

Florida Public Service Commission
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 5, 1991

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF APPEALS (BROWN) *MCB DES*
DIVISION OF LEGAL SERVICES (VANDIVER) *W*
DIVISION OF ADMINISTRATION (WARD) *W*
DIVISION OF ELECTRIC AND GAS (McCORMICK, BULECZA-BANKS) *Jim RLT* *WRB*

SUBJECT: DOCKET NO. 910031-GU - PROTESTS BY NATURAL GAS UTILITIES OF APPLICATION OF REGULATORY ASSESSMENT FEE RULE DURING PERIOD OF JANUARY-JUNE 1990.

AGENDA: 4/18/91 - CONTROVERSIAL AGENDA - PARTIES MAY NOT PARTICIPATE

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

CASE BACKGROUND

Several natural gas utilities have protested the Commission's application of its regulatory assessment fee rule for the assessment period of January through June, 1990. Staff brings this recommendation before the Commission today to suggest that the protest be set for an informal hearing under the provisions of Section 120.57(2), Florida Statutes. Staff recommends that the companies protesting the Commission's action, and any other gas utilities that choose to participate in this docket, should submit written briefs explaining their objections and their substantive arguments in support of those objections to the Commission for its determination.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission set the gas utilities' protest of the application of the 1990 changes to the regulatory assessment fee rate for an informal 120.57(2) hearing?

DOCUMENT NUMBER-DATE

03290 APR-4 1991

FPSC-RECORDS/REPORTING

RECOMMENDATION: Yes. The Commission should order the utilities to file briefs outlining their objections to the application of the regulatory assessment fee rule and the substantive legal bases of those objections. There are no factual issues in dispute in this docket, and the Commission can resolve the protests by resolution of the legal issues. The briefs should be filed within 30 days of the issuance of the order.

STAFF ANALYSIS: The utilities' protest arises from the following facts:

During the 1989 legislative session, as part of its extensive revision of Chapter 366, Florida Statutes, the Legislature adopted a specific statute to govern regulatory assessment fees for all electric and gas utilities. Section 366.14, Florida Statutes, raised the limit for regulatory assessment fees charged investor owned gas utilities to 0.5 percent of gross operating revenues. It also specifically provided, for the first time, that municipals and gas districts were to be assessed the cost of the Commission's safety regulation. The statute set the limit for fees assessed municipals and gas districts at 0.25 percent of gross operating revenues. The statute said:

"Notwithstanding any provision of law to the contrary, each regulated company under the jurisdiction of the commission which was in operation for any part of the preceding 6-month period shall pay to the commission within 30 days following the end of each 6-month period a fee based upon its gross operating revenues for that period.

On the basis of the Commission's projected costs of operation for 1990 and the utilities' projected revenues for that period, Docket No. 891203-GU was opened to amend Rule 25-7.0131, Florida Administrative Code. Staff proposed that the regulatory assessment fees for the gas industry should be raised.

The Commission held a workshop for the gas industry on the proposed assessment fees increase on September 20, 1989. On the basis of the information received at the workshop, the staff recommended that the Commission increase its regulatory assessment fees for all natural gas utilities. The increase was needed to fund the Commission's projected operating budget for the 1990 fiscal year and to adhere to the legislative directive of section 350.113(3), Florida Statutes, that regulatory fees should ". . . to the extent practicable, be related to the cost of regulating such type of regulated company." Staff recommended that municipals and

gas districts should be assessed a fee for safety regulation for the first time. Staff proposed a fee rate of 1/4 of one percent for gas municipals and gas districts and an increase from 1/8 of one percent to 3/8 of one percent for investor-owned utilities.

The Commission approved the proposed increases on December 5, 1989. The Notice of Rulemaking was published in the Florida Administrative Weekly on December 22, 1989, with a hearing date set for January 29, 1990, if a hearing was requested. A hearing was requested by the gas municipals and districts, which contested the revenue figures the Commission staff had used to calculate the fee rate for them. The investor-owned utilities did not participate in the hearing.

At the hearing the utilities and the staff agreed that the assessment rate should be lowered for municipals and gas districts on the basis of revised revenue figures the utilities prepared for the hearing. The rate for investor-owned utilities remained at 3/8 of one percent. The hearing officer recommended that the Commission adopt the reduced rate of .1919 percent for municipals and districts, and the Commission did so at its Agenda Conference on March 20, 1990. Rule 25-7.0131 became final on April 25, 1990.

Section 366.14, Florida Statutes, and Rule 25-7.0131 (2), Florida Administrative Code, provide that regulatory assessment fees will be paid by the utilities in January and July based on gross operating revenues for the preceding 6 month period. In July of 1990, when the investor-owned gas utilities paid their regulatory fees, five companies adjusted the fees paid to reflect the change in the assessment rate that had become effective in April. That is, they paid assessment fees at the rate of one-eighth of one percent of gross operating revenues for January through April, and three-eighths of one percent for May and June.

In August, the staff sent a letter to those utilities advising them that their assessment fee payments should have been calculated at the three-eighths of one percent rate for the entire January to June period. Staff also assessed a penalty for failure to pay the amounts in question. All five of the utilities protested the application of the three-eighths rate for the entire period.

The utilities' primary objection to the manner in which the Commission has applied the assessment fee rate to the first six months of 1990 is that the new increased rate should not have been applied "retroactively" to the period before the rule was final.

Staff recommends that the Commission should conduct informal proceedings under the provisions of section 120.57(2), Florida

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Statutes to resolve this matter. Under that section of the Administrative Procedures Act, where no material issues of fact are in dispute, affected persons may be given the opportunity to present to the agency a written statement challenging the grounds upon which the agency has acted. The protesting utilities should be required to file briefs to inform the Commission of the substantive legal arguments in support of their position, and when the briefs are received, staff will prepare a recommendation on the appropriate action that should be taken. In this manner the Commission will have the opportunity to fully inform itself of the issues involved in the protest, and the utilities will have the opportunity to present their position on those issues.

The issue the utilities should address in their briefs is:

Should the January-June 1990 regulatory assessment fees due from natural gas utilities be calculated at the rate of three-eighths of one percent of gross operating revenues for the entire six-month period?

Also, the Commission should order each investor-owned gas utility to provide its gross operating revenues for the period January 1, 1990 through April 24, 1990 and April 25, 1990 through June 30, 1990. That information will provide the data necessary to determine any additional collections or any refunds due without a need for interrogatories or other discovery.

ISSUE 2: Should this docket remain open?

RECOMMENDATION: Yes. This docket should remain open until the Commission resolves the utilities' protests.

MCB/cjp
rec91031.cjp

DATE: 5/16/91

TO: Legal

The attached is sent to you for:

- Your Information
- Further Handling
- Necessary action
- Advice on Handling
- Response

Remarks: 4852-91

Division of Records & Reporting TB

PSC/R&R 9 (3/87)