

State of Florida



Public Service Commission

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

DATE: January 6, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Brown)
Division of Economic Regulation (Baxter)

RE: Docket No. 041307-EI – Petition for declaratory statement, or in the alternative, petition for waiver of Rule 25-6.100(2)(c), F.A.C., by Gulf Power Company.

AGENDA: 01/18/05 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: 90-day deadline for disposition of petition – 01/31/05

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041307.RCM.DOC

Case Background

On May 12, 2004, Gulf Power Company (Gulf) filed a petition for authority to implement its proposed FlatBill rate schedule, an optional pricing program that offers residential and small commercial customers a fixed monthly electric bill regardless of kilowatt-hour (kWh) usage for 12 months. The Commission approved the FlatBill program by Order No. PSC-04-1052-TRF-EI, issued October 27, 2004, in Docket No. 040442-EI, In re: Petition for authority to implement proposed FlatBill rate schedule by Gulf Power Company. The Commission found that the program provided a valuable billing option for residential and small business customers who would benefit from predictable, level bills throughout the year.

As one of the conditions for Commission approval of the Flatbill program, Gulf proposed to petition for a waiver of Rule 25-6.100, Florida Administrative Code, which prescribes certain requirements for customer billing. Gulf's petition, filed November 1, 2004, asks either for a declaratory statement that portions of Rule 25-6.100 are not applicable to billings under the FlatBill program, or for a waiver of portions of that rule. Specifically Gulf has asked for relief from subparts 1, 2 and 4 of subsection (2)(c) of the rule which is attached to this

recommendation as Attachment A. A notice that the Commission received the petition was published in the November 24, 2004, Florida Administrative Weekly. No comments were filed. On December 28, 2004, after conversations with staff concerning the most efficient handling of its petition, Gulf sent a letter (Attachment B) requesting that the Commission defer a decision on the declaratory statement request in its petition, pending a decision on its rule waiver request. Gulf asserted that if the Commission approved its request for a rule waiver, the declaratory statement would not be necessary.

This is staff's recommendation to grant Gulf's petition for a waiver of this rule. In light of Gulf's recent letter, staff has not addressed Gulf's declaratory statement request at this time. The Commission has jurisdiction over this matter pursuant to sections 366.05 and 120.542, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Gulf's petition for a waiver of subparts (2), (3) and (4) of Rule 25-6.100 (2)(c), Florida Administrative Code?

Recommendation: Yes. The Commission should grant Gulf's petition for a rule waiver. (BROWN, BAXTER)

Staff Analysis: Section 120.542, Florida Statutes, generally provides that a person subject to an administrative agency's rules may petition for a variance or waiver of the rules under certain circumstances. Section 120.542(2), Florida Statutes, provides a two-pronged test for determining when waivers and variances from agency rules shall be granted:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Rule 25-6.100(2)(c) of the customer billing rule requires that the customer's bill must separately list a series of specific charges and fees, including the customer charge, the energy charge in cents per kWh, and the fuel cost in cents per kWh. According to Gulf the purpose of the rule is to provide a customer receiving electric service based on monthly electricity usage a statement of the specific charges that make up the monthly bill in order to verify the calculation of the amount the customer owes. Gulf asserts that Rule 25-6.100(2)(c) implements section 366.05(1), Florida Statutes, which grants the Commission the power to prescribe the service rules and regulations to be observed by each utility. The requirements of the rule are stated in mandatory terms, and there are no exceptions incorporated in the rule. Therefore, Gulf's bills issued under its new FlatBill pricing program would be subject to the rule's requirements unless the Commission grants a waiver of those requirements.

As Gulf explains in its petition, the FlatBill rate schedule will offer eligible residential and small commercial customers the opportunity to pay a fixed monthly electric bill regardless of actual kWh usage for 12 months. The customer's bill will contain a single line item charge in lieu of all customer charges, energy charges, and cost recovery clause charges that would otherwise be applicable under either the Residential or General Service rate schedules. The only information the customer will need to verify the correct billing amount is the set monthly amount set out in the FlatBill offer to the customer. A bill under the FlatBill rate schedule will not change from one month to another based on usage. Gulf explains that there is no reasonable way to comply with the rule under the Flatbill pricing program, and any attempt to restructure a bill issued under the program to comply with the rule would be misleading to the customer. Gulf contends that compliance with the rule for billing under the FlatBill program would not

accomplish the purpose of the rule, which is to assist customers in verifying the accuracy of their bills. Breaking out charges on a monthly basis based on usage would not result in a calculation that matched a customer's monthly bill under the FlatBill rate schedule. Gulf states that application of the rule under these circumstances would not be fair to customers because it would produce inaccurate and misleading billing information, just the opposite of what the rule intended. Gulf also states that compliance with the rule would create hardship for Gulf as well, because it could increase customer inquiries and complaints.

Staff agrees that a waiver of the identified subparts of the Commission's customer billing rule for bills issued to customers participating in Gulf's FlatBill program is reasonable and appropriate under section 120.542, Florida Statutes. The purpose of the relevant underlying statute, section 366.05, to set appropriate service rules and regulations for utilities, is accomplished by the Commission's approval of the FlatBill tariff that describes the set monthly calculation for FlatBill. Further, staff agrees that application of Rule 25-6.100(2)(c) to the FlatBill program would be unfair to the FlatBill customers and to Gulf, because it would hinder those customers' ability to understand their bills, not improve it. For these reasons, Staff recommends that the Commission grant Gulf's request for a waiver of subparts (1), (2) and (4) of Rule 25-6.100(2)(c), Florida Administrative Code. If the Commission grants the waiver petition, as Gulf states in its December 28, 2004, letter, the declaratory statement portion of its petition is moot.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (BROWN)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.