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May 28, 2019

**VIA E-PORTAL FILING**

Mr. Adam J. Teitzman  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Petition for Approval of Demand Side Management Goals and Residential  
Customer Assisted and Commercial Walk-through Energy Audit  
Programs, by Peoples Gas System; Docket No. 20180186-GU

Dear Mr. Teitzman:

Attached for electronic filing in the above docket on behalf of Peoples Gas System,  
please find its Petition for Waiver of Rule 25-17.003(3)(a) and (b), F.A.C.

Thank you for your assistance with this matter. If you have any further questions  
or comments, please do not hesitate to let me know.

Sincerely,

Andrew M. Brown

AB/plb

cc: Office of Public Counsel, Patty Christensen  
Douglas Wright, Engineering Specialist, FPSC  
Mr. Mark R. Roche  
Ms. Paula K. Brown  
Ansley Watson, Jr., Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Peoples Gas System for )  
approval of DSM Goals and Residential )  
Customer Assisted and Commercial )  
Walk-Through Energy Audit DSM Programs)

DOCKET NO. 20180186-GU

FILED: May 28, 2019

**PETITION FOR WAIVER OF RULE 25-17.003(3)(a) and (b), F.A.C.**

Peoples Gas System ("Peoples" or "the company"), pursuant to Sections 366.82, 366.05 and 366.06, Florida Statutes, and Rule 25-17.001, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Public Service Commission ("Commission"), pursuant to Section 120.542, Florida Statutes and Rule 28-104.002, F.A.C., for a waiver of Rule 25-17.003(a) and (b), F.A.C., and as grounds therefor, say:

1. Peoples Gas System ("PGS") is an investor-owned public utility regulated by the Commission pursuant to Chapter 366, Florida Statutes. PGS is subject to the Florida Energy Efficiency and Conservation Act ("FEECA"), which is codified at Sections 366.80 through 366.83 and Section 403.519 of the Florida Statutes.

2. As a "utility," PGS is subject to Rule 25-17.003 of the F.A.C. (the "Energy Audit Rule").<sup>1</sup> The Energy Audit Rule requires PGS to offer residential customers Building Energy-Efficiency Rating System ("BERS") Audits, Computer-Assisted Audits and Walk-Through Audits. *See* R. 25-17.003(3)(a)-(b), F.A.C.

3. All three types of audits are performed on site at the customer's residence. *See* R. 25-17.003(7)(a), F.A.C. ("Upon arrival at a residence..."); *see also* R. 25-17.003(2)(b) (defining a "Computer-Assisted Audit" to include an "on-site evaluation"); R. 25-17.003(2)(i), F.A.C. (in a Walk-Through Audit, "a qualified auditor walks through the residence").

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<sup>1</sup> The Rule applies to a "utility," which is defined to include an "entity...which provides...natural gas at retail to the public." § 366.81(2), Fla. Stat.

4. PGS hereby seeks a waiver from the “on-site evaluation” and Walk-Through Audit requirements because the purpose of the underlying statute can be achieved by other means and strict compliance with these applications of the Rule would result in a substantial hardship to PGS.

5. The Florida Legislature has recognized that “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances.” § 120.542(1), Fla. Stat.

6. As a result, the Legislature gave agencies the authority to grant variances and waivers from the requirements of their rules, provided certain requirements are met. § 120.542(1), Fla. Stat.

7. A waiver or variance “shall be granted” where a person demonstrates: (1) that the person subject to the rule will achieve the purpose of the underlying statute by other means; and (2) strict application of the rule would create a “substantial hardship” for the person subject to the rule. § 120.542(2), Fla. Stat. Both requirements are met here.

8. The purpose of the underlying statute can be achieved by other means. Under the rule, PGS will be providing an electronic, online-only version of the computer-assisted audit. At the time when the Energy Audit Rule was developed, electronic, online energy audits did not exist which necessitated the performance of an on-site energy audit in order to ensure that all pertinent information regarding energy usage was obtained by the utility. Because of the advancement and capabilities of electronic, online energy audits, utilities are able to gather sufficient information electronically and online so that they can provide customers with immediate feedback and recommendations on their energy usage by answering questions prompted by the online audit. The electronic, online-only version of the company’s computer-assisted audits will provide customers the same type of feedback and recommendations regarding their energy usage and ways to improve the efficiency of that appliance usage as would be provided in an on-site audit.

9. A strict application of the Energy Audit Rule would also be inconsistent with the purpose of the underlying statute. The Energy Audit Rule implements Section 366.82 of the Florida Statutes, which requires the Commission to adopt “goals for increasing the efficiency of energy consumption.” § 366.82(2), Fla. Stat. In establishing the goals, the Commission is directed to consider “the costs and benefits” of each available conservation and efficiency measure. § 366.82(3), Fla. Stat. The Commission is also granted “the flexibility to modify or deny plans or programs that would have an undue impact on the costs passed on to customers.” § 366.82(7), Fla. Stat. As explained below, strict application of the Energy Audit Rule would have precisely such an “undue impact” on those costs.

10. A strict application of the Rule would also create a “substantial hardship.” That term is defined to include “a demonstrated economic...hardship.” § 120.542(2), Fla. Stat. Applying the on-site audit requirement would result in significant economic hardship to PGS and its customers.

11. PGS is headquartered in Tampa but serves customers in all or portions of twenty-six Florida Counties. PGS’ service territory is non-contiguous and spans the state from Dade County in the southeast to Bay County in the northwest.<sup>2</sup>

12. To satisfy the in-person energy audit requirement, PGS would need to dispatch employees based in the Tampa area across the entire service territory or position employees throughout its service territory, resulting in significant costs in terms of employee time and travel expenses to provide these audit services upon request. For instance, a PGS employee might be dispatched from Hillsborough County (Tampa) to perform a single walk-through audit requested by a customer in Bay County (Panama City). If PGS were required to have its employees physically present in each of its divisions to be available to perform every energy audit, the

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<sup>2</sup> See <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/May%202018.pdf> (last visited April 25, 2019).

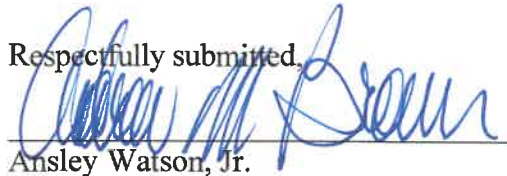
company would need to employ multiple additional energy audit personnel to comply given the expanse of the company's service territory. Alternatively, PGS could outsource the energy audits to third parties, incurring incremental labor costs in the process. PGS estimates that either option could result in a cost per audit to the company due to time, travel time, travel expenses, and idle time would drive the average cost per audit well over \$500 per audit.

13. In short, PGS will achieve the energy-efficiency goals of the Energy Audit Rule through online energy audits, and strict application of the Rule would run counter to the purposes of its underlying statute and impose a substantial economic hardship on PGS and its customers with little if any benefit to customers. As a result, the requirements for a waiver under Section 120.542 are met.

14. PGS respectfully requests that the Commission grant a waiver from the on-site audit requirements and performance of the BERS and Walk-Through Energy Audits found in Rule 25-17.003(3)(a) and (b) pursuant to Section 120.542 of the Florida Statutes.

DATED this 28th day of May, 2018.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing have been furnished via electronic mail, this 28th day of May 2019, to the following:

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Andrew M. Brown