded. Our alternatives concerning the disposition of any remaining refund amounts include: (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 of any unrefunded amounts, we take 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. We find 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. Therefore, FPUC shall increase the storm damage reserve account by \$1,739.

Based on the foregoing, it is

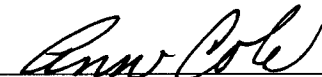
ORDERED by the Florida Public Service Commission that the storm damage reserve account shall be increased by \$1,739 to reflect the appropriate disposition of the remaining refund amount. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that at the conclusion of the protest period, if no protest is filed by a substantially affected person, this docket shall be closed upon the issuance of a Consummating Order. It is further

ORDERED that upon issuance of the Consummating Order, the \$6,000,000 corporate undertaking guaranteed by Florida Public Utilities Company, the consolidated entity, shall be released.

By ORDER of the Florida Public Service Commission this 16th day of July, 2010.



ANN COLE
Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 6, 2010.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.