

Eric Fryson

120189-GU

**From:** Keating, Beth [BKeating@gunster.com]  
**Sent:** Thursday, July 12, 2012 11:46 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** 'Cheryl\_Martin@fpuc.com'; 'J.R. Kelly'  
**Subject:** New Filing - Florida Public Utilities Company Petition for Recognition of Regulatory Liability and Amortization Schedule

**Attachments:** 20120712104610627.pdf

Attached for electronic filing, please find an electronic copy of the Petition of Florida Public Utilities Company for Approval of Recognition of Regulatory Liability and Associated Amortization Schedule. Thank you for your assistance with this filing, and as always, please don't hesitate to let me know if you have any questions.

Sincerely,  
Beth

a. Person responsible for this electronic filing:

Beth Keating  
**Gunster, Yoakley & Stewart, P.A.**  
 215 S. Monroe St., Suite 601  
 Tallahassee, FL 32301  
[bkeating@gunster.com](mailto:bkeating@gunster.com)  
 Direct Line: (850) 521-1706

b. New Filing: Petition of Florida Public Utilities Company for Approval of Recognition of Regulatory Liability and Associated Amortization Schedule

c. On behalf of: Florida Public Utilities Company

d. Total pages: 9

e. Description: Petition for Approval of Recognition of Regulatory Liability and Associated Amortization Schedule

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**GUNSTER**

FLORIDA'S LAW FIRM FOR BUSINESS

Beth Keating | Attorney  
 Governmental Affairs  
 215 S. Monroe Street, Suite 601  
 Tallahassee, FL 32301  
 P 850-521-1706 C 850-591-9228  
[gunster.com](http://gunster.com) | [View my bio](#)

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1 Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230,

7/12/2012

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Writer's Direct Dial Number: (850) 521-1706  
Writer's E-Mail Address: bkeating@gunster.com

July 12, 2012

**VIA E-MAIL FILINGS@PSC.STATE.FL.US**

Ms. Ann Cole, Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**New Filing: Petition for Approval of Recognition of a Regulatory Liability and Associated Amortization Schedule**

Dear Ms. Cole:

Attached for electronic filing, please find Florida Public Utilities Company's Petition for Approval of Recognition of a Regulatory Liability and Associated Amortization Schedule.

Thank you for your assistance with this filing. As always, please do not hesitate to let me know if you have any questions or concerns.

Sincerely,

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

cc: Office of Public Counsel (Kelly)

DOCUMENT NUMBER DATE

04629 JUL 12 2012

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Florida Public Utilities ) Docket No.: 120189-90  
Company for Recognition of Regulatory )  
Liability and Amortization Schedule ) Filed: July 12, 2012

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**PETITION FOR APPROVAL OF  
RECOGNITION OF A REGULATORY LIABILITY AND ASSOCIATED AMORTIZATION  
SCHEDULE**

Florida Public Utilities Company ("FPUC"), by and through undersigned counsel, hereby seeks approval, pursuant to Section 366.076, Florida Statutes, and consistent with Rule 25-14.013, Florida Administrative Code, to record a tax related liability associated with vehicle depreciation as a regulatory liability in Account No. 254 and to amortize that liability over approximately a 3-year period, beginning January 1, 2012, and ending October 30, 2014, to be reflected in Account No. 407.3. FPUC's proposal is revenue neutral and consistent with Accounting Standards Codification (ASC) 740. At this time, the Company is not requesting approval of any rate adjustment.

In support of this Petition, the Company hereby states:

1. Notices and communications with respect to this petition and docket should be addressed to:

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 S. Monroe Street, Suite 601  
Tallahassee, FL 32301-1804

Cheryl Martin  
Director, Regulatory Affairs  
1641 Worthington Road, Suite 220  
West Palm Beach, FL 33409

2. FPUC is an investor-owned natural gas utility providing retail natural gas service to customers in Florida and, pursuant to the provisions of Chapter 366 of the Florida Statutes; it is subject to economic regulation by the Commission. FPUC also has an electric division that likewise is subject to Commission regulation under Chapter 366.

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3. In early 2012, after an internal audit of Company records and completion of income tax related reconciliations, the Company determined that an income tax liability that had originated on FPUC's books prior to its merger with Chesapeake Utilities Corporation, had outlived the applicable statutes of limitation set forth in the Internal Revenue Code and pertinent Income Tax Regulations beyond which the tax is no longer collectible by the Internal Revenue Service (IRS). As such, the related amount is no longer appropriately reflected as a tax related liability included in the deferred tax liability.

4. The amount in question is tied to the Company accounts associated with depreciation on Company vehicles. In the past preparation for income tax filings, the Company calculated the difference in depreciation expense between book and tax basis, which adjusted the book depreciation expense to calculate the depreciation deduction for income tax purposes. In this calculation of the book-to-tax depreciation difference, the Company inadvertently excluded the book depreciation expense related to vehicles as depreciation on vehicles was charged to accounts other than depreciation expense. This resulted in depreciation deduction for tax purposes being overstated and income tax payment being understated. Although the Company underpaid its taxes, the Company, through a different accounting process, accumulated the liability related to the underpayment in a deferred income tax account. Since the tax outlived the applicable statutes of limitation set forth in the Internal Revenue Code and pertinent Income Tax Regulations beyond which the tax is no longer collectible by the Internal Revenue Service (IRS), the associated tax related liability must be written off immediately as a one-time gain or amortized as a Regulatory Liability. The impact applies to both the Electric and Natural Gas divisions as follows:

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| <u>Division</u> | <u>Allocated Amount</u> | <u>Tax Impact</u> | <u>Regulatory Liability</u> |
|-----------------|-------------------------|-------------------|-----------------------------|
| Electric        | 48%                     | \$ 571,495        | \$ 930,395                  |
| Natural Gas     | 52%                     | \$ 619,120        | \$ 1,007,928                |
| <i>Net</i>      |                         | \$1,190,615       | \$ 1,938,323                |

5. Upon recognizing this tax issue, FPUC has endeavored to determine the appropriate regulatory accounting treatment for this amount. The Company believes that the treatment most consistent with prior regulatory treatment of one-time gains would be to record the amount as a regulatory liability in Account No. 254 and amortize that amount over a specified period to be reflected in Account No. 407.3. In this context, the Company suggests that the straight-line methodology historically preferred by the Commission be used in this instance as well. Without regulatory approval for amortization and deferral of the gain, Accounting Standards would require immediate recognition of a one-time gain.

6. As for the amortization period to be applied, the Company asks that it be allowed to implement an amortization period that will synchronize the amortization on this new regulatory liability with the remaining amortization period associated with the regulatory asset the Company was allowed to record to reflect the transaction and transition expenses associated with the merger between FPUC and Chesapeake Utilities Corporation.<sup>1</sup> Not only will amortization over the proposed period allow the new regulatory liability to provide some offset for the previously established regulatory asset, but it will also enable the Company to move this liability off the Company's books within five years of the merger between FPUC and Chesapeake.

7. Specifically, by Order No. PSC-12-0010-PAA-GU ("Acquisition Adjustment Order"), the Commission allowed the Company to record these expenses under Account 182.3 - Other

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<sup>1</sup> See Order No. PSC-12-0010-PAA-GU at p. 12.

Regulatory Assets, which includes "the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies." (18 CFR 182.3) The Commission further approved amortization of that regulatory asset over a 5-year period, beginning November 2009, with amortization recorded in Account 407.3 - Regulatory Debits. Acquisition Adjustment Order at p. 12. As such, that regulatory asset will be fully amortized by October 2014. If the Company is now allowed to record this income tax related liability as a new regulatory liability, amortization of the recorded amount over the remaining period associated with regulatory asset approved in the Acquisition Adjustment Order will, to an extent, offset some of the impact of the previously established regulatory asset. The Company suggests that this method will ensure that the impact of the newly recorded liability associated with the tax related liability will be appropriately revenue neutral and amortized in a manner that will not only have no impact on rates, but will also lessen the impact of the prior regulatory asset established in the Acquisition Adjustment Order. As such, FPUC asks that it be allowed to record the proposed regulatory liability over the period beginning January 1, 2012 and ending October 31, 2014. The Company believes this proposal is in the best interests of both the Company and its ratepayers.

8. Attachment A to this Petition is a spreadsheet reflecting the detail of the tax related liability tax impact associated with the vehicle depreciation account. The spreadsheet details the impact of the amortization over the proposed period versus a proforma five year period.

WHEREFORE, for all the foregoing reasons, FPUC respectfully requests that the

Commission granted the relief requested herein.

Respectfully submitted this 12th day of July, 2012.

A handwritten signature in black ink, appearing to read "Beth Keating", written over a horizontal line.

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706  
*Attorneys for Florida Public Utilities Company*



Vehicle Expenses - Tax Related Liability

|      | Vehicle Asset Balance |           |           | Average<br>Vehicle - FPU | Vehicle<br>Depreciation<br>- FPU | Vehicle<br>Depr Rate<br>- FPU                 | Average<br>Vehicle<br>- Flo Gas | Vehicle<br>Depreciation<br>- Flo Gas | Vehicle<br>Depr Rate<br>- Flo Gas             |
|------|-----------------------|-----------|-----------|--------------------------|----------------------------------|---|---------------------------------|--------------------------------------|---|
|      | FPU                   | FLO GAS   | TOTAL     |                          |                                  |   |                                 |                                      |   |
| 1995 | 3,611,063             | 476,189   | 4,087,251 |                          |                                  |   |                                 |                                      |   |
| 1996 | 3,485,939             | 476,189   | 3,962,128 |                          |                                  |   |                                 |                                      |   |
| 1997 | 3,669,420             | 464,089   | 4,133,509 |                          |                                  |   |                                 |                                      |   |
| 1998 | 3,674,073             | 464,089   | 4,138,162 |                          |                                  |   |                                 |                                      |   |
| 1999 | 4,011,719             | 424,766   | 4,436,486 |                          |                                  |   |                                 |                                      |   |
| 2000 | 3,951,735             | 733,973   | 4,685,708 |                          |                                  |   |                                 |                                      |   |
| 2001 | 4,516,343             | 1,069,571 | 5,585,915 |                          |                                  |   |                                 |                                      |   |
| 2002 | 4,700,436             | 1,273,185 | 5,973,621 |                          |                                  |   |                                 |                                      |   |
| 2003 | 5,049,980             | 1,365,858 | 6,415,838 |                          |                                  |   |                                 |                                      |   |
| 2004 | 5,289,199             | 1,544,510 | 6,833,709 |                          |                                  |   |                                 |                                      |   |
| 2005 | 5,662,385             | 1,684,064 | 7,346,449 |                          |                                  |   |                                 |                                      |   |
| 2006 | 6,376,803             | 2,066,053 | 8,442,856 | 6,019,594                | 506,402                          | 8.41% A                                       | 1,875,059                       | 188,753                              | 10.07% A                                      |
| 2007 | 6,505,722             | 2,150,624 | 8,656,346 | 6,441,262                | 561,979                          | 8.72% A                                       | 2,108,339                       | 226,519                              | 10.74% A                                      |
| 2008 | 6,970,164             | 2,097,989 | 9,068,153 | 6,737,943                | 454,828                          | 6.75% A                                       | 2,124,306                       | 205,064                              | 9.65% A                                       |
|      |                       |           |           |                          |                                  | 7.96%   |                                 |                                      | 10.15%  |
|      |                       |           |           |                          |                                  | Average vehicle depreciation rate (2006-2008) |                                 |                                      | Average vehicle depreciation rate (2006-2008) |

A 2006-2008 returns amended to correct the issue.

|      | FPU                |                                 |                                      | Flo Gas            |                                 |                                      | TOTAL              |                                      |
|------|--------------------|---------------------------------|--------------------------------------|--------------------|---------------------------------|--------------------------------------|--------------------|--------------------------------------|
|      | Average<br>Vehicle | Average<br>Vehicle<br>Depr Rate | Estimated<br>Vehicle<br>Depreciation | Average<br>Vehicle | Average<br>Vehicle<br>Depr Rate | Estimated<br>Vehicle<br>Depreciation | Average<br>Vehicle | Estimated<br>Vehicle<br>Depreciation |
| 1995 |                    |                                 |                                      |                    |                                 |                                      |                    |                                      |
| 1996 | 3,548,501          | 7.96%                           | 282,549                              | 476,189            | 10.15%                          | 48,355                               | 4,024,689          | 330,904                              |
| 1997 | 3,577,680          | 7.96%                           | 284,873                              | 470,139            | 10.15%                          | 47,741                               | 4,047,818          | 332,613                              |
| 1998 | 3,671,747          | 7.96%                           | 292,363                              | 464,089            | 10.15%                          | 47,126                               | 4,135,836          | 339,489                              |
| 1999 | 3,842,896          | 7.96%                           | 305,990                              | 444,428            | 10.15%                          | 45,130                               | 4,287,324          | 351,120                              |
| 2000 | 3,981,727          | 7.96%                           | 317,045                              | 579,369            | 10.15%                          | 58,832                               | 4,561,097          | 375,877                              |
| 2001 | 4,234,039          | 7.96%                           | 337,135                              | 901,772            | 10.15%                          | 91,571                               | 5,135,811          | 428,706                              |
| 2002 | 4,608,390          | 7.96%                           | 366,943                              | 1,171,378          | 10.15%                          | 118,948                              | 5,779,768          | 485,891                              |
| 2003 | 4,875,208          | 7.96%                           | 388,188                              | 1,319,521          | 10.15%                          | 133,992                              | 6,194,729          | 522,180                              |
| 2004 | 5,169,590          | 7.96%                           | 411,628                              | 1,455,184          | 10.15%                          | 147,768                              | 6,624,774          | 559,396                              |
| 2005 | 5,475,792          | 7.96%                           | 436,010                              | 1,614,287          | 10.15%                          | 163,924                              | 7,090,079          | 599,933                              |
| 2006 |                    |                                 |                                      |                    |                                 |                                      |                    |                                      |
| 2007 |                    |                                 |                                      |                    |                                 |                                      |                    |                                      |
| 2008 |                    |                                 |                                      |                    |                                 |                                      |                    |                                      |
|      | <u>42,985,570</u>  |                                 | <u>3,422,724</u>                     | <u>8,896,356</u>   |                                 | <u>903,386</u>                       | <u>51,881,925</u>  | <u>4,326,110</u>                     |
|      | 82.85%             |                                 | 79.12%                               | 17.15%             |                                 | 20.88%                               |                    |                                      |

Total estimated vehicle depreciation (1996-2005)

38.575% FPU / Flo Gas effective tax rate - current  
 1,668,797 Potential deferred tax build-up - estimated

1,470,163 Deferred tax variance at 12/31/2010

|  | Based on<br>Estimated<br>Vehicle<br>Depreciation | Based on<br>Average<br>Vehicle | Average          | Tax<br>Impact    | Regulatory<br>Liability |
|--|--|--------------------------------|------------------|------------------|-------------------------|
| Income tax related variance at 12/31/2010 (related to depreciation)                      | 1,470,163  | 1,470,163                      |                  |                  |                         |
| Estimated portion of vehicle depreciation tax issue caused by regulated businesses (FPU) | 79.12%   | 82.85%                         |                  |                  |                         |
| Income tax related variance attributed to regulated businesses (FPU)-estimated           | 1,163,161  | 1,218,070                      | 1,190,615        | 1,190,615        | 1,938,323               |
| Electric   | 48%  | 558,317                        | 584,673          | 571,495          | 930,395                 |
| Natural Gas  | 52%  | 604,844                        | 633,396          | 619,120          | 1,007,928               |
| Net  |  | <u>1,163,161</u>               | <u>1,218,069</u> | <u>1,190,615</u> | <u>1,938,323</u>        |

Tax Rate 38.575%

Florida Public Utilities Company  
 Recognition of Regulatory Liability and Amortization Schedule

Vehicle Plant Balances

|      | <u>FPU</u> | <u>FLO GAS</u> | <u>TOTAL</u> | <u>ITB</u> | <u>Electric</u> | <u>Natural Gas</u> | <u>Total</u> |
|------|------------|----------------|--------------|------------|-----------------|--------------------|--------------|
| 1995 | 3,611,063  | 476,189        | 4,087,251    | 4,087,251  | 1,956,741       | 1,654,321          | 3,611,063    |
| 1996 | 3,485,939  | 476,189        | 3,962,128    | 3,962,128  | 1,779,736       | 1,706,203          | 3,485,939    |
| 1997 | 3,669,420  | 464,089        | 4,133,509    | 4,133,509  | 1,875,331       | 1,794,089          | 3,669,420    |
| 1998 | 3,674,073  | 464,089        | 4,138,162    | 4,138,162  | 1,797,486       | 1,876,587          | 3,674,073    |
| 1999 | 4,011,719  | 424,766        | 4,436,486    | 4,436,486  | 2,080,090       | 1,931,629          | 4,011,719    |
| 2000 | 3,951,735  | 733,973        | 4,685,708    | 4,685,708  | 2,128,624       | 1,823,111          | 3,951,735    |
| 2001 | 4,516,343  | 1,069,571      | 5,585,915    | 5,585,915  | 2,247,033       | 2,269,310          | 4,516,343    |
| 2002 | 4,700,436  | 1,273,185      | 5,973,621    | 5,973,621  | 2,394,447       | 2,305,990          | 4,700,436    |
| 2003 | 5,049,980  | 1,365,858      | 6,415,838    | 6,415,838  | 2,679,108       | 2,370,872          | 5,049,980    |
| 2004 | 5,289,199  | 1,544,510      | 6,833,709    | 6,833,709  | 2,688,240       | 2,600,959          | 5,289,199    |
| 2005 | 5,662,385  | 1,684,064      | 7,346,449    | 7,346,449  | 2,627,679       | 3,034,706          | 5,662,385    |
| 2006 | 6,376,803  | 2,066,053      | 8,442,856    | 8,442,856  | 2,814,039       | 3,562,764          | 6,376,803    |
| 2007 | 6,505,722  | 2,150,624      | 8,656,346    | 8,656,346  | 2,805,435       | 3,700,287          | 6,505,722    |
| 2008 | 6,970,164  | 2,097,989      | 9,068,153    | 9,068,153  | 3,028,892       | 3,941,272          | 6,970,164    |
| 2009 | 7,128,304  | 1,139,542      | 8,267,846    | 8,267,846  | 3,005,903       | 4,122,401          | 7,128,304    |
| Net  | 74,603,286 | 17,430,690     | 92,033,976   | 92,033,976 | 35,908,784      | 38,694,502         | 74,603,286   |

Percentage

48.00%

52.00%

**Amortization Comparison**

**Proposed Period January 1, 2012 through October 31, 2014:**

|                                | 2012             | 2013             | 2014             | 2015 | 2016 | Total            |
|--------------------------------|------------------|------------------|------------------|------|------|------------------|
| <b>Electric</b>                |                  |                  |                  |      |      |                  |
| Amortization Expense/(Income)  | (328,375)        | (328,375)        | (273,645)        |      |      | (930,395)        |
| Income Tax Expense /(Income)   | 126,671          | 126,671          | 105,558          |      |      | 358,900          |
| Net Operating Expense/(Income) | <u>(201,704)</u> | <u>(201,704)</u> | <u>(168,087)</u> | -    | -    | <u>(571,495)</u> |
| <b>Natural Gas</b>             |                  |                  |                  |      |      |                  |
| Amortization Expense/(Income)  | (355,739)        | (355,739)        | (296,450)        |      |      | (1,007,928)      |
| Income Tax Expense /(Income)   | 137,226          | 137,226          | 114,356          |      |      | 388,808          |
| Net Operating Expense/(Income) | <u>(218,513)</u> | <u>(218,513)</u> | <u>(182,094)</u> | -    | -    | <u>(619,120)</u> |

**Proforma Period January 1, 2012 through December 31, 2016:**

|                                | 2012             | 2013             | 2014             | 2015             | 2016             | Total            |
|--------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Electric</b>                |                  |                  |                  |                  |                  |                  |
| Amortization Expense/(Income)  | (186,079)        | (186,079)        | (186,079)        | (186,079)        | (186,079)        | (930,395)        |
| Income Tax Expense /(Income)   | 71,780           | 71,780           | 71,780           | 71,780           | 71,780           | 358,900          |
| Net Operating Expense/(Income) | <u>(114,299)</u> | <u>(114,299)</u> | <u>(114,299)</u> | <u>(114,299)</u> | <u>(114,299)</u> | <u>(571,495)</u> |
| <b>Natural Gas</b>             |                  |                  |                  |                  |                  |                  |
| Amortization Expense/(Income)  | (201,586)        | (201,586)        | (201,586)        | (201,586)        | (201,584)        | (1,007,928)      |
| Income Tax Expense /(Income)   | 77,762           | 77,762           | 77,762           | 77,762           | 77,760           | 388,808          |
| Net Operating Expense/(Income) | <u>(123,824)</u> | <u>(123,824)</u> | <u>(123,824)</u> | <u>(123,824)</u> | <u>(123,824)</u> | <u>(619,120)</u> |

**Difference between Proposed and Proforma:**

|                                | 2012            | 2013            | 2014            | 2015           | 2016           | Total    |
|--------------------------------|-----------------|-----------------|-----------------|----------------|----------------|----------|
| <b>Electric</b>                |                 |                 |                 |                |                |          |
| Amortization Expense/(Income)  | (142,296)       | (142,296)       | (87,566)        | 186,079        | 186,079        | -        |
| Income Tax Expense /(Income)   | 54,891          | 54,891          | 33,778          | (71,780)       | (71,780)       | -        |
| Net Operating Expense/(Income) | <u>(87,405)</u> | <u>(87,405)</u> | <u>(53,788)</u> | <u>114,299</u> | <u>114,299</u> | <u>-</u> |
| <b>Natural Gas</b>             |                 |                 |                 |                |                |          |
| Amortization Expense/(Income)  | (154,153)       | (154,153)       | (94,864)        | 201,586        | 201,584        | -        |
| Income Tax Expense /(Income)   | 59,464          | 59,464          | 36,594          | (77,762)       | (77,760)       | -        |
| Net Operating Expense/(Income) | <u>(94,689)</u> | <u>(94,689)</u> | <u>(58,270)</u> | <u>123,824</u> | <u>123,824</u> | <u>-</u> |