Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

August 20, 2025

VIA E-PORTAL

Mr. Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20250057-GU –Petition for approval of tariff modification for equipment financing, by Florida Public Utilities Company.

Dear Mr. Teitzman:

Attached for filing, please find Florida Public Utilities Company's Responses to Staff's Third Set of Data Requests.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

Sincerely,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

MEK

Cc:// Office of the General Counsel (Crawford, Thompson)
Division of Economics (Pope, Barrett)

Florida Public Utilities Company's Responses to Staff's Third Set of Data Requests

1. **Section 366.05(2), Florida Statutes, states, in part, "Every public utility...which in addition to the production, transmission, delivery or furnishing of heat, light, or power also sells appliances or other merchandise shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the sale of such items in arriving at any rate to be charged for service by any public utility." The purpose of Section 366.05(2) is to ensure that ratepayers are not exposed to financial risk or subsidization related to non-utility merchandise or appliance transactions.**

   a. **Does FPUC's proposed tariff revision satisfy both the letter and intent of the statute? Why or why not?**

   b. **Under this program as it relates to tankless water heaters, who is the seller and who is the buyer? If FPUC believes it does not constitute a sale, describe the nature of the transaction.**

Company Response:

a. Yes. First and foremost, it satisfies the clear statutory language provided by the Legislature. The stated "purpose" of the statute, as presented by Staff, is not supported by the law itself. The tariff proposed does not contemplate a sale of an appliance or other merchandise. To further elaborate, the Company does not contemplate engaging in the sale, lease, or profit-making arrangement under this tariff. FPUC is neither selling nor leasing appliances. FPUC proposes to provide customer assistance through financing arrangements only. **Please refer to the further analysis attached hereto as Attachment A.**

b. In a scenario where an appliance is involved, the seller will be a third-party appliance dealer that has been vetted by and is partnering with FPUC for purposes of this program. As part of its partnership with FPUC, FPUC will ensure the third-party dealer provides FPUC's customers with a fixed price for the purchase and installation of specific equipment. Any 'add-ons' requested by the customer will be the sole responsibility of the customer and will not be included in the financed amount.

Financing of the piping and plumbing services necessary to enable the customer to utilize gas service in a home is similar except that the third-party is a plumber with natural gas installation expertise and not an appliance dealer. As described more fully in response to DR #5, FPUC expects to handle the overall conversion financing as one financed amount, which would include the conversion piping and the appliance that the customer wants to convert service in order to use.

The customer will be an FPUC natural gas service customer whose account has been in good standing for the past 12 months. FPUC will also file a UCC-1 lien to secure the arrangement until the customer has fully repaid the amount financed. The customer will own the appliance from the inception of the arrangement through its completion.

2. **For the following questions, please refer to FPUC response to Staff's Second Data Request, Attachment "A":**

   a. **Does the accounts payable and accounts receivable entry for $2,500 constitute a sale? Please explain.**

   b. **Does the tariff proposal fully prevent profits or losses to the utility related to appliance financing? If so, how — particularly in cases of customer nonpayment or delayed recovery through UCC-1 liens?**

   c. **Is the recording of the payments to the contractor for equipment and installation included in plant in service or working capital on the company's records, which in turn is part of rate base? Please explain.**

   d. **If the "miscellaneous A/R" shown in the response is part of rate base, please explain in detail how the proposed financing options could potentially impact rate base, utility profit and loss, at least in the short term (i.e., potentially impacting rates for non-participating customers in the early years of the program, after a rate setting proceeding)?**

   e. **Will FPUC establish and maintain *separate and individual accounts* for all appliance financing activities pursuant to the proposed tariff to allow the Commission to review in future rate case proceedings payments to contractors and financing payments received from participating customers?**

Company Response:

a. No, not all receivables are sales. The receivable for this transaction related to the finance amount FPUC provides to the customer for the appliance installation and equipment.

b. The tariff establishes the recovery of the financed amount including a carrying cost at the Company's overall cost of capital. A provision for loss is included in the financed amount to protect non-participant ratepayers.

c. The appliance and installation costs are not recorded to "plant in service," because FPUC never holds title to the appliance, does not acquire any right to own the equipment, and does not take possession of any asset. However, the miscellaneous A/R and provision for bad debt will be reflected in working capital.

d. It is highly unlikely that there would be any material impact on the miscellaneous A/R or utility profit and loss such that rates would be impacted, whether in the early years or in a rate case. In addition, the provision for bad debt included in the financing along with the UCC-1 lien provides sufficient protection for the Company and non-participating customers.

e. The Company can establish subaccounts for the finance activities that will allow the Commission to review in future rate case proceedings.

3. Refer to Staff's First Data Request, No. 3.b. Describe the procedure and conditions under which some participants in equipment financing under the proposed tariff will do so via one of FPUC's Natural Gas Energy Conservation Cost Recovery clause program (e.g. Residential Appliance Replacement Program 3) while others will not participate in such programs.

Company Response:

There are no differing procedures. Any customer eligible to participate in a conservation rebate program is eligible for a rebate if the selected appliance is included and subject to a conservation rebate.

Whether or not they utilize FPUC's financing has no impact on their ability or eligibility for conservation program participation. If a customer does intend to utilize FPUC's financing option for their conversion including the appliance, the rebate amount applicable to the appliance is simply applied to the total financed amount to reduce the balance.

4. **In Paragraph 5 of the Petition, FPUC states that Florida City Gas (FCG) offers a similar tariff. In Order No. PSC-04-0218-PAA-GU[1], pages 20-21, it states that FCG removed common plant costs allocated to the leased appliance business, indicating the costs were put below the line. Please respond to the following:**

   a. Confirm whether FCG recorded appliance-related revenues, profits, and losses as above-the-line or below-the-line from 2004 through 2025.

   b. Identify the FERC accounts used by FCG to record (1) customer loan payments, (2) loan receivables, (3) plant-in-service entries, and (4) any related offsets.

   c. Confirm whether FPUC intends to record financing-related revenues and expenses in the same manner as FCG. If not, describe any differences.

   d. How does the "leased appliance business" differ from FPUC's proposed conversion tariff?

Company Response:

a. FPUC is not privy to the entire accounting history of FCG's equipment financing back to 2004, as they have been affiliates for only 2 years. With that said, FCG does not currently have an appliance sales or leasing business, and it is FPUC's understanding that the leasing business was terminated when AGL Resources acquired FCG in the early 2000s.

As reflected in the 2022 MFRs, G-1, there were no adjustments for unregulated or "non-utility" assets. Likewise, in the same schedule submitted in the 2017 rate case, the only "non-utility" adjustments were associated with personnel and assets of AGL Services Company (AGSC), which, at the time, was an affiliated service company, and the allocation of the associated costs.[2]

FPUC would further emphasize that the scenario presented in this DR #4 was significantly different than that addressed in this docket.

Specifically, as set forth in the Testimony of Gloria Lopez on behalf of FCG in that docket, Docket No. 20030569-GU:

> In 2001, a separate accounting entity was created for the appliance business to better segregate leasing, servicing and merchandising activities from regulated utility activities. These activities, associated accumulated depreciation, and related lease receivables and merchandise inventories have been excluded from utility assets and Adjusted Rate Base, either by exclusion from the utility balance sheet initially or by adjustment on Schedule G-I, page 4. In addition,

[1] The Order referenced should be Order No. PSC-2004-0128-PAA-GU, which was issued in Docket No. 20030569-GU.

[2] At the time of the 2017 rate case filing, FCG was wholly owned by AGL Resources.

> the adjustments to working capital and to common plant for the calculation of Adjusted Rate Base exclude components that help support or are shared with the leased appliance business. All lease, service and merchandising revenues, operating expenses and depreciation directly chargeable to the leasing business are accounted for on the financial statements of the new entity, and thus are excluded from the calculation of City Gas N0I. In addition, the calculation of the Company's Adjusted NOI includes adjustments to exclude the appropriate portion of Administrative and General ("A&G") expenses that support or are shared with the leased appliance business.

Testimony, page 9. Notably, in that very same case, FCG's witness Kaufman explained that the "Equipment Financing" provision in Section 16 of its tariff was created to remove and consolidate similar provisions that had previously been located in each separate rate schedule.

b. Response: (1 and 2) customer loan payments: FERC Account 142. For item (3). Plant in Service, there will be nothing recorded as there is no sale or leasing of any merchandise or "plant" and thus, no plant in service to record. With regard to item (4) Other offsets: Provision for bad debt FERC 144, Lien fee FERC 912, Interest FERC 488

c. FPUC intends to follow FCG's current bookkeeping methodology.

d. Again, FCG no longer has a "leased appliance business." And yes, leasing differs from financing both from an accounting perspective and a legal perspective. **Please also refer to Attachment A hereto.**

5. **The FCG equipment financing tariff was originally approved in rate case docket No. 19960502-GU. Witness Demoine testified in that docket that the Company has added language that allows "the cost of natural gas conversion equipment to be recovered…" Please explain why FCG and FPUC believe that the term "conversion equipment" includes appliance sales through a third party vendor, as opposed to just redoing interior piping for instance.**

Company Response:

As described herein, it is common that a customer decides to convert their home to enable use of natural gas because they would like to utilize a particular gas appliance. In other words, conversions to gas are not done on a stand-alone basis – there is a desire by the customer to use a gas appliance. As such, when conversions have been done, and utility financing has been used, the amount financed has included both the piping as well as the desired equipment (appliance). Put another way, simply installing interior piping without the equipment does not constitute full conversion. **See also Attachment A for further analysis of the use of the term "appliance" and related analysis.**

6. **First Data Request, No. 2.d. According to the utility, there would be Trade Allies (third-party vendors) involved in equipment sales or financing.**

   a. Identify the third-party vendors that would be involved in equipment sales or financing at this time or as expected to be relied upon for this equipment financing program.

   b. Confirm whether any of these vendors are non-regulated affiliates of FPUC or Chesapeake Utilities Corporation.

   c. Describe the nature of any affiliation these vendors have with FPUC (e.g., ownership, personnel, financial interests).

   d. Provide a sample agreement between FPUC and the Trade Ally that corresponds with the financing structure provided in Attachment B of the petition.

Company Response:

a. Once FPUC receives approval from the Commission, the Company will send invitations to experienced contractors to participate. Until then, the Company will not know which contractors will participate.

b. The contractors FPUC will send the invitation to participate in this program are independent with no affiliation to Chesapeake Utilities Corporation.

c. There is no affiliation of any kind.

d. FPUC does not anticipate developing a standardized agreement between FPUC and the Trade Ally, because the financing arrangement is between FPUC and its customer. Instead, similar to the process used for financing the piping, Trade Allies will submit invoices for review and approval under the internal policies.

7. **Refer to the Company's Equipment Financing Tariff, filed on April 4, 2025.**

   a. Why is FPUC proposing to offer direct financing to customers instead of conducting appliance sales and financing through an unregulated affiliate?

   b. Has appliance financing historically been limited to the unregulated side of the utility industry?

   c. Does this proposed tariff revision reflect a departure from current and past business models?

   d. Aside from the gas conversion, compression, and RNG equipment included in the proposed tariff, does FPUC currently sell or finance any other merchandise (e.g., branded items, tools, or appliances) either directly or through non-regulated affiliates or third-party arrangements? If so, describe how those transactions are accounted for and explain whether the treatment differs from the proposed tariff. If so, how?

Company Response:

a. Administratively, this is a more efficient and less costly mechanism for keeping the program under the utility. Also, the utility manages the contractor relationship, coordination and customer communications. Additionally, this will support our efforts to align processes and procedures between FPUC and FCG for consolidation in the future.

b. No, Florida City Gas has had a similar tariff program since the late 1990s. Moreover, recent amendments to that tariff were made in Docket No. 20200216, which provides at Sheet 74.1 and 74.2:

> MONTHLY SERVICES CHARGE: The Monthly Service Charge shall be an amount negotiated between the Company and the Customer, but in no event shall Monthly Service Charge cause any additional cost to the Company's other rate classes. The Monthly Charge shall be set in a manner to allow the Company to recover the total installed cost of the facilities required to provide RNG Service plus the carrying costs at the Company's overall cost of capital, which facilities may include, but are not limited to, blowers, chillers, condensate removal equipment, compressors, heat exchangers, driers, digesters, gas constituent removal equipment, quality monitoring equipment, storage vessels, controls, piping, metering, propane injection, and any other related appurtenances including any redundancy necessary to provide reliable RNG Service.

In that same proceeding, slight modifications were approved for existing Section 19 on Sheet No. 26, which provides:

> 19. EQUIPMENT FINANCING If the Company agrees to provide the necessary gas conversion, compression, or RNG equipment to be owned and maintained by the Customer, an agreement as to terms and conditions governing recovery of the costs for such equipment from the Customer may be entered into and the initial contract term of gas service shall at a minimum be the same as the period of recovery stated in the agreement. Further, the rates established in the monthly rate section may be adjusted to provide for recovery by the Company of the costs incurred, including carrying cost at the Company's overall cost of capital, in providing such equipment. At such time when the Company has recovered its costs of providing such equipment the ongoing gas deliveries shall be billed at rates stated in the Customers applicable Rate Schedule.

FCG's RNGS tariff was modeled after PGS's tariff, approved in Docket No. 20170206-GU.

Other financing arrangements that have been approved by the Commission over the years, include:

> FPL's Supplemental Power Services Tariff: With this program, residential customers have the option of receiving an FPL-owned backup generator in exchange for making monthly payments designed to fully recover the costs incurred. Here, a residential backup generator is installed on a pad and connected behind the meter to a customer's home electrical system.
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> FPL's HVAC On Bill Option: While structured differently than FPUC's proposed tariff, the HVAC On Bill Option is a financing arrangement that has been approved by the Commission. Unlike FPL's conservation program, FPUC does not take ownership of the equipment at any time; thus, FPUC's mechanism, as set forth in response to DR 1(a) clearly falls outside the definition of a "sale." Although not addressed in the Commission's Order No. PSC-2024-0505-FOF-EG, the transcript from the Commission's discussion at the Agenda Conference regarding staff's recommendation is clear that the prevailing motion at that hearing was to deny staff's recommendation on Issue 10, which posited that FPL's HVAC On-Bill option was not within the Commission's jurisdiction, involved the sale of HVAC units, and mixed non-jurisdictional appliance sales with FEECA investments.[3]
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> PGS's NGV Compressor financing for filling station and fleet operator customers (Order 25626) Essentially, the program was designed to assist fleet operators or filling station operators in obtaining compressor units. The major aspects of the program included

[3] For instance: Commissioner Passidomo-Smith stated: "Now regarding the legal analysis of whether it's a sale, I have a differing opinion than staff does on this." TR, page 7, lines 14-16. Also, Commissioner Passidomo-Smith: "I appreciate Commissioner Fay's comments, and I understand. He makes a good point. You know, this is a legal interpretation. I think, like I said, staff did a really good job of laying out their position in the recommendation, and did all of the necessary legal research, and, you know, lawyers can disagree. And so, I guess with that, I would move to deny staff's recommendation and approve the stipulation as presented."

recovery of the costs of the compressor units through an NGV surcharge to be applied to the program participants. A qualified fleet or filling station operator would pay a surcharge per therm of gas purchased for compression. The surcharge was applied toward the cost of the compressor unit. Similar programs approved FCG in Docket 20130147 and FPUC in 20130135.

FPUC's Good Cents Loan Program, which was intended to encourage residential customers to install energy conservation features. Acting as a middleman, FPUC arranged unsecured loans with participating financial institutions for up to $20,000 for a twelve-year term. Approved Order No. 2001-2026-PAA-EG. Discontinued in 2002 due to lack of participation.

While each of the above-referenced programs has minor differences from FPUC's proposed tariff modification (as well as FCG's existing tariff), they each reflect financing arrangements approved by the Commission. There is no legal basis for distinguishing FPUC's proposal from that of these previously approved programs.

c. No, for the reasons set forth above in (b).

d. FPUC has a small unregulated energy services unit.

8. **Refer to the Company's Equipment Financing Tariff, filed on April 4, 2025, in which the Company requests approval to include renewable natural gas (RNG). In June 2025, the Governor vetoed funding for a state-supported RNG pilot program.**

   a. Explain how this veto affects FPUC's proposed RNG activities under the proposed tariff revision.

   b. If so, identify any modifications to the proposed tariff that FPUC is considering in response.

Company Response:

a. The Governor's veto has no impact.

b. No modifications are needed.

9. **May 27, 2025, via email, FPUC provided revised tariff language to clarify that the Company provides financing only. Please respond to the following potential additional tariff revisions:**

   a. State whether FPUC considered including within the tariff language (Sheet Nos. 6.153 and 6.154) that recovery of financing costs will appear as a separate monthly charge on the customer's bill? A separate conversion costs charge on the customer's bill has been approved for St. Joe in Order No. PSC-08-0436-PAA-GU and is shown on the sample bill provided in response to staff's first data request No.5. If not, explain why.

   b. State whether FPUC considered specifying that the Company would provide financing only for the installation of residential water heaters and exclude compression and RNG equipment from the proposed tariff revision. If not, explain why.

   c. Based on the above questions, please provide a revised tariff that also includes the revisions provided on May 27, 2025.

Company Response:

a. Yes, if the Commission considers appropriate, FPUC can include language stating that equipment financing will appear on the bill as a separate line.

b. The company's preference is not the have this limitation as it would hinder the ongoing efforts to align processes and procedures. Additionally, it would cause increased administrative and communication cost due to the need to differentiate both companies. Moreover, the distinction suggested is ultimately one without a real difference. While water heaters were the appliance mentioned in earlier data requests, they are not the only appliance customers have expressed interest in over the years, nor are they only type of equipment financed. And again, there is no legal basis for distinguishing water heaters from other appliances. Likewise, FCG has compression and RNG equipment included in its tariff, which was approved by this Commission.

c. Please see Attachment B for proposed revised tariff sheets.

Attachment "A"

Section 366.05(2), Florida Statutes, provides as follows:

> (2) Every public utility, as defined in s. 366.02, which in addition to the production, transmission, delivery or furnishing of heat, light, or power also sells appliances or other merchandise shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the sale of such items in arriving at any rate to be charged for service by any public utility.

The plain language of the statute speaks only to appliance sales. As clearly articulated by the Florida Supreme Court in Diamond Aircraft Indus., Inc. v. Horowitch, 107 So.3d. 362, 367 (Fla. 2013):

> The issue before this Court is a matter of statutory construction, which we review de novo. *See Borden v. East–European Ins. Co.*, 921 So.2d 587, 591 (Fla.2006). Legislative intent is the polestar that guides our analysis regarding the construction and application of the statute. *See Bautista v. State*, 863 So.2d 1180, 1185 (Fla.2003). Our statutory analysis begins with the plain meaning of the actual language of the statute, as we discern legislative intent primarily from the text of the statute. *See Heart of Adoptions, Inc. v. J.A.*, 963 So.2d 189, 198 (Fla.2007). If statutory language is "clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984) (quoting *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157, 159 (1931)). In instances of an ambiguity in statutory language, we may resort to the rules of statutory construction, which permit us to examine the legislative history to aid in our determination regarding legislative intent. *See Weber v. Dobbins*, 616 So.2d 956, 958 (Fla.1993).

More recently, in *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (citing Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 56 (2012)), the Florida Supreme Court reiterated that:

> In interpreting the statute, we follow the "supremacy-of-text principle"—namely, the principle that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012). We also adhere to Justice Joseph Story's view that "every word employed in [a legal text] is to be expounded in its plain,

> obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it." *Advisory Op. to Governor re Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833), *quoted in* Scalia & Garner, *Reading Law* at 69).

Notably, even in his dissent in that opinion, Chief Justice Muniz stated his agreement with the "supremacy of the text" principle. Id. at 950.

Florida courts have been consistent in this approach to statutory interpretation, which emphasizes that the language chosen by the Legislature best reflects its intent. For instance, in *Fla. Dept. of Bus. Reg. v. Invest. Corp.*, 747 So.2d 374, 382 (Fla. 1999),[4] the Court provided a similar analysis of the order of priority of statutory construction:

> [L]egislative intent controls construction of statutes in Florida. Moreover, "that intent is determined primarily from the language of the statute [and] ... [t]he plain meaning of the statutory language is the first consideration." *St. Petersburg Bank and Trust Co. v. Hamm*, 414 So.2d 1071, 1073 (Fla.1982) (citation omitted). This Court consistently has adhered to the plain meaning rule in applying statutory and constitutional provisions. *See Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984); *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So.2d 879, 882 (Fla.1983); *Carson v. Miller*, 370 So.2d 10, 11 (Fla. 1979); *State ex rel. West v. Gray*, 74 So.2d 114, 116 (Fla.1954); *Wilson v. Crews*, 160 Fla. 169, 175, 34 So.2d 114, 118 (1948); *City of Jacksonville v. Continental Can Co.*, 113 Fla. 168, 171-73, 151 So. 488, 489-90 (1933); *Van Pelt v. Hilliard*, 75 Fla. 792, 798, 78 So. 693, 694 (1918). As we recently explained:
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> Florida case law contains a plethora of rules and extrinsic aids to guide courts in their efforts to discern legislative intent from ambiguously worded statutes. However, "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." It has also been accurately stated that courts of this state are "without power to construe an unambiguous statute in a way which would extend, modify, or *limit,* its express terms or its *reasonable and obvious implications.* To do so would be an abrogation of legislative power."

[4] *Citing* Holly, 450 So.2d at 219 .

The Court elaborated further in State v. Peraza, 259 So.3d 728, 730 (Fla. 2018), emphasizing that:

> This Court is "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications." *Id.* (emphasis omitted) (quoting *Am. Bankers Life Assurance Co. of Fla. v. Williams* , 212 So.2d 777, 778 (Fla. 1st DCA 1968)).

In that same opinion, the Court also concluded that:

> Moreover, this Court has held that "[e]ven where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity." *St. Petersburg Bank & Trust Co. v. Hamm* , 414 So.2d 1071, 1073 (Fla. 1982) (quoting *Van Pelt v. Hilliard* , 75 Fla. 792, 78 So. 693, 694 (1918)). Because even a clearly discernible Legislative intent cannot change the meaning of a plainly worded statute, it would only confuse matters to focus on what the Legislature might have intended rather than what the statute actually says.[5]

In concert with the above opinions, the Fifth District Court similarly concluded that:

> An agency may not redefine statutory terms to modify the meaning of a statute. *Campus Commc'ns, Inc. v. Dep't of Revenue,* 473 So.2d 1290 (Fla.1985) (department rule defining "newspaper" for purposes of a statutory sales tax exemption invalid for adding criteria to statute); *see also Pedersen v. Green,* 105 So.2d 1 (Fla.1958) (where statute excepted "feed" from sales tax, agency cannot adopt rule limiting exemption to feed for animals kept for agricultural purposes thereby excluding feed for zoo animals). Nor may an agency apply a construction which conflicts with the plain language of the statute. If an agency rule contravenes a statute, it must be rejected as an invalid exercise of delegated legislative authority. *Dep't of Natural Res. v. Wingfield Dev. Co.,* 581 So.2d 193, 198 (Fla. 1st DCA 1991).
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> *A. Duda and Sons v. St. Johns River Water*, 17 So.3d 738, 744 (Fla. App. 2009), citing *Campus Commc'ns, Inc. v. Dep't of Revenue,* 473 So.2d 1290 (Fla.1985).

The wording of Section 366.05(2), Florida Statutes, has not changed since its inception in 1951. See Attachment C. While other provisions of Section 366.05 have, over the years, been modified, the Legislature has not amended this provision to change or expand its application, nor is there any Legislative analysis that would suggest that the Legislature intended anything other than what was

[5] Id. at 733.

expressly stated. Thus, FPUC respectfully suggests that, in this case, satisfaction of both the letter of the law and the intent are, in fact, one and the same.

> Financing is not a "sale" for purposes of Chapter 672, F.S. FPUC never holds title to the appliance. Likewise, it is not a lease, whether a "consumer lease" or a "financing lease" for purposes of Chapter 680, Florida Statutes, because FPUC does not enter into a contract with the appliance dealer to acquire the appliance nor does it "acquire the right to possession and use of the goods" in question. FPUC does not acquire any right of possession, nor does it acquire a leasehold interest in the financed equipment. Instead, the arrangement creates a "purchase money security interest" whereby a creditor (here, FPUC) loans money to a debtor (here, FPUC's natural gas customer) to finance the purchase of certain goods. *See*, Section 679.1031(1)(a) and (b), F.S. In return, the debtor grants the creditor a security interest in those goods, which is perfected through the filing of a UCC-1 lien.

Finally, as it pertains to Staff's apparent distinction between "appliance" financing and "equipment" financing, the distinction finds no support in the relevant statutes. In fact, the term "appliance" is not defined in Chapter 366 and is used in a variety of contexts throughout Florida Statutes, from references to home appliances to dental appliances to equipment and "appliances" used to secure a load on a semitruck. Most notably, in the original Chapter 26545, Laws of Florida, the term "appliances" is used to describe **meters.**

A suggestion has also been made that the phrase "in addition to the production, transmission, delivery or furnishing of heat, light, or power" provides some indication of "utility" vs. "nonutility" equipment or appliances. The plain-language of the statute does not support this view. Instead, the phrase is clearly used to distinguish the provision or "sale" of heat, light, or power by a utility from the "sale" of an appliance or other merchandise.

ATTACHMENT B

Proposed Revised Version of Tariff

First Revised Sheet No. 1.653

Original Sheet No. 1.654

a. The AEP Charge shall not be billed to any Customer premise that activates Gas service from an AEP extension of facilities subsequent to the end of the completed build out period following the in-service date of an AEP extension of facilities.

b. Revenues from the AEP Charge shall be credited against the Company's distribution main plant account, except that the Company shall retain, as a return on its capital investment, a portion of such revenues equal to its allowed cost of capital.

4. Service Extensions from Existing Mains:
The Company shall extend service facilities connecting a Customer premise to an existing Main, where the Company's capital investment to install the service does not exceed the MACC. Where the service extension capital investment exceeds the MACC, the Customer shall pay to the Company a non-refundable amount equal to the difference between the MACC and the estimated capital cost of the service extension.

5. Temporary Service:
In the case of temporary service for short-term use, Company may require Customer to pay all costs of making the service connection and removing the material after service has been discontinued, or to pay a fixed amount in advance to cover such expense; provided, however, that Customer shall be credited with reasonable salvage realized by Company when service is terminated.

6. Relocation of Distribution Facilities:
When alterations or additions to structures or improvements on premises to which Company provides service necessitate the relocation of Company's distribution facilities, or when such relocation is requested by Customer for any reason, Customer may be required to reimburse Company for all or any part of the costs incurred by Company in the performance of such relocation.

7. Ownership of Property:
The Company shall own, operate, and maintain all service pipes, regulators, vents, Meters, Meter connections, valves, and other apparatus from Company Mains to the outlet side of the Meter and shall have a perpetual right of ingress and egress thereto.

8. Equipment Financing:
If requested by Customer, and the Company agrees to provide financing for the necessary gas conversion, compression, or RNG equipment to be owned and maintained by the Customer, an agreement as to terms and conditions governing

RULES AND REGULATIONS - CONTINUED

Equipment Financing Continued

recovery of the financed costs for such equipment from the Customer may be entered into and the initial contract term of gas service shall at a minimum be the same as the period of recovery stated in the agreement. A finance cost recovery charge will be listed as a separate line item on the customer's bill to collect cost incurred; including carrying cost at the company's overall approved cost of capital, in providing such conversion to natural gas. At such time as the Company has recovered its installation cost, the finance charge will be removed from the customer's bill.

a. The AEP Charge shall not be billed to any Customer premise that activates Gas service from an AEP extension of facilities subsequent to the end of the completed build out period following the in-service date of an AEP extension of facilities.

b. Revenues from the AEP Charge shall be credited against the Company's distribution main plant account, except that the Company shall retain, as a return on its capital investment, a portion of such revenues equal to its allowed cost of capital.

4. Service Extensions from Existing Mains:
The Company shall extend service facilities connecting a Customer premise to an existing Main, where the Company's capital investment to install the service does not exceed the MACC. Where the service extension capital investment exceeds the MACC, the Customer shall pay to the Company a non-refundable amount equal to the difference between the MACC and the estimated capital cost of the service extension.

5. Temporary Service:
In the case of temporary service for short-term use, Company may require Customer to pay all costs of making the service connection and removing the material after service has been discontinued, or to pay a fixed amount in advance to cover such expense; provided, however, that Customer shall be credited with reasonable salvage realized by Company when service is terminated.

6. Relocation of Distribution Facilities:
When alterations or additions to structures or improvements on premises to which Company provides service necessitate the relocation of Company's distribution facilities, or when such relocation is requested by Customer for any reason, Customer may be required to reimburse Company for all or any part of the costs incurred by Company in the performance of such relocation.

7. Ownership of Property:
The Company shall own, operate, and maintain all service pipes, regulators, vents, Meters, Meter connections, valves, and other apparatus from Company Mains to the outlet side of the Meter and shall have a perpetual right of ingress and egress thereto.

8. Equipment Financing:

If requested by Customer, and the Company agrees to provide financing for the necessary gas conversion, compression, or RNG equipment to be owned and maintained by the Customer, an agreement as to terms and conditions governing

RULES AND REGULATIONS - CONTINUED

Equipment Financing Continued

recovery of the financed costs for such equipment from the Customer may be entered into and the initial contract term of gas service shall at a minimum be the same as the period of recovery stated in the agreement. A finance cost recovery charge will be listed as a separate line item on the customer's bill to collect cost incurred; including carrying cost at the company's overall approved cost of capital, in providing such conversion to natural gas. At such time as the Company has recovered its installation cost, the finance charge will be removed from the customer's bill.

ATTACHMENT C

Chapter 26545, Laws of Florida (1951)

required to be paid during such semiannual period as the same may not be registered and in use, if the annual registration rate for the aforesaid motor vehicle is in excess of one hundred dollars, fee not included.

The sale of license number plates by the motor vehicle commissioner or his agents, for each year, shall begin on January 5th. The operation of any motor vehicle after the 20th of February, without having attached thereto a license tag for the current year, shall subject the operator thereof to arrest and punishment as provided by law for the operation of a motor vehicle without proper license. The time for the operation of any motor vehicle for the current year may be extended by the governor from February 20th of the current year for a period of thirty days, if within his judgment and discretion an emergency exists justifying the thirty days extension period.

Section 2. All laws and parts of laws in conflict herewith are hereby repealed.

Section 3. This act shall take effect on December 1, 1951.

Approved by the Governor May 7, 1951.

Filed in Office Secretary of the State May 7, 1951.

CHAPTER 26545—(No. 66)

HOUSE BILL NO. 26

AN ACT Providing for the Regulation, Control, and Supervision of Certain Privately Owned Electric or Gas Public Utilities by The Florida Railroad and Public Utilities Commission; Defining Such Public Utilities and Prescribing Their Duties and Responsibilities; Prescribing the Duties and Powers of the Commission With Reference to the Rates, Service, Securities and Financing of Said Utilities; Prescribing Penalties for Violations of This Act or Any Order, Rate, Rule or Regulation of Said Commission; Providing That the Provisions of This Act Shall Neither Apply to Utilities Owned or Operated by Cooperatitves Organized and Existing Under the Rural Electrification Cooperative Law of the State of Florida nor to Utilities Owned or Operated by

Municipalities, nor to Certain Natural Gas Pipe Line Transmission Companies nor a Person Supplying Liquified Petroleum Gas Unless Such Person also Supplies Electricity, Manufactured or Natural Gas; Providing That This Act Shall Not Affect Certain Rate Litigation and Refund Proceedings; Repealing All Laws or Parts of Laws in Conflict Herewith; and Providing the Effective Date of This Act.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The regulation of public utilities as defined herein is declared to be in the public interest and this Act shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

Section 2. The term "public utility" as used herein means and includes every person, corporation, partnership, association or other legal entity and their lessees, trustees or receivers, now or hereafter either owning, operating, managing or controlling any plant or other facility supplying electricity or gas (natural, manufactured or similar gaseous substance) to or for the public within this state, directly or indirectly for compensation; but the term "public utility" as used herein does not include either a cooperative now or hereafter organized and existing under the rural electrification cooperative law of the State of Florida nor a municipality nor any natural gas pipe line transmission company making only sales of natural gas at wholesale and to direct industrial consumers, nor a person supplying liquified petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, unless such person also supplies electricity, manufactured or natural gas.

Section 3. Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate and efficient service upon terms as required by the Commission, provided, no public utility shall be required to furnish electricity or gas for resale. All rates and charges made, demanded or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

Section 4. In addition to its existing functions, the Florida Railroad and Public Utilities Commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates, service and, from and after July 1, 1951, the issuance and sale of its securities maturing more than twelve months after date of issue. The jurisdiction conferred upon said Commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in case of conflict therewith all lawful acts, orders, rules and regulations of the Commission shall in each instance prevail; provided, however, that the Florida Railroad and Public Utilities Commission is not granted by this Act jurisdiction over the rates fixed by the Pinellas Utility Board, which have been attacked by the public utility in the Courts, nor over the pending litigation before the Courts of this State or the United States, in which such rate order is challenged until after such litigation has been finally adjudicated and the jurisdiction of Pinellas Utility Board over said rates and the pending litigations is hereby continued in full force and effect until the final determination thereof.

Section 5. In the exercise of such jurisdiction, the Commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to prescribe uniform system and classification of accounts for all public utilities, which among other things shall set up adequate, fair and reasonable depreciation rates and charges; to require the filing by each public utility of periodic reports and all other reasonably necessary data; to require repairs, improvements, additions and extensions to the plant and equipment of any public utility reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners, and technical, legal and clerical employees as it deems necessary to carry out the provisions of this Act; to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this Act; and to exercise all judicial powers, issue all writs and do all things, necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.

Every public utility as defined in Section 2 of this Act, who in addition to the production, transmission, delivery or furnishing of heat, light or power also sells appliances or other merchandise, shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the Commission from the sale of such items in arriving at any rate to be charged for service by any public utility.

The Commission shall provide for the examination and testing of all appliances used for measuring any product or service of a public utility.

Any consumer or user may have any such appliance tested upon payment of the fees fixed by the Commission.

The Commission shall establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadavantage of the consumer or user, in excess of the degree or amount of tolerance customarily allowed for such appliances or as may be provided for in rules and regulations of the Commission.

The Commission may purchase materials, apparatus, and standard measuring instruments for such examination and tests.

Section 6. All rates being charged and collected by a public utility upon the effective date of this Act shall be the lawful rates until changed in accordance with the rules, regulations or orders of the Commission or court decree. Under rules and regulations to be prescribed by the Commission every public utility shall, within ninety days after the effective date of such rules and regulations, file with the Commission schedules showing all rates, classifications and charges for service of every kind furnished by it, and all rules and regulations relating thereto in effect at the time this Act becomes a law. Thereafter current schedules shall be maintained on file with the Commission on such forms and under such rules and regulations as the Commission may prescribe. 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, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the Commission, shall be used for rate-making purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any good-will or going-concern value or franchise value in excess of payment made therefor. Whenever the Commission shall find, upon request made or upon its own motion, that the rates demanded, charged or collected by any public utility company for public utility service, or that the rules, regulations or practices of any public utility company affecting such rates are unjust, unreasonable, unjustly discriminatory, or in any wise in violation of law, or that such rates are insufficient to yield reasonable compensation for the services rendered, or that such service is inadequate or cannot be obtained, the Commission shall order and hold a public hearing, giving notice to the public and to the utility company, and shall thereafter determine just and reasonable rates to be thereafter charged for such service and to promulgate rules and regulations affecting equipment, facilities and service to be thereafter installed, furnished, and used; provided, however, that nothing in this Act shall be construed to affect a rate in litigation and refund proceedings thereunder pending in the courts on April 3, 1951; provided, however, that a rate order of a duly constituted local regulatory board or authority entered before April 3, 1951, shall be deemed to be the lawful rates charged and collected by the public utility subject to such regulatory body, and should such rate order be challenged and/or such challenge is pending before the courts of this state or the United States, such rate order shall continue in full force and effect until final determination of such litigation, or until changed by an order of the Commission, and the jurisdiction of said Board to continue said litigation, and said rates, shall continue until such final determination

by the courts, and the Commission shall not interfere with the conduct of such litigation nor the jurisdiction of the Board.

Section 7. Whenever the Commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, or unjustly discriminatory or preferential, or in any wise in violation of law, or any service is inadequate or cannot be obtained, the Commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

Section 8. The Commission or its duly authorized representatives may during all reasonable hours enter upon any premises occupied by any public utility and may set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations and tests and exercising any power conferred by this Act; provided, such public utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations and tests.

Section 9. Any person called upon to testify before the Commission or one of its examiners shall not be excused from answering on the ground or claim that his testimony would tend to incriminate himself; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced documentary evidence provided that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

Section 10. Any public utility or any person in interest dissatisfied with any order of the Commission may have it reviewed by the Supreme Court by certiorari

Section 11. No provision of this Act shall apply in any manner to utilities owned and operated by municipalities, whether within or without any municipality, or by cooperatives organized and

existing under the rural electrification cooperative law of the State of Florida, nor to the sale of electricity, manufactured gas or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under and pursuant to any contracts now in effect or which may be entered into in the future, where such municipality or cooperative is engaged in the sale and distribution of electricity, manufactured or natural gas, nor to the rates provided for in such contracts. Nothing herein shall restrict the police power of municipalities over their streets, highways and public places or the power to maintain or require the maintenance thereof, nor the right of a municipality to levy taxes on public services under Section 167.431, Florida Statutes, 1949, nor affect the right of any municipality to continue to receive revenue from any public utility as is now provided or as may be hereafter provided in any franchise, nor repeal Section 167.22, Florida Statutes, 1949.

Section 12. If any public utility, by any authorized officer, agent or employee, shall knowingly refuse to comply with or wilfully violate any provision of this Act or any lawful rate, rule or regulation, order, direction, demand or requirement prescribed by the Commission hereunder, such public utility shall incur a penalty for each such offense of not more than Five Thousand Dollars to be fixed, imposed and collected by the Commission. Each day that said refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the public utility, enforceable by the Commission as statutory liens under Chapter 86, Florida Statutes, 1949, the proceeds of which shall be deposited to the credit of the General Revenue Fund of the State of Florida.

Section 13. If any of the provisions of this Act or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared to be severable.

Section 13-A. No provision of this Act shall in any way affect any municipal tax or franchise tax in any manner whatsoever.

Section 14. All laws and parts of laws in conflict herewith be, and the same are hereby, repealed.

Section 15. This Act shall take effect upon its becoming a law.

Approved by the Governor May 9, 1951.

Filed in Office Secretary of the State May 9, 1951.

CHAPTER 26546— (No. 67)

HOUSE BILL NO. 117

AN ACT to Amend Section 440.39, Florida Statutes, 1949, Relating to the Payment of Workmen's Compensation Benefits where the Employee Is Injured or Killed by the Negligence or Wrongful Act of a Third Party Tort-Feasor and Actions at Law and Other Remedies Against Such Third Parties.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That Section 440.39 of Florida Statutes 1949 be, and the same is hereby amended to read as follows:

"Section 440.39—COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE.

(1) If an employee, subject to the provisions of the Florida Workmen's Compensation Law, is injured or killed in the course of his employment by the negligence or wrongful act of a third party tort-feasor, such injured employee, or in the case of his death his dependents, may accept compensation benefits under the provisions of this law, and at the same time such injured employee, his dependents or personal representative may pursue his remedy by action at law or otherwise against such third party tort-feasor.

(2) If the employee or his dependents shall accept compensation benefits under this law or begin proceedings therefor, the employer or, in the event the employer is insured against liability hereunder then the insuror, shall be subrogated to the rights of the employee or his dependents against such third party tort-feasor, to the extent of the amount of compensation benefits paid as provided by sub-section (3) of this section.

(3) In actions at law against a third party tort-feasor, the employee, or his dependents, or those entitled by law to sue in the