

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: February 21, 2013

TO: Office of Commission Clerk (Cole)

FROM: Division of Economics (Garl, Draper) *EJD*
Division of Engineering (Moses) *JWD*
Office of the General Counsel (Klancke) *JSC/PD*

RE: Docket No. 130039-GU – Request for approval of new Tariff Sheets 22A and 22B to add provisions for "Limits of Company Responsibilities," "Limitation of Damages," and "Access to Premises," by Florida City Gas.

AGENDA: 03/05/13 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 04/01/13 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECO\WP\130039.RCM.DOC

Case Background

On February 1, 2013, Florida City Gas ("City Gas" or "Company") filed a petition requesting Commission approval of new tariff sheets that add provisions to (1) limit company responsibility, (2) limit company liability, and (3) access customer premises. The proposed provisions mirror the language already contained in other utilities' tariffs. The Commission has jurisdiction in this matter pursuant to Sections 366.03, 366.04, and 366.06, Florida Statutes.

DOCUMENT NUMBER-DATE

00944 FEB 21 2013

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Discussion of Issues

Issue 1: Should the Commission approve the Florida City Gas proposed tariff additions?

Recommendation: Yes, the Commission should approve the proposed tariff additions. (Garl)

Staff Analysis: Florida City Gas requests Commission approval of new Tariff Sheet Nos. 22A and 22B. City Gas explains that the intent of the additions is to better clarify the Company's liability in situations outside the Company's control and provisions governing access to customer premises.

The proposed section on Tariff Sheet No. 22A, titled Limits of Company Responsibilities, exempts the utility from responsibility for damages sustained on the customer's side of the meter including any damage due to any equipment or appliances installed by the customer on the customer's side of the point of delivery. The proposed section also relieves the Company from liability for naturally occurring or other impurities in the gas delivered to the customer. Additionally, the Company is relieved of liability for interruption of service in an emergency or other system operating conditions which justify such interruption. Finally, the proposed section specifically removes any obligation of the Company to inspect gas piping or appliances of a customer.

The proposed second section on Tariff Sheet No. 22A, titled Limitation of Damages, imposes limits on damage recovery by the customer and requires the customer to hold harmless and defend the Company for damages from the customer's use of natural gas provided by the Company or negligent acts or omissions by the customer.

In reviewing the proposed City Gas tariff, staff found that the proposed limitations of liability are consistent with the tariffs of all regulated natural gas and electric companies in Florida. Staff also noted that it has long been held that a regulated utility has the right to limit its liability, as the cost to defend against unlimited liability could result in significantly higher rates to all customers. In Landrum v. Florida Power & Light Company, 505 So. 2d 552, 554 (Fla. 1987), and cases from around the country cited therein, the Florida Supreme Court stated:

It is well established that a limitation of liability contained in a tariff is an essential part of the rate, and that the consumer is bound by the tariff, regardless of his knowledge or assent thereto. . . . Therefore, a tariff validly approved by the Public Service Commission, including a limitation of liability for ordinary negligence, resulting in the interruption of the regular supply of electric service is valid.

On April 2, 2012, the Commission approved two tariff modifications requested by Peoples Gas System ("PGS") which established limits to the utility's liability under certain specified conditions.¹ The first change approved for PGS exempts the utility from responsibility

¹ See Order No. PSC-12-0172-TRF-GU, issued April 2, 2012, in Docket No. 110308-GU, In re: Request by Peoples Gas System to modify Tariff Sheet 5.701 to add sections entitled "Limits of Company's Responsibilities" and "Continuity of Service."

for damages sustained on the customer's side of the meter and limits the utility's responsibilities for impurities in gas delivered to the customer. The second change states that the utility is not liable due to service interruptions caused by conditions beyond the utility's control.

With regard to impurities in delivered gas, in Order No. PSC-12-0127-TRF-GU the Commission found that:

PGS, like other distribution utilities in the state, has no control over the characteristics of the gas it delivers to its customers from the interstate pipelines. The Federal Energy Regulatory Commission (FERC) has established standards for some of the more important characteristics of gas, and these characteristics are measured by the pipeline delivering the gas to PGS.

Staff observed that the language limiting liability in City Gas's proposed addition is found verbatim in the PGS tariff recently approved by the Commission.²

The second proposed tariff sheet addition addresses the customer's responsibility to provide an acceptable location for the Company's meter and access to the customer's premises for subsequent operation, inspection, and maintenance. This requirement is the Company's implementation of Rule 25-7.060, Florida Administrative Code. Subparagraph (1) of the Rule states, "The customer shall furnish a convenient, accessible and safe place in which the meter can be installed, operated and maintained." Staff observes that the location and access requirements for the utility's equipment are consistently stated in tariffs of every regulated gas and electric utility in Florida.

Staff recommends, based on practice and legal precedent, that the Commission approve the proposed tariff additions which are similar to continuity of service and limitations of liability provisions in other utilities' tariffs.

² Id.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, the tariff sheets should become effective as of the Commission vote. If a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Klancke)

Staff Analysis: If Issue 1 is approved, the tariff sheets should become effective as of the Commission vote. If a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.