

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: January 20, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Sunshine) *SMC*
Division of Accounting and Finance (Mouring) *ALM*
Division of Economics (Barrett, Coston, Galloway) *JGH*
Division of Engineering (Wooten) *TB*

RE: Docket No. 20210188-GU – Joint petition for variance from Rule 25-7.039(1), F.A.C., by Florida Public Utilities Company and Florida Division of Chesapeake Utilities Corporation.

AGENDA: 02/01/22 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: 4/10/22 (Petition for Variance Deemed Approved if Not Granted or Denied by this Date pursuant to Section 120.542(8), Florida Statutes)

SPECIAL INSTRUCTIONS: None

Case Background

On November 30, 2021, Petitioners, Florida Public Utilities Company (FPUC) and the Florida Division of Chesapeake Utilities Corporation (CFG), filed a joint petition for a variance from Rule 25-7.039(1), Florida Administrative Code (F.A.C.) (Joint Petition). FPUC and CFG ask the Commission to grant a variance from Rule 25-7.039(1), F.A.C., based on the facts presented and Joint Petitioners' proposed approach as described within the Joint Petition for preparing Minimum Filing Requirements (MFRs) for an anticipated rate case to be filed in 2022.

Rule 25-7.039(1), F.A.C.

Rule 25-7.039(1), F.A.C., sets forth the general filing instructions for investor-owned natural gas utilities' MFRs when submitting applications for changes in rates.

Rule 25-7.039(1), F.A.C., states, in pertinent part:

(1) General Filing Instructions.

(a) The petition under Sections 366.06 and 366.071, F.S., for adjustment of rates must include or be accompanied by:

1. The information required by Commission Form PSC 1027 (12/20), entitled "Minimum Filing Requirements for Investor-Owned Natural Gas Utilities," which is incorporated into this rule by reference, and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-12643>. This form is also available on the Commission's website, www.floridapsc.com.

This requirement implements the Commission's authority under Section 366.06, Florida Statutes (F.S.), to investigate, determine, and consider certain costs and factors when fixing and changing rates for investor-owned natural gas utilities.

Section 366.06(1), F.S., states, in pertinent part:

A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

Joint Petition

The Joint Petition states that FPUC was acquired by Chesapeake Utilities Corporation ("CUC") on October 28, 2009. CUC also operates CFG in Florida. With the acquisition of FPUC in 2009, CUC expanded its energy presence throughout Florida, acquiring Indiantown Gas Company ("Indiantown") on August 6, 2010, and purchasing the City of Fort Meade's natural gas system on October 8, 2013, both of which became Divisions of FPUC. Petitioners assert the records and surveillance reports of FPUC and CFG, as well as those of the Indiantown and Fort Meade Divisions (to the extent they exist), have been maintained separately; but the Companies

have, nonetheless, taken several steps over the years to consolidate the processes, methodologies, and tariffs of the FPUC/CFG natural gas business units.¹

Joint Petitioners reviewed the MFR requirements for an anticipated rate filing in 2022 which would contemplate new, consolidated rates for the natural gas business units to be effective January 1, 2023. For the anticipated, proposed projected test year of 2023, Petitioners state that compilation of the necessary information would be based on the full consolidation of FPUC, CFG, and FPUC's Indiantown and Fort Meade Divisions, which they assert is appropriate, as well as manageable, given the structure of the MFR schedules themselves, as well as the intent of the Companies to operate, going forward, on a fully consolidated basis.

Accordingly, in paragraph 8 of the Joint Petition, Petitioners propose, in response to the requirement to provide comparable, consolidated data for certain MFRs requiring a comparison of prior period data or rates to those proposed, to provide this data for each existing division with totals where possible on a consolidated basis. In paragraph 9 of the Joint Petition, Petitioners propose to deviate from the benchmarking schedules (C-34 through C-38) because the index used to multiply the prior historic year expense data by is based on the customer growth and inflation for all the years since the last case.

In summary, the Companies request that the Commission grant a variance to allow them to provide the required data in the MFRs consistent with the Companies' proposal set forth in Attachment A of the Joint Petition. The Companies further state that "all other MFRs, other than those identified in Attachment A, would be submitted on a consolidated basis and populated consistent with the current schedule requirements, forms, and format."

Procedural Matters

Pursuant to Section 120.542(6), F.S., a Notice of Variance or Waiver was published in the December 2, 2021 edition of the Florida Administrative Register. No comments were received, and the time for filing comments expired on December 27, 2021.

On December 15, 2021, staff requested additional information regarding the Joint Petition. On January 10, 2022, Joint Petitioners filed their Response to Staff's First Data Request, which provided information responsive to staff's request for additional information.

This recommendation addresses FPUC and CFG's Joint Petition. Pursuant to Section 120.542(8), F.S., the Commission must grant or deny a request for variance within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. Joint Petitioners having provided the last item of timely requested additional information on January 10, 2022, the statutory deadline for this proceeding is April 10, 2022. The Commission has jurisdiction pursuant to Sections 120.542 and 120.565, F.S., and Chapter 366, F.S.

¹ See, for instance, Docket Nos. 20200214-GU; 20200046-GU; 20190056-GU; and 20150117-GU.

Discussion of Issues

Issue 1: Should the Commission grant FPUC and CFG’s Joint Petition for variance from Rule 25-7.039(1), F.A.C.?

Recommendation: Yes, FPUC and CFG’s Joint Petition for variance from Rule 25-7.039(1), F.A.C., should be granted, subject to discovery and cross-examination procedures remaining intact. (Sunshine)

Staff Analysis: Joint Petitioners request the Commission grant a variance from Rule 25-7.039(1), F.A.C., to allow the Companies to complete and file the MFRs as proposed in Paragraphs 8 and 9, and Attachment A, of their Joint Petition for an anticipated 2022 rate case filing. In response to staff’s request for additional information, Joint Petitioners provided acceptable demonstrative examples of the MFR Schedules as requested. The rule requires investor-owned natural gas utilities to file MFR schedules when submitting a petition for rate relief. These schedules include substantial accounting, engineering, rate, cost of capital, and other data that the Commission, staff, and parties use in reviewing the rate request.

Joint Petitioners assert their proposed approach of providing the information required by the specific schedules, as identified in Attachment A to their Joint Petition, will provide the Commission with all of the information contemplated by the MFRs and in the most accurate form possible; emphasizes that all other MFRs, other than those identified in Attachment A to their Joint Petition, would be submitted on a consolidated basis and populated consistent with the current schedule requirements, form, and format; and that not permitting their proposed approach would subject the Companies to the significant and undue hardship of forcing the separate entities’ information into the fully consolidated format of the specified MFRs, which might result in inaccurate or skewed data as a result to translating the data of four separate entities into a consolidated format that just does not fit, which could ultimately result in the Companies’ request being unfairly denied as deficient or incomplete simply because the information available does not fit the specific format of the MFRs.

Law Governing Petitions for Variance

Section 120.542(2), F.S., directs agencies to grant variances or waivers from agency rules when the person subject to the rule demonstrates the purpose of the underlying statute will be or has been achieved by other means and application of the rule would cause the person substantial hardship or violate the principles of fairness. As defined by Section 120.542(2), F.S., “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship.

Purpose of the Underlying Statute

The purpose of Section 366.06, F.S., is to ensure that investor-owned natural gas utilities only charge or receive rates that have been approved by the Commission; to ensure that the Commission only approves rates that are fair, just, and reasonable for each customer class; and to set a procedure for fixing and changing rates.

Joint Petitioners request a variance from the Rule 25-7.039(1), F.A.C., requirement for submission of certain MFR information for an anticipated 2022 rate case filing because they

assert certain consolidated data does not yet exist. Instead, Joint Petitioners propose to submit the MFR information as described in Paragraphs 8 and 9 and Attachment A of the Joint Petition for an anticipated 2022 rate case filing and assert this proposed approach will provide the Commission with all of the information contemplated by the MFRs and in the most accurate form possible. For these reasons, Joint Petitioners maintain their proposed filings would achieve the underlying purpose of Section 366.06, F.S.

Staff believes Joint Petitioners' proposed approach to preparing MFRs for an anticipated 2022 rate case filing will allow the Commission to evaluate the rate case based on those MFRs and fulfill its statutory obligation to approve rates that are fair, just, and reasonable, as long as the Commission, staff, and parties maintain the ability to conduct appropriate discovery and cross-examination on such information. Accordingly, staff recommends the purpose of the underlying statute will be achieved by other means for an anticipated 2022 rate case filing.

Substantial Hardship

Joint Petitioners assert denial of their request for a variance would subject the Companies "to the significant and undue hardship of forcing separate entities' information into the fully consolidated format of the specified MFRs, which may also result in inaccurate or skewed data as a result of translating the data of four separate entities into a consolidated format that just does not fit, which could ultimately result in the Companies' request being unfairly denied as deficient or incomplete simply because the information available does not fit the specific format of the MFRs."

Staff believes a strict application of Rule 25-7.039(1), F.A.C., to Joint Petitioners' potential 2022 rate case filing would create a substantial hardship for Joint Petitioners based on the unavailability of certain MFR information. Consequently, staff recommends Joint Petitioners have demonstrated that a strict application of the rule would create a substantial hardship under the circumstances described by Joint Petitioners.

Conclusion

Based on the above, staff recommends that the Commission grant FPUC and CFG's Joint Petition for variance from Rule 25-7.039(1), F.A.C., subject to discovery and cross-examination procedures remaining intact.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Sunshine)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.