

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: April 6, 2006

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

FROM: Division of Economic Regulation (Gardner)
Division of Competitive Markets & Enforcement (Bulecza-Banks)
Office of the General Counsel (Fleming)

RE: Docket No. 060199-GU – Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by July 14, 2006, by Peoples Gas System.

AGENDA: 04/18/06 – Regular Agenda – Proposed Agency Action– Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: June 6, 2006 – Petition Deemed Approved If Not Granted Or Denied Within 90 Days of Receipt

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060199.RCM.DOC

Case Background

Peoples Gas Company (Peoples or the company) filed its last depreciation study on April 2, 2001, with an effective date of January 1, 2002. Rule 25-7.045(8)(a), Florida Administrative Code, requires gas utilities to file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission. In accordance with this Rule, Peoples' next depreciation study was due on or before April 3, 2006.

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On March 8, 2006, Peoples filed a petition for a waiver of the filing deadline imposed by Rule 25-7.045, Florida Administrative Code, and asked for an extension of its depreciation study filing date until July 14, 2006, and succeeding depreciation studies by July 14 at least every five years thereafter.

Pursuant to Section 120.542(6), Florida Statutes, the notice of Peoples' petition was submitted to the Secretary of State for publication in the March 24, 2006, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code. In accordance with section 120.542(8), Florida Statutes, the petition is deemed approved if the Commission does not grant or deny it by June 6, 2006.

The Commission has jurisdiction pursuant to Sections 120.542, 350.115, and several provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06.

Discussion of Issues

Issue 1: Should Peoples Gas System's request for a waiver of Rule 25-7.045(8)(a), Florida Administrative Code, be granted?

Recommendation: Yes. The Commission should grant Peoples' waiver request for an extension of time to file its depreciation study no later than July 14, 2006. The petition satisfies the statutory criteria for a rule waiver. (Gardner, Fleming)

Staff Analysis: Section 120.542(2), Florida Statutes, provides that waivers and variances from agency rules 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 a 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.

The company seeks a waiver of Rule 25-7.045(8)(a), Florida Administrative Code, to extend the filing date for the current depreciation study until July 14, 2006, and to file the succeeding studies every five years thereafter. The company states that the granting of this waiver will enable it to comply in the future with Rule 25-7.045(8)(a), Florida Administrative Code, in a timely, cost effective, and accurate manner based upon the required fiscal year data.

Peoples asserts that Rule 25-7.045, Florida Administrative Code, implements a number of Florida Statutes including Sections 350.115 and 366.06(1). Section 350.115, Florida Statutes, gives the Commission authority to "prescribe by rule uniform systems and classification of accounts for each type of regulated company and approve or establish adequate fair and reasonable depreciation rates and charges." Section 366.06(1), Florida Statutes, gives the Commission authority to:

. . . investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and to keep a current record of the net investment of each public service, and to keep a current record of the net investment of each public utility company, and such property which value, as determined by the Commission, shall be used for rate making purposes and shall be the money honestly and prudently invested by the public utility company in such property...less accrued depreciation . . .

Peoples contends that its requested rule waiver serves the purpose of these underlying statutes by providing the data required by the rule on a cost effective basis. Staff agrees with

Peoples' analysis of underlying statutes and believes that granting the company's requested waiver will satisfy the purposes of these statutes.

Staff believes that the company has adequately demonstrated that application of the rule would create a substantial economic hardship since its fiscal year coincides with the calendar year, which ends December 31. The additions and retirements to plant-in-service and depreciation reserves critical to a comprehensive depreciation study for the year ended December 31, 2005, are not available until after the year end. Peoples has limited accounting staff who are responsible for plant accounting, depreciation studies, year-end closing throughout the year, preparation of regulatory reports for the U.S. Department of Transportation and this Commission, internal reporting data, and uniform statistical and annual reports. The company's current staff was able to handle its workload until the implementation of the Sarbanes-Oxley Act which created intensified audits of the books after year-end closing requirements. The preparation required for the depreciation studies occurs during Peoples' busiest period of the year and would hinder them from producing a depreciation study which is in compliance with the Commission's rule. The limited staff and the increase in their workload following each year end will impose an ongoing substantial hardship within the meaning of Section 120.542(2), Florida Statutes.

The extension of time requested by Peoples should be considered reasonable and provides no hardship to staff or other utilities in scheduling future depreciation studies. As Peoples noted, this will allow the preparation of future depreciation filings by its limited plant accounting staff to be in accordance with the Commission's rule. Staff recommends that Peoples' request to submit its depreciation study no later than July 14, 2006, and succeeding depreciation studies by July 14 at least every five years hereafter be approved.

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Issue 2: Should this docket be closed?

Recommendation: 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. (Fleming)

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.