

**Dorothy Menasco**

---

**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Monday, March 16, 2009 4:09 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 080366-GU  
**Attachments:** 2009-03-16, 080366, FPUC's Objections and Motion for Protective Order.pdf

The person responsible for this electronic filing is:

Norman H. Horton, Jr.  
Messer, Caparello & Self, P.A.  
P.O. Box 15579  
Tallahassee, FL 32317  
(850) 222-0720  
[nhorton@lawfla.com](mailto:nhorton@lawfla.com)

The Docket No. is 080366-GU

Petition of Florida Public Utilities Company for an Increase in Rates Charged to Natural Gas Customers

This is being filed on behalf of Florida Public Utilities Company

Total Number of Pages is 6

Florida Public Utilities Company's Objections and Motion for Protective Order

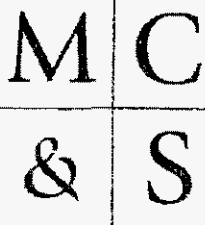
Ann Bassett  
Messer, Caparello & Self, P.A.  
2618 Centennial Place (32308)  
P.O. Box 15579  
Tallahassee, FL 32317  
Direct Phone: 850-201-5225  
Fax No. 850-224-4359  
Email Address: <[abassett@lawfla.com](mailto:abassett@lawfla.com)>  
Web Address: <[www.lawfla.com](http://www.lawfla.com)>

3/16/2009

DOCUMENT NUMBER-DATE

02265 MAR 16 8

FPSC-COMMISSION CLERK



MESSER CAPARELLO & SELF, P.A.

Attorneys At Law

[www.lawfla.com](http://www.lawfla.com)

March 16, 2009

**VIA ELECTRONIC FILING**

Ms. Ann Cole, Commission Clerk  
Office of Commission Clerk  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 080366-GU

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Public Utilities Company is Florida Public Utilities Company's Objections and Motion for Protective Order in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Norman H. Horton, Jr.', with a stylized flourish at the end.

Norman H. Horton, Jr.

NHH/amb  
Enclosures

cc: Ms. Cheryl Martin  
Parties of Record

Regional Center Office Park / 2618 Centennial Place / Tallahassee, Florida 32308

Mailing Address: P.O. Box 15579 / Tallahassee, Florida 32317

Main Telephone: (850) 222-0720 / Fax: (850) 224-4359

DOCUMENT NUMBER - DATE

02265 MAR 16 8

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for rate increase by )  
Florida Public Utilities Company ) Docket No. 080366-GU  
\_\_\_\_\_ ) Date Filed: March 16, 2009

**OBJECTIONS AND MOTION FOR PROTECTIVE ORDER**

COMES NOW, Florida Public Utilities Company ("FPUC" or the "Company"), and files this objection to Citizens First Set of Interrogatories and First Request for Production of Documents and Request for Protective Order and as basis would say:

1. On December 17, 2008, FPUC filed its Petition for Rate Increase requesting an increase in rates and charges for natural gas service. The Company requested that the Petition be treated as a Proposed Agency Action ("PAA") as provided by Section 366.06(4), Florida Statutes and Rule 25-22.029, Florida Administrative Code.

2. On December 30, 2008, the Office of Public Counsel ("OPC") filed a Notice of Intervention, as they customarily do for those dockets in which they participate, and the Commission acknowledged their intervention by Order No. PSC-09-0010-PCO-GU issued January 5, 2009. On March 10, 2009, the OPC served their First Set of Interrogatories and First Request for Production of Documents.

3. FPUC objects to the discovery filed by OPC as being premature and requests that the Commission enter an appropriate order that discovery not be had.

4. As stated, FPUC filed its petition pursuant to Section 366.06(4), Florida Statutes, which permits a natural gas utility to request the Commission to process the request using the Proposed Agency Action procedure. In a PAA proceeding, the Commission Staff conducts their review and analysis of the filing and issues a recommendation which is thereafter considered by

the Commission. The staff analysis includes a review and analysis of the MFRs, an audit of the request just as would be performed in a standard rate proceeding and review of responses to staff data requests. To date, staff has sent the company more than 80 data requests seeking clarification of material and data which has been filed by the Company. Once the Staff has completed their review, the Commission considers their recommendations at an agenda and the decisions are reflected in a Proposed Agency Action order. When the PAA order is issued, any affected party then has 21 days to protest portions of the order and request a Section 120.569 or 120.57 hearing. See Rule 25-22.029, Florida Administrative Code, and 28-106.111, Florida Administrative Code. This provides parties a clear point of entry into the process as required by Chapter 120, Florida Statutes. An affected party need not have intervened in the docket prior to filing a protest and thereby instituting a formal process.

5. The PAA process utilized by the Commission enables the Commission to review petitions and applications and dispose of many without the necessity of a hearing. The PAA approach was originally developed to address water and wastewater cases but over the years has been expanded so that it is now used in a substantial number of the Commission proceedings. In Order No. 21202 issued May 8, 1989 in Docket No. 880883-WS, the Commission conducted an extensive investigation of the rate setting procedures for water and sewer utilities and discussed favorably therein the PAA and use of the five month time clock for PAA rate petitions. In the discussion of the PAA process, the Commission recognized that OPC has the right to participate as a party representing the Citizens pursuant to Section 350.0611, Florida Statutes. Nowhere is there any discussion or recognition that OPC would have any rights in a PAA proceeding different from those of any other affected party and in a PAA proceeding affected parties may protest the Commission's preliminary action when it is published and request a hearing.

6. The PAA process has benefits to the petitioning utility and consumers alike but there are protections for parties as well. Section 366.06(4), Florida Statutes, requires that the Commission enter a vote on the request within five (5) months from the commencement date for final agency action, rather than eight (8) months for a traditional rate case. The potential that a utility can receive a decision on a rate case within 5 months rather than 8 and without the expense and time associated with hearings and extensive prehearing activities is beneficial to both the utility and consumers and is reflected in significant differences in rate case expense. The PAA process also has the benefit of allowing parties to focus on specific issues with which there may be concern rather than having to take a broader approach. On the other hand, Section 366.06(4), Florida Statutes, also provides that should any affected party take issue with the Commission decision, or portions thereof, they may protest the PAA and in that case, the Commission must render a final decision within 8 months of the date of the protest. Should that happen, the utility is then allowed to place the rates into effect subject to refund but a final decision on rate relief is not received until 13 months, or more, from the initial filing date. Should there be a protest, the Commission then establishes a schedule for hearing and the case moves forward in the same manner as a rate case filed pursuant to the file and suspend provisions. Should there be a protest, the burden is on the utility to prove its case.

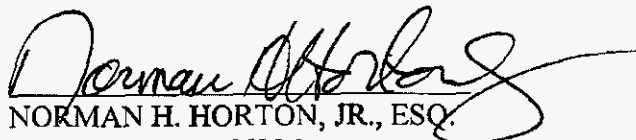
7. In this proceeding the Commission will handle the request as a PAA and issue an order at which time the OPC will have an opportunity to protest such portions of the order as they may deem necessary. At that time the proceeding will have "commenced" and the OPC will have the opportunity to conduct discovery to the same extent as any other party. See Section 350.0611(1), Florida Statutes, and Rule 28-106.206 Discovery, Florida Administrative Code. To allow the OPC to conduct discovery at this point in the PAA process is unnecessarily

burdensome and serves no purpose and is arguably contrary to the purpose of the PAA. The Commission has not taken any action that would define the issues or disposition of those issues and discovery by OPC adds nothing to that process. The OPC will have ample opportunity to conduct discovery on issues if they protest the PAA order. The granting of a protective order does not deprive OPC of any rights or opportunities they have as a party.

8. Based on the foregoing, FPUC would request that the Commission issue a protective order that discovery not be had at this time and allow the PAA process to proceed as designed and intended. This would be the more efficient and orderly process.

9. The Company also requests that the time for responding to the attempted discovery be stayed pending resolution of this objection and request. Finally FPUC reserves the right to enter specific objections to the discovery as may be necessary.

Respectfully submitted,



NORMAN H. HORTON, JR., ESQ.  
Florida Bar No. 156386  
MESSER, CAPARELLO & SELF, P.A.  
2618 Centennial Place  
Post Office Box 15579  
Tallahassee, FL 32317-5579  
(850) 222-0720

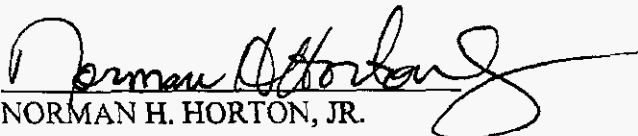
Attorneys for Florida Public Utilities Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Electronic Mail and/or U. S. Mail this 16<sup>th</sup> day of March, 2009 upon the following:

Jennifer Brubaker, Esq.  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Charles Rehwinkel  
Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison St., Room 812  
Tallahassee, FL 32399-1400

  
NORMAN H. HORTON, JR.