

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Public Utilities Company.

DOCKET NO. 080366-GU
ORDER NO. PSC-09-0520-PCO-GU
ISSUED: July 27, 2009

ORDER ESTABLISHING PROCEDURE

I. Case Background

On December 17, 2008, Florida Public Utilities Company (FPUC or Company) filed an application for increased gas rates for the approximate 51,000 customers it serves in Florida through its two divisions – the Central Florida Division and the South Florida Division. In that application, the Company sought a \$9,917,690 increase in revenues. The Company requested that its application be processed using the proposed agency action procedures set forth in Section 366.06(4), Florida Statutes (F.S.) Pursuant to that section, Commission staff conducted its investigation and held several customer meetings in the Company's service areas. Subsequently, the Commission issued Proposed Agency Action Order No. PSC-09-0375-PAA-GU (PAA Order) on May 27, 2009, in which the Commission proposed to allow an increase of \$8,496,230. The Office of Public Counsel (OPC), who had intervened effective January 5, 2009, filed its timely protest of the PAA Order on June 17, 2009.

In its protest, OPC states that it is protesting the Commission's determination of rate base, net operating income (NOI), the revenue requirement, and that the revenue requirement may be further overstated due to the current effects of the potential merger between the Company and Chesapeake Utilities Corporation. OPC specifically states that it is "not protesting the issues in the test period, quality of service, cost of capital, or cost of service and rate design sections" in the PAA Order. Also, the Company filed its Cross-Petition on June 26, 2009, in which it raised several additional issues concerning additional rate case expense, the appropriate amount of pension curtailment expenses, and the appropriate amount of expenses associated with environmental liability. Pursuant to this protest of OPC, two customer service hearings have been scheduled in the Company's service area, and a technical hearing has been scheduled to be held in Tallahassee to address the issues raised by OPC and any other issues that may eventually be approved.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the

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Commission. The hearing will be conducted according to the provisions of Chapter 120, F.S., and all administrative rules applicable to this Commission.

II. General Filing Procedures

In accordance with Rule 25-22.028, F.A.C., parties filing documents in this proceeding shall submit the original document and the appropriate number of copies to the Office of Commission Clerk for filing in the Commission's docket file. Filings may be made by mail, hand delivery, courier service, or in some instances electronically. Please refer to the rule for the requirements of filing on diskette for certain utilities. To the extent possible, all filings made electronically or on diskette shall be provided in Microsoft Word format. Filings pertaining to this docket should identify the assigned docket number and should be addressed to:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

III. Notice and Public Information

The utility shall comply with the requirements of Rule 25-22.0406, F.A.C. The notice required by Rule 25-22.0406, F.A.C., shall also include a statement that any customer comments regarding the utility's service or the proposed rate increase should be addressed to the Commission Clerk, Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and that such comments should identify the docket number assigned to this proceeding.

In addition to the requirements of Rule 25-22.0406, F.A.C., the utility shall give written notice of the date, time, location, and purpose of the hearing to each of its customers no less than fourteen days prior to the first day of the hearing. The utility shall utilize first class mail for notices sent to customers with out-of-town mailing addresses.

IV. Tentative List of Issues

A list of the issues identified thus far in this proceeding is attached hereto as Appendix A. The scope of this proceeding will be based upon these issues as well as other issues raised by the parties up to and during the Prehearing Conference, unless modified by the Commission.

V. Prefiled Testimony and Exhibits

Each party shall file, in writing, all testimony and exhibits that it intends to sponsor, pursuant to the schedule set forth in Section X, Controlling Dates, of this Order. An original and 15 copies of all testimony and exhibits shall be filed with the Office of Commission Clerk, by 5:00 p.m. on the date due. A copy of all prefiled testimony and exhibits shall be served by regular mail, overnight mail, or hand delivery to all other parties and staff no later than the date

filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit sponsored by a witness in support of his or her prefiled testimony shall be:

- (1) Attached to that witness' testimony when filed;
- (2) Sequentially numbered beginning with 1 (any exhibits attached to subsequently filed testimony of the same witness shall continue the sequential numbering system);
- (3) Identified in the upper right-hand corner of each page by the docket number, a brief title, and the witness' initials followed by the exhibit's number; and
- (4) Paginated by showing in the upper right-hand corner of each page the page number followed by the total number of pages in the exhibit.

An example of the information to appear in the upper right-hand corner of the exhibit is as follows:

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Cash Projections 2008-2012
Exhibit DC-1, Page 1 of 3

After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing.

VI. Discovery Procedures

A. General Requirements

Discovery shall be conducted in accordance with the provisions of Chapter 120, Florida Statutes (F.S.), and the relevant provisions of Chapter 366, F.S., Rules 25-22, 25-40, and 28-106, F.A.C., and the Florida Rules of Civil Procedure (as applicable), as modified herein or as may be subsequently modified by the Prehearing Officer.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Discovery shall be completed by November 30, 2009.
- (2) Discovery requests shall be served by e-mail, hand delivery, or overnight mail. If a request is served electronically, a hard copy of the request shall be served by hand-delivery, U.S. Mail, or overnight mail on the day that the request is served electronically.

- (3) Sets of interrogatories, requests for admissions, requests for production of documents, or other forms of discovery shall be numbered sequentially in order to facilitate their identification.
- (4) Within each set, discovery requests shall be numbered sequentially, and any discovery requests in subsequent sets shall continue the sequential numbering system.
- (5) Discovery responses shall be served within 30 calendar days (inclusive of mailing) of receipt of the discovery request. If responses are served electronically, a hard copy of the responses shall be served by hand-delivery, U.S. Mail, or overnight mail on the day that responses are served electronically.
- (6) Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties should number their produced documents in an unbroken sequence through the final hearing.
- (7) Copies of discovery requests and responses shall be served on parties other than the party from whom discovery is sought to the extent required by the applicable provisions of the Florida Rules of Civil Procedure. In addition, copies of all responses to requests for production of documents shall be provided to the Commission staff at its Tallahassee office unless otherwise agreed.

Unless subsequently modified by the Prehearing Officer, the following shall apply:

- (1) Interrogatories, including all subparts, shall be limited to 200.¹
- (2) Requests for production of documents, including all subparts, shall be limited to 150.²
- (3) Requests for admissions, including all subparts, shall be limited to 50.

When a discovery request is served and the respondent intends to seek clarification of any portion of the discovery request, the respondent shall request such clarification within 10 days of service of the discovery request. Further, any specific objections to a discovery request shall be made within 10 days of service of the discovery request.) These procedures are intended to reduce delay in resolving discovery disputes.

B. Confidential Information Provided Pursuant to Discovery

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall

¹ OPC has already served 98 numbered interrogatories.

² OPC has already served 38 production of document requests.

be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

When a person provides information that it maintains as proprietary confidential business information to the Office of Public Counsel pursuant to a discovery request by the Office of Public Counsel or any other party, that party may request a temporary protective order pursuant to Rule 25-22.006(6)(c), F.A.C., exempting the information from Section 119.07(1), F.S.

When a party other than the Commission staff or the Office of Public Counsel requests information through discovery that the respondent maintains as proprietary confidential business information, or when such a party would otherwise be entitled to copies of such information requested by other parties through discovery (e.g., interrogatory responses), that party and respondent shall endeavor in good faith to reach agreement that will allow for the exchange of such information on reasonable terms, as set forth in Rule 25-22.006(7)(b), F.A.C.

VII. Prehearing Procedures

A. Prehearing Statements

All parties in this docket and the Commission staff shall file a prehearing statement pursuant to the schedule set forth in Section X, Controlling Dates, of this Order. The original and seven copies of each prehearing statement shall be filed with the Office of Commission Clerk by 5:00 p.m. on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission.

Each party's prehearing statement shall set forth the following information in the sequence listed below:

- (1) The name of all known witnesses whose testimony has been prefiled or who may be called by the party, along with subject matter of each such witness' testimony;
- (2) A description of all prefiled exhibits and other exhibits that may be used by the party in presenting its direct case (including individual components of a composite exhibit) and the witness sponsoring each;
- (3) A statement of the party's basic position in the proceeding;
- (4) A statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party's position on each issue, and, where applicable, the names of the party's witness(es) who will address each issue. Parties who wish to maintain "no position at this time" on any particular issue or issues should refer to the requirements of subsection C, below;
- (5) A statement of issues to which the parties have stipulated;

- (6) A statement of all pending motions or other matters the party seeks action upon;
- (7) A statement identifying the party's pending requests or claims for confidentiality;
- (8) Any objections to a witness' qualifications as an expert. Failure to identify such objection will result in restriction of a party's ability to conduct voir dire absent a showing of good cause at the time the witness is offered for cross-examination at hearing; and
- (9) A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position on each such issue.

B. Attendance at Prehearing Conference

Pursuant to Rule 28-106.209, F.A.C., a prehearing conference will be held at 9:30 a.m., on November 20, 2009, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Unless excused by the Prehearing Officer for good cause shown, each party (or designated representative) shall personally appear at the prehearing conference. Failure of a party (or that party's representative) to appear shall constitute waiver of that party's issues and positions, and that party may be dismissed from the proceeding.

C. Waiver of Issues

Any issue not raised by a party either before or during the Prehearing Conference shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the Prehearing Conference shall demonstrate each of the following:

- (1) The party was unable to identify the issue because of the complexity of the matter.
- (2) Discovery or other prehearing procedures were not adequate to fully develop the issue.
- (3) Due diligence was exercised to obtain facts touching on the issue.
- (4) Information obtained subsequent to the Prehearing Conference was not previously available to enable the party to identify the issue.
- (5) Introduction of the issue would not be to the prejudice or surprise of any party.

Specific reference shall be made to the information received and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall take a position on each issue by the time of the Prehearing Conference or by such later time as may be permitted by the Prehearing Officer. If a party is unable through diligence and good faith efforts to take a position

on a matter at issue for that party, it shall explicitly state in its Prehearing Statement why it cannot take a position. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue, and the party's position shall be shown as "no position" in the Prehearing Order. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement. Commission staff may take "no position at this time" or a similar position on any issue without having to make the showing described above.

D. Motions to Strike Prefiled Testimony and Exhibits

Motions to strike any portion of the prefiled testimony and related portions of exhibits of any witness shall be made in writing no later than the Prehearing Conference. Motions to strike any portion of prefiled testimony and related portions of exhibits at hearing shall be considered untimely, absent good cause shown.

E. Demonstrative Exhibits

If a party wishes to use a demonstrative exhibit or other demonstrative tools at hearing, such materials must be identified by the time of the Prehearing Conference.

F. Official Recognition

Parties seeking official recognition of materials pursuant to Section 120.569(2)(i), F.S., shall notify all other parties and staff in writing no later than two business days prior to the first scheduled technical hearing date. Such notification shall identify all materials for which the party seeks official recognition, and to the extent such materials may not be readily available to all parties, such materials shall be provided along with the notification.

VIII. Hearing Procedures

A. Attendance at Hearing

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date of the following:

- (1) All parties agree that the witness will not be needed for cross examination.

- (2) All Commissioners assigned to the panel do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness' testimony.

B. Cross-Examination

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

C. Use of Confidential Information at Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such information is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidentiality filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

IX. Post-Hearing Procedures

If the Commission (or assigned panel) does not render a bench decision at the hearing, it may allow each party to file a post-hearing statement of issues and positions pursuant to the schedule set forth in Section X., Controlling Dates, of this Order. In such event, a summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position. However, the position must be reduced to no more than 50 words. If a post-hearing statement is required and a party fails to file in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages and shall be filed at the same time, unless modified by the Presiding Officer.

X. Controlling Dates

The following dates have been established to govern the key activities of this case:

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|------|--|---------------------|
| (1) | Utility's supplemental testimony and exhibits ³ | July 29, 2009 |
| (2) | Intervenors' testimony and exhibits | October 8, 2009 |
| (3) | Service Hearings | October 21-22, 2009 |
| (4) | Staff's testimony and exhibits, if any | October 22, 2009 |
| (5) | Rebuttal testimony and exhibits | November 4, 2009 |
| (6) | Prehearing Statements | November 5, 2009 |
| (9) | Prehearing Conference | November 20, 2009 |
| (10) | Discovery deadline | November 30, 2009 |
| (11) | Technical Hearing | December 7-9, 2009 |
| (12) | Briefs | December 24, 2009 |

In addition, all parties should be on notice that the Prehearing Officer may exercise the discretion to schedule additional prehearing conferences or meetings of the parties as deemed appropriate. Such meetings will be properly noticed to afford the parties an opportunity to attend.

³ The Utility filed prefiled testimony and exhibits for 10 witnesses on December 17, 2008, but has requested that it be allowed to file supplemental direct testimony by no later than July 29, 2009.

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Based upon the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 27th day of July, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

TENTATIVE ISSUES LIST

Rate Base

- ISSUE 1: Whether the inclusion in the rate base of the Area Expansion Program (AEP) deficiency proposed by FPUC is appropriate?
- ISSUE 2: What are the appropriate projected plant additions for 2008 and 2009?
- ISSUE 3: What is the appropriate amount of accumulated depreciation?
- ISSUE 4: What is the appropriated amount of working capital?
- ISSUE 5: Whether any additional adjustments to rate base should be made due to the impact of the potential merger?

Net Operating Income

- ISSUE 6: Should an adjustment be made to inflation factors applied in the projection of operating expenses for 2008 and 2009?
- ISSUE 7: Should an adjustment be made to salaries and benefits for the 2009 projected test year?
- ISSUE 8: Should an adjustment be made for FPUC's proposed new and vacant positions?
- ISSUE 9: Should an adjustment be made to rate case expense for the 2009 projected test year?
- ISSUE 10: What is the appropriate amount of depreciation expense?
- ISSUE 11: Should an adjustment be made to landscaping and office maintenance expenses for the projected 2009 test year?
- ISSUE 12: Should an adjustment be made to the projected level of outside contractual services?
- ISSUE 13: Should an adjustment be made to FPUC's proposed travel, training, conferences and meeting fees and costs for the 2009 projected test year?
- ISSUE 14: Should an adjustment be made for FPUC's proposed new GPS system?
- ISSUE 15: Should an adjustment be made for FPUC's proposed research and development costs?

- ISSUE 16: Should an adjustment be made to sales and marketing expenses?
- ISSUE 17: Should an adjustment be made to projected membership dues?
- ISSUE 18: Should an adjustment be made to the expenses projected for the Summer Glen conversion from propane to natural gas?
- ISSUE 19: Should an adjustment be made to the proposed increases to the Injuries and Damages expense?
- ISSUE 20: Should an adjustment be made to the Miscellaneous Office and General expenses?
- ISSUE 21: Should an adjustment be made to Office Utility Expense?
- ISSUE 22: Should an adjustment be made to the proposed increases to the Maintenance of Mains expenses?
- ISSUE 23: What adjustment, if any, should be made to net operating income due to the impact of the potential merger?
- ISSUE 24: What is the appropriate amount of pension curtailment expense to be included in the test year?
- ISSUE 25: What is the appropriate amount of expense associated with environmental liability?
- ISSUE 26: What is the appropriate amount of additional rate case expense as a result of the protest?

Revenue Requirement

- ISSUE 27: What is the appropriate revenue requirement for the 2009 projected test year?
- ISSUE 28: What other adjustments should be made due to the impact of the potential merger?
- ISSUE 29: What are the appropriate final rates and charges?
- ISSUE 30: What is the appropriate effective date for FPUC's revised rates and charges?

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ISSUE 31: Should any of the \$984,054 annual interim increase granted by Order No. PSC-09-0123-PCO-GU, issued March 3, 2009, be refunded to the customers, and, if so, in what amount?

ISSUE 32: Should any of the \$8,496,230 annual increase proposed in Order No. PSC-09-0375-PAA-GU, issued May 27, 2009, and implemented by FPUC, be refunded to the customers, and, if so, in what amount?

ISSUE 33: Should this docket be closed?