

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 20210188-GU  
ORDER NO. PSC-2022-0058-PAA-GU  
ISSUED: February 15, 2022

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman  
ART GRAHAM  
GARY F. CLARK  
MIKE LA ROSA  
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING JOINT PETITION FOR RULE VARIANCE

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 (F.A.C.).

I. 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 us 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.

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.

On December 15, 2021, Commission 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.

On January 25, 2022, FPUC, CFG, and the Office of Public Counsel (OPC) filed a joint statement of support for the joint petition for variance.<sup>1</sup> OPC read the joint statement into the record at our February 1, 2022, Commission Conference.

This Order addresses the Joint Petition. We have jurisdiction pursuant to Sections 120.542 and 120.565, F.S., and Chapter 366, F.S.

II. 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](http://www.floridapsc.com).

This requirement implements our 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.

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<sup>1</sup> Document No. 00696-2022.

### III. The Joint Petition

The Joint Petitioners state 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.<sup>2</sup>

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, 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, propose 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, by which to multiply the prior historic year expense data, is based on the customer growth and inflation for all the years since the last case.

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 us with all of the information contemplated by the MFRs and in the most accurate form possible. They emphasize 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. They state 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

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<sup>2</sup> See, for instance, Docket Nos. 20200214-GU; 20200046-GU; 20190056-GU; and 20150117-GU.

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 their request being unfairly denied as deficient or incomplete simply because the information available does not fit the specific format of the MFRs.

#### IV. Analysis

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.

##### A. The Purpose of the Underlying Statutes Will Be Achieved by Other Means

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 us; to ensure that we only approve rates that are fair, just, and reasonable for each customer class; and to set a procedure for fixing and changing rates.

FPUC and CFG 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 us 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.

FPUC and CFG’s proposed approach to preparing MFRs for an anticipated 2022 rate case filing will allow us to evaluate the rate case based on those MFRs and fulfill our statutory obligation to approve rates that are fair, just, and reasonable, as long as we, our staff, and the parties maintain the ability to conduct appropriate discovery and cross-examination on such information. Accordingly, we find the purpose of the underlying statute will be achieved by other means for an anticipated 2022 rate case filing.

##### B. Application of the Rule Would Create a Substantial Hardship

FPUC and CFG assert that 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.”

We find that 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, under the specific facts presented, we find Joint Petitioners have demonstrated that a strict application of the rule would create a substantial hardship under Section 120.542, F.S.

V. Conclusion

Based on the above, FPUC and CGF's Joint Petition for variance from Rule 25-7.039(1), F.A.C., is granted, subject to discovery and cross-examination procedures remaining intact.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Public Utilities Company and the Florida Division of Chesapeake Utilities Corporation's Joint Petition for Variance from Rule 25-7.039(1), F.A.C., is hereby granted, subject to discovery and cross-examination procedures remaining intact. It is further

ORDERED that the provisions of this order issued as a proposed agency action, will become final and effective upon issuance of a Consummating Order unless an appropriate petition in the form provided by Rule 25-106.201, F.A.C., 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," which appears below. It is further

ORDERED that if no timely protest is received to the proposed agency action, a Consummating Order shall be issued upon the expiration of the protest period, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 15th day of February, 2022.



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ADAM J. TETZMAN  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

DDS

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 8, 2022.

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

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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.