

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida City
Gas.

DOCKET NO. 20220069-GU
ORDER NO. PSC-2022-0276-PCO-GU
ISSUED: July 15, 2022

ORDER DENYING OFFICE OF PUBLIC COUNSEL'S MOTION
TO REQUIRE PUBLIC, IN-PERSON SERVICE HEARINGS

As required by Chapter 366, Florida Statutes (F.S.), when an investor-owned natural gas utility seeks a rate increase, the Commission holds customer service hearings to hear from customers about the service they receive from the utility. In this docket, Florida City Gas (FCG or Utility) is requesting a rate increase, and virtual service hearings are scheduled to take place on September 14 and 15, 2022, at multiple times throughout both days.

OPC's Motion

On June 24, 2022, the Office of Public Counsel (OPC) filed a motion requesting that the service hearings be held in person (Motion), pursuant to Rule 28-106.204(4), Florida Administrative Code (F.A.C.). In its Motion, OPC argues that virtual service hearings are a product of Executive Orders, based on the special circumstances presented by the COVID-19 pandemic.¹ OPC argues that FCG's customers are entitled to appear in-person and address regulators face-to-face to provide testimony about service and other issues related to FCG's proposed rate increase. According to OPC, the impersonal video presentation mode was established under emergency conditions and cannot be a permanent substitute for the long, established history of customers fulfilling their rights to speak directly to the Commission. Ultimately, it is OPC's position that the Commission is obligated to hold public, in-person hearings in FCG's service territories to hear the service complaints of the ratepayers and the public. Counsel for OPC represents that FGC indicated that it defers to the Commission on the Motion.

Legal Requirements

In evaluating OPC's Motion, the Commission is guided by Section 366.041(1), F.S., which provides that in fixing just, reasonable, and compensatory rates, the Commission is authorized to give consideration to the adequacy of the facilities provided and the services rendered, and the cost of providing service to the public. As part of that consideration, "it shall be the [C]ommission's duty to hear service complaints, if any, that may be presented by subscribers and the public during any proceedings involving such rates, charges, fares, tolls, or rentals...." Section 366.06(2), F.S., provides that when the Commission finds, upon request or its own motion, that the rates charged by a public utility are unreasonable, excessive, or insufficient to yield reasonable compensation for the services rendered, "the [C]ommission shall order and hold a public hearing, giving notice

¹ In its motion at Paragraph 10, OPC states that public buildings were closed and other restrictions were made on gatherings pursuant to Executive Order 2020-69. This order was extended several times, and the last extension (Order 2020-246, issued September 30, 2020) expired on November 1, 2020.

to the public and to the public utility, and shall thereafter determine just and reasonable rates to be thereafter charged for such service....”

Contrary to OPC’s assertion, there is no statutory requirement that the Commission conduct in-person service hearings in a gas utility’s service territory.² To the contrary, Florida law contains specific provisions allowing agencies to conduct proceedings by means of communications media technology (CMT).³ More specifically, testimony provided through a form of CMT is afforded equal weight to testimony that is provided in-person.⁴ Nor is an Executive Order a prerequisite for conducting a service hearing virtually. The provisions of Florida Law allowing the Commission to hold virtual hearings predate the executive orders referenced in OPC’s motion.

In addition, it is noted that the Florida Supreme Court recently announced a host of rule changes that broaden and permanently authorize remote proceedings in a variety of situations.⁵ These changes give recognition to the positive outcomes and efficiencies of remote (virtual) hearings observed during the COVID-19 pandemic. They include a “substantially rewritten” Rule 2.530 under the Florida Rules of General Practice and Judicial Administration, which enables a court official to authorize the use of communications technology in the event of one party’s written request or simply at the discretion of the court official.⁶

Determinative Factors for Service Hearings

In deciding how best to hear from customers, it is both prudent and within the Commission’s discretion to weigh a myriad of factors in each rate case that include but are not limited to the financial costs borne by utility customers, the Commission, and parties in conducting service hearings in-person or by virtual means.

The Commission incurs a number of costs to conduct in-person service hearings, including the travel costs for Commissioners and staff, costs for security, court transcription, and multiple visits by Commission AIT staff to ensure sufficient technology exists to comply with livestreaming requirements pursuant to Section 350.01(8), F.S. Just as the Utility may recover reasonable and prudent costs incurred during a rate increase proceeding, so too the Commission recovers its expenses through Utility Regulatory Assessment Fees, paid by customers.

In fact, it has been the Commission’s experience that conducting service hearings virtually may actually increase customer participation. Unlike in-person service hearings, where the

² See in contrast Section 367.045, F.S., which requires that when a hearing is requested with respect to a water or wastewater certificate application, “such hearing must, if feasible, be held in or near the area for which application is made.”

³ See Chapter 28-109, F.A.C., which was first enacted in 1997.

⁴ Rule 28-109.006(1), F.A.C., provides, “Any evidence, testimony, and argument which is offered utilizing CMT shall be afforded equal consideration as if it were offered in person, and shall be subject to the same objections.”

⁵ *In Re: Amendments to Florida Rules of Civil Procedure, Florida Rules of General Practice and Judicial Administration, Florida Rules of Criminal Procedure, Florida Probate Rules, Florida Rules of Traffic Court, Florida Small Claims Rules, and Florida Rules of Appellate Procedure.*, No. SC21-21-990 (Fla. July 14, 2022)

⁶ *Id.* at 4 & 30.

location and time of a service hearing dictates customer participation, virtual hearings empower customers to choose which time of day is most convenient for them – morning, afternoon, or evening. This enhanced customer choice comes without the expense or inconvenience of travel or lost work hours. During virtual service hearings held in the most recent gas utility rate case regarding Peoples Gas Company,⁷ 21 customers testified virtually, which was a 162.5% increase in the total number of participating customers compared to the eight customers who participated at in-person service hearings held in Peoples' 2008 rate case.⁸

As with in-person service hearings, virtual service hearings will allow customers the option to submit written comments concerning their service, the proposed rate increase, or any other matter to be considered in this proceeding. A form is attached to the rate case overview for this purpose, or they can simply send an email or letter to our Clerk's Office. All written comments are included in the correspondence side of the docket file where they are reviewed by the Commission.

Ruling

Customer service hearings play a critical role in the Commission's statutory duty to hear service complaints, and they are a vital component in setting fair, just, and reasonable rates for a regulated utility. However, to require that these customer services hearings be held in-person would be to interpret a mandate that does not exist within the controlling statutes. It is the Commission's responsibility to determine the appropriate medium in which customers service hearings are held, as a result of the totality of the circumstances in each rate case. For the reasons set forth herein, OPC's Motion to Require Public, In-Person Service Hearings is denied.

However, in the spirit of accommodating OPC's interest in holding in-person service hearings, Commission staff is directed to review the most recent participation of customers in previous FCG rate case service hearings, and afford FCG's customers at least one in-person customer service hearing. All in-person service hearings shall be in addition to, and not in place of, virtual service hearings in this docket.

Therefore, it is

ORDERED by Chairman Andrew Giles Fay, as Prehearing Officer, that the Office of Public Counsel's Motion to Require Public, In-Person Service Hearings is denied.

⁷ Docket No. 20200051-GU, *In re: Petition for rate increase by Peoples Gas System.*

⁸ Docket No. 20080318-GU, *In re: Petition for rate increase by Peoples Gas System.*

By ORDER of Chairman Andrew Giles Fay, as Prehearing Officer, this 15th day of July, 2022.



ANDREW GILES FAY

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

WLT

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.