

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for waiver of  
Rule 25-7.045(8) (a), F.A.C., by  
South Florida Natural Gas  
Company.

DOCKET NO. 980256-GU  
ORDER NO. PSC-98-0706-FOF-GU  
ISSUED: May 21, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING WAIVER OF  
RULE 25-7.045(8) (a), FLORIDA ADMINISTRATIVE CODE

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.

South Florida Natural Gas Co., (Company) filed its last  
depreciation study on December 21, 1992 with an effective date of  
January 1, 1993. Rule 25-7.045(8) (a), Florida Administrative Code,  
requires gas companies to file a study for each category of  
depreciable property for Commission review at least once every five  
years from the submission date of the previous study unless  
otherwise required by the Commission. In accordance with this Rule,  
the Company's next depreciation study was due on or before December  
21, 1997.

In a letter dated January 23, 1998, the Company submitted a  
request "for an extension to file their depreciation study which  
was due in December 1997," required by Rule 25-7.045(8) (a), Florida  
Administrative Code. The Company's initial letter did not  
adequately address the issues that are required to be answered by

DOCUMENT NUMBER-DATE

05656 MAY 21 98

FPSC-REGDROS/REPORTING

Section 120.542, Florida Statutes, before an agency can determine whether a waiver or variance can be granted. A letter was sent to the Company requesting additional information necessary for processing the request for waiver. The Company responded by letter dated April 1, 1998.

A Notice of Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly March 6, 1998. No public comments were received.

We believe that South Florida Natural Gas Company's request for waiver of Rule 25-7.045(8)(a), Florida Administrative Code, for an extension of time to file its depreciation study no later than May 31, 1998, should be granted.

Rule 25-7.045(8)(a), Florida Administrative Code, states the following:

Each company shall file a study for each category of depreciable property for Commission review at least once every five years from the submission date of the previous study unless otherwise required by the Commission.

In this case, the Company's last depreciation study was filed on December 21, 1992, with an effective date of January 1, 1993. Therefore, the new filing date for the requisite study was December 21, 1997.

Section 120.542(1), Florida Statutes, provides a two pronged test for determining when waivers and variances from agency rules shall be granted:

. . . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person **and** when application of the rule would create a substantial hardship . . . . For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. (Emphasis added).

In its letter filed April 1, 1998, the Company stated that the waiver it seeks, of Rule 25-7.045(8)(a), Florida Administrative Code, is "temporary" and the request for "extension [is only] until

May 31, 1998." Furthermore, the Company asserts that the request "should not affect the duties of the Commission."

I. Achieves Purpose of Underlying Statute

In accordance with the above referenced statute, Section 120.542(1), Florida Statutes, we believe that the Company has adequately demonstrated that the purpose of the underlying statute [Section 350.115, Florida Statutes] will be achieved by this extension.

The underlying purpose of the statute is to provide sufficient information permitting the Commission to establish adequate, fair and reasonable depreciation rates. The initial proposed implementation date for the new depreciation rates is January 1, 1998. This requested extension will not affect that initial proposed implementation date, nor our duties. The reason the requested waiver will not affect our duties is because so long as the study is filed before June 30, the initial proposed implementation date will remain the same, no matter how much time we choose to utilize in evaluating the study and issuing our order. Rule 25-7.045(8)(b), Florida Administrative Code, provides that:

A utility proposing an effective date of the beginning of its fiscal year shall submit its depreciation study no later than the mid-point of that fiscal year.

In this case, the Company's "mid-point" is July 1, 1998. The implementation date, therefore, shall remain the same. Accordingly, the filing of the required study on or before May 31, 1998, will allow the purpose of the underlying statute to be achieved.

II. Demonstrating Substantial Hardship

We believe that the Company has also adequately demonstrated that it has endured a substantial hardship, within the meaning of Section 120.542, Florida Statutes. The Company asserts that as a consequence of its "recent acquisition by Southern Union Company", its employees have spent a "substantial amount of time to integrate the acquisition." Moreover, the Company claims that a "substantial [amount of] time has been incurred on the preparations of South Florida Natural Gas Company's Annual FERC filing." Thus, we believe that the application of the rule would have created a substantial hardship.

Accordingly, because the Company has met both statutory requirements for the granting of a waiver, we find that the Company's request should be granted.

### III. Timeliness of Waiver Request

The Company did not submit its request until approximately 33 days after the due date for the study. Thus, the question arises as to whether we should deny the waiver based upon the Company's failure to timely request a waiver. As stated earlier, herein, the requested extension resulted as a consequence of the Company enduring a substantial hardship which the Company asserts prevented it from complying with the filing deadline of December 21, 1997.

We believe that the Company's requested waiver should not be denied based upon the Company's failure to timely file, for two reasons. First, we believe that the Company has adequately demonstrated that it endured a substantial hardship. Second, the requested waiver would not affect the initial proposed implementation date, nor our duties. Again, as outlined earlier, the reason the requested waiver would not affect our duties is because so long as the study is filed before June 30 [as the Company proposes] the initial proposed implementation date will remain the same - no matter how much time we choose to utilize in evaluating the study and issuing its order. For these reasons, we find that the Company's requested waiver should not be denied based upon the Company's failure to timely file.

Finally, we believe that the Company has adequately demonstrated that it endured a substantial hardship which prevented the Company from complying with the filing deadline of December 21, 1997. We, therefore, believe that the Company should be granted the waiver and be ordered to submit its study no later than May 31, 1998.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that South Florida Natural Gas Company's request for waiver of Rule 25-7.045(8)(a), Florida Administrative Code, for an extension of time to file its depreciation study no later than May 31, 1998, is granted. It is further

ORDER NO. PSC-98-0706-FOF-GU  
DOCKET NO. 980256-GU  
PAGE 5

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of May, 1998.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

JCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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.

ORDER NO. PSC-98-0706-FOF-GU  
DOCKET NO. 980256-GU  
PAGE 6

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 11, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.