

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition of Peoples Gas System and Office of Public Counsel for approval of stipulation and settlement agreement for possible overearnings for calendar year ending December 31, 2010.

DOCKET NO. 100462-GU  
ORDER NO. PSC-11-0111-PAA-GU  
ISSUED: February 10, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING STIPULATION  
REGARDING 2010 OVEREARNINGS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Through our continuing earnings surveillance program, Commission staff noted that Peoples Gas System (PGS or Company) had reported an achieved return on equity (ROE) of 13.73 percent on its March 2010 Earnings Surveillance Report (ESR). This reported ROE exceeded the 11.75 percent maximum ROE authorized in Docket No. 080318-GU.<sup>1</sup> Our staff subsequently contacted PGS concerning the reported overearnings. On June 9, 2010, PGS submitted a letter<sup>2</sup> in which it agreed to cap its earnings at an 11.75 percent ROE for calendar year 2010. In the letter, PGS proposed applying any overearnings to increase the storm damage reserve up to the \$1 million target level, and that the remainder (if any) of such overearnings be used to increase the environmental reserve, and/or other purposes benefitting both the Company and its customers before any customer refunds are ordered.

<sup>1</sup> Order No. PSC-09-0411-FOF-GU, issued June 9, 2009, in Docket No. 080318-GU, In re: Petition for Rate Increase by Peoples Gas System.

<sup>2</sup> Document No. 10088-10 in Docket No. 100462-GU.

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On December 16, 2010, a Joint Petition for Approval of Stipulation and Settlement Agreement was filed by PGS and the Office of Public Counsel (OPC). The Stipulation and Settlement Agreement (Stipulation), attached hereto as Attachment A, is intended to resolve all of the issues relating to the Company's overearnings for the calendar year ended December 31, 2010.

This order addresses the proposed Stipulation. We are vested with jurisdiction over this matter by several provisions of Chapter 366, including Sections 366.04, 366.05 and 366.06, Florida Statutes.

### DECISION APPROVING PROPOSED STIPULATION

The major elements contained in the Stipulation are:

- 2010 earnings capped at an 11.75 percent ROE (Paragraph 2)
- \$3 million refund as a one-time credit to customers' bills (Paragraph 1)
- Overearnings in excess of \$3 million to be used to correct or mitigate deficiencies in the depreciation reserve (Paragraph 3)

The proposed Stipulation consists of 8 paragraphs of agreement between PGS and OPC. We find that several of the paragraphs merit comment or clarification. These are as follows:

Paragraph 1: Paragraph 1 provides that PGS will refund \$3 million to its customers in the form of a one-time credit on customer bills. Refunds will be applied only to active bills at the time the refunds are being made, and the refund amount will be based on each customer's cents-per-therm consumption during the month the refund is made. The refund will be made one month following the date this Order becomes final. PGS states that assuming the refund is made in March 2011, a residential customer using 20 therms would receive a one-time refund of \$3.74.

Paragraph 2: PGS' 2010 earnings are capped at an ROE of 11.75 percent. Per its September 2010 ESR, PGS reported an achieved ROE of 15.96 percent on an FPSC Adjusted Basis which exceeds the 11.75 percent ROE cap by 4.21 percent. However, the actual amount of any overearnings will be based on the 12-month period ended December 31, 2010. The December 2010 ESR is not due to be filed until February 15, 2011. In response to a staff data request, dated January 5, 2011, PGS estimates that the total overearnings will be approximately \$11.5 million for 2010. Once the December 2010 ESR is received, an audit will be conducted to determine the actual amount of the 2010 overearnings.

Paragraph 3: PGS proposes to use any overearnings in excess of \$3 million to correct or mitigate any deficiencies subsequently identified by PGS and Commission staff. PGS indicates that in its last depreciation study filed with this Commission, where new depreciation rates were implemented on January 1, 2007, there was a \$46.5 million deficiency between the actual depreciation reserve balance and the theoretical reserve balance. Although not known with certainty, PGS anticipates that the study it files this year will show a reserve deficiency in excess

of \$25 million. PGS' next depreciation study is presently scheduled to be filed with this Commission on July 13, 2011.

We have reviewed the terms of the Stipulation, and believe that it provides a reasonable resolution for the disposition of any 2010 overearnings and is in the public interest. Therefore, the proposed Stipulation is hereby approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the proposed Stipulation filed by Peoples Gas System and the Office of Public Counsel regarding possible 2010 overearnings, attached hereto as Attachment A, is approved as set forth herein. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open until Peoples Gas System files a refund report indicating that the entire \$3 million refund has been completed. After the refund has been verified by Commission staff, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 10th day of February, 2011.



ANN COLE  
Commission Clerk

( S E A L )

JSC

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 3, 2011.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**STIPULATION AND SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement (this "Agreement") is made and entered into as of the 16<sup>th</sup> day of December 2010, by and between Peoples Gas System ("PGS" or the "Company"), and the Office of Public Counsel ("OPC"), sometimes referred to hereinafter collectively as the "Parties" and individually as a "Party".

WHEREAS, by Order No. PSC-09-0411-FOF-GU ("Order No. 09-0411"), issued June 9, 2009 in Docket No. 080318-GU, the Florida Public Service Commission (the "Commission") granted in part and denied in part PGS' petition for a rate increase and, among other things, awarded PGS a 10.75 percent return on common equity ("ROE") midpoint with a range of plus or minus 100 basis points for surveillance reporting purposes;

WHEREAS, primarily as a result of record low temperatures in Florida during the first quarter of 2010, PGS' Earnings Surveillance Report ("ESR") for the aforementioned quarter indicated the Company's earnings exceeded the top of its authorized ROE range established by Order No. 09-0411;

WHEREAS, representatives of the Parties and Commission Staff ("Staff") met to discuss the Company's March 2010 ESR and, as requested by Staff, by letter dated June 9, 2010, PGS agreed, subject to certain conditions, to cap its 2010 calendar year earned ROE at 11.75 percent, the top of the range established by Order No. 09-0411;

WHEREAS, PGS' ESRs for the second and third quarters of 2010 continued to reflect an earned ROE above the top of the range established by Order No. 09-0411, and PGS recorded a provision in each such report to recognize the Company's anticipated 2010 overearnings (the "Existing Provision");

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APA \_\_\_\_\_  
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WHEREAS, Staff has raised questions regarding certain deficiencies in the Company's depreciation reserves through data requests directed to PGS in connection with the Company's

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2008 and 2009 annual status reports contained in its annual reports filed pursuant to Rule 25-7.014(3), *Florida Administrative Code*;

WHEREAS, representatives of PGS and OPC have met and engaged in negotiations for the purpose of reaching agreement on the disposition of any overearnings (as defined in PGS' letter dated June 9, 2010) for the 2010 calendar year; and

WHEREAS, the Commission's approval of this Agreement will remove uncertainties with respect to the disposition of any PGS overearnings for the 2010 calendar year, and provide substantial short term and long term benefits for the Company's customers.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree as follows:

1. Upon final approval of this Agreement by the Commission, PGS will refund a total of \$3,000,000 to its customers in the form of a one-time credit to customer bills, such refund to be effected as hereinafter described. Refunds will be applied only to active bills at the time the refunds are being made. The refunds will commence with Cycle 1 billing one month following the date the Commission's order approving this Agreement becomes final and non-appealable. The refunds will be made on a volumetric cents-per-therm, basis based on each customer's consumption during the month the refund is applied to the customer's bill. The portion of the total refund amount allocable to each customer class, and the cents-per-therm refund factors will be determined in the same manner used by PGS to allocate and recover costs under the energy conservation cost recovery clause in Docket No. 100004-GU (as first approved by the Commission's Order No. 23576 in Docket No. 900002-EG). Any overpayment or underpayment of the one-time refund amount will be trued-up in a subsequent period.

2. Calculation of PGS' earned ROE to determine the amount of any earnings above an 11.75 percent ROE will be on an "FPSC Adjusted Basis" as set forth in the Company's ESR required by Rule 25-7.1352, *Florida Administrative Code*, for December 31, 2010, using the

adjustments made in the Company's rate proceeding in Docket No. 080318-GU, but excluding that portion of the Company's share of net revenues derived from Off-System Sales that exceeds \$2,068,676. See Orders Nos. 09-0411 and PSC-10-0208-S-GU. All reasonable and prudent expenses and investment will be included in the calculation.

3. The amount of any overearnings, calculated as provided in paragraph 2 of this Agreement, in excess of \$3,000,000 shall be used to correct or mitigate deficiencies in the Company's depreciation reserves as may be agreed by PGS and Staff. In its ESR for the final quarter of 2010, PGS will assign \$3,000,000 of any overearnings against the Existing Provision with any remaining balance resulting from a year-end ROE above 11.75 percent, as calculated pursuant to paragraph 2 of this Agreement, credited to the depreciation reserve adjustments contemplated by this paragraph 3. Such ESR will contain a pro forma adjustment for the portion of Off-System Sales revenues to be retained by PGS as described in paragraph 2.

4. Final Commission approval of this Agreement in its entirety will resolve all matters arising out of PGS' overearnings for the year ending December 31, 2010.

5. The provisions of this Agreement are contingent upon approval of this Agreement in its entirety by the Commission. The Parties agree that they will support this Agreement and will not request or support any order, relief, outcome or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing or challenging the establishment, approval, adoption or implementation of this Agreement or the subject matter hereof.

6. The Parties agree to jointly petition the Commission for approval of this Agreement at the earliest possible time in order to facilitate implementation of the refund and other provisions hereof, and will urge the Commission to take final agency action approving this Agreement at the earliest possible time.

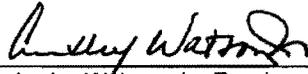
7. In the event the Commission rejects or modifies this Agreement, in whole or in part, the Parties agree that this Agreement shall become void unless such rejection or modification is ratified by the Parties, and that thereafter each Party may pursue its interests as those interests may exist, and neither Party will be bound by or make reference to this Agreement before the Commission, any court, or any other administrative body.

8. This Agreement may be executed in counterpart originals, and a facsimile or scan of the original signature shall be deemed an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

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**PEOPLES GAS SYSTEM**

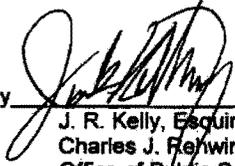
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