

State of Florida



Public Service Commission

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

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COMMISSION
CLERK

DATE: November 29, 2012

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Miller)
Division of Economics (Rome, Draper) *OM SMC ELO J.W.D.*

RE: Docket No. 120258-GU – Proposed amendment of Rule 25-7.0851, F.A.C., Backbilling, and adoption of Rule 25-7.0852, F.A.C., Unauthorized Use Relating to Gas Utilities.

AGENDA: 12/10/12 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\120258.RCM.DOC

Case Background

Rule 25-7.0851, Florida Administrative Code, (F.A.C.), addresses backbilling by gas utilities. In our continuing review of our rules, staff thought it important to clarify existing practices in this rule. Currently, the rule only addresses underbillings. Staff is recommending that the rule be amended to address overbillings as well.

Staff is also recommending the adoption of new Rule 25-7.0852, F.A.C., Unauthorized Use. It provides that, in the event of unauthorized or fraudulent use or meter tampering, the utility must bill the customer on an estimate of the gas used, based on the customer's past consumption.

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Docket No. 120258-GU
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A Notice of Rule Development was published in the Florida Administrative Weekly on March 9, 2012. No requests for workshop were submitted in response to the notice, and, thus, no workshop was held.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-7.0851, F.A.C., and the adoption of new Rule 25-7.0852, F.A.C. The Commission has jurisdiction pursuant to Section 120.54, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-7.0851, F.A.C., Underbillings and Overbillings, and the adoption of new Rule 25-7.0852, F.A.C., Unauthorized Use?

Recommendation: Yes. The Commission should propose the amendment of Rule 25-7.0851, F.A.C., and the adoption of new Rule 25-7.0852, F.A.C., as set forth in Attachment A. (Miller, Draper)

Staff Analysis: Rule 25-7.0851 currently addresses underbillings by gas utilities. Staff recommends that Rule 25-7.0851, F.A.C., be amended to also address overbillings by gas utilities. Staff recommends that the rule be amended to state that, in the event of overbillings, the utility must refund the overcharge to the customer for the period during which the overcharge occurred, based on available records. In the event of an overbilling, the customer may elect to receive the refund as a credit to future billings or as a one-time credit.

Staff also recommends that new Rule 25-7.0852, F.A.C., Unauthorized Use, be adopted. Gas utilities do not currently have rules dealing with unauthorized use of gas service. This new rule would allow for a utility to bill for an estimate of usage where tampering has been detected. It provides that, in the event of unauthorized or fraudulent use or meter tampering, the utility must bill the customer on an estimate of the gas used, based on the customer's past consumption. The new rule would allow gas utilities to recoup costs from customers who are not authorized to use their service, which avoids shifting those costs to other ratepayers.

Statement of Estimated Regulatory Costs (SERC)

The Statement of Estimated Regulatory Costs (Attachment B) analyzed whether the rule changes are likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after implementation, as well as the impact on small businesses and local governments. Also, the statute requires consideration of whether the draft rules are likely to have an adverse impact on business competitiveness, productivity, or innovation in excess of the above amount. These proposed rule amendments would not have such impacts. Thus, the rule amendments do not require legislative ratification, pursuant to Section 120.541(3), Florida Statutes.

Staff recommends that the Commission propose the amendment of Rule 25-7.0851, F.A.C., and the adoption of Rule 25-7.0852, F.A.C.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rules should be filed with the Department of State, and the docket should be closed. (Miller)

Staff Analysis: If no requests for hearing or comments are filed, the rules should be filed with the Department of State, and the docket should be closed.

1 25-7.0851 Underbillings and Overbillings ~~Backbilling.~~

2 (1) A utility may not backbill customers for any period greater than 12 months for any
3 undercharge in billing which is the result of the utility's mistake. The utility shall allow the
4 customer to pay for the unbilled service over the same time period as the time period during
5 which the underbilling occurred or some other mutually agreeable time period. The utility
6 shall not recover in a ratemaking proceeding any lost revenues which inure to the utility's
7 detriment on account of this provision.

8 (2) In the event of overbillings, the utility shall refund the overcharge to the customer for the
9 period during which the overcharge occurred, based on available records. If commencement
10 of the overcharging cannot be fixed, then an estimate of the overcharge shall be made, based
11 on past consumption, and refunded to the customer. The amount and period of the adjustment
12 shall be based on the available records. The refund shall not include any part of a minimum
13 charge.

14 (3) In the event of an overbilling, the customer may elect to receive the refund as a credit to
15 future billings or as a one-time credit.

16 *Specific Authority 367.121 FS. Law Implemented 367.121 FS. History—New 5-8-91,*
17 *Amended _____.*

18 Rule 25-7.0852 Unauthorized Use

19 (1) In the event of unauthorized or fraudulent use or meter tampering, the utility shall bill the
20 customer on an estimate of the gas used, based on the customer's past consumption.

21 *Specific Authority 367.121 F.S. Law Implemented 367.121 F.S. History- New _____*
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CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

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

DATE: November 19, 2012
TO: Cindy B. Miller, Senior Attorney, Office of the General Counsel
FROM: C. Donald Rome, Jr., Public Utility Analyst I, Division of Economics *CR*
RE: Statement of Estimated Regulatory Costs for Proposed Rules 25-7.0851 and 25-7.0852, Florida Administrative Code (F.A.C.) *JMD ESD*

Summary of Proposed Rule Revisions

Rules 25-7.0851 and 25-7.0852, F.A.C., apply to investor-owned gas utilities (gas IOUs). Rule 25-7.0851, F.A.C., addresses backbilling, and the draft rule amendment would require gas IOUs to provide refunds for overbilling. The new proposed Rule 25-7.0852, F.A.C., addresses unauthorized use and allows gas IOUs to estimate usage and bill a customer where unauthorized usage has occurred through meter tampering or other fraudulent acts. The above rules are recommended for amendment to bring gas rules into a greater degree of conformity with similar rules for electric IOUs.

Economic Analysis Showing Whether the Rules Are Likely to Have an Adverse Impact on Either Economic Growth or Business Competitiveness in Excess of \$1 Million within 5 Years

Subparagraph 120.541(2)(a)1, Florida Statutes (F.S.), requires an economic analysis showing whether the draft rule directly or indirectly is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Subparagraph 120.541(2)(a)2, F.S., requires an economic analysis showing whether the draft rule directly or indirectly is likely to have an adverse impact on business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. The draft rule amendments were evaluated for the potential for having adverse impacts on measures of economic activity noted above.

The current language in Rule 25-7.0851, F.A.C., only addresses backbilling when the customer has been underbilled due to utility error. It does not address refunds when the customer has been overbilled. Proposed revisions to the rule add language to address overbillings as well as underbillings due to company error and specify the process for issuing refunds when a customer has been over charged.

The proposed new rule 25-7.0852, F.A.C., explicitly allows a utility to bill for an estimated amount of usage based on a customer's past consumption where meter tampering or other unauthorized usage has occurred. Gas utilities do not currently have an explicit rule

dealing with unauthorized usage, where service has been obtained fraudulently. The proposed rule would allow utilities to better recoup costs from customers fraudulently using service, and would avoid shifting these costs to other ratepayers.

It is anticipated that the proposed rule revisions will add additional clarity and certainty to typical industry business practices. Therefore, the proposed revisions are not expected to impact economic growth, private sector job creation, or private sector investment. For the same reason, the proposed revisions are not expected to adversely impact business competitiveness, productivity, or innovation.

Economic Analysis Showing Whether the Rules Are Likely to Increase Regulatory Costs in Excess of \$1 Million within 5 Years

Subparagraph 120.541(2)(a)3, F.S., requires an economic analysis showing whether the draft rule directly or indirectly is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. The proposed revisions add language to address overbillings as well as underbillings due to company error and specify the process for issuing refunds when a customer has been over charged. In addition, the proposed revisions would allow gas utilities to estimate usage and bill customers based on past consumption, where unauthorized usage has occurred through meter tampering or other fraudulent acts. The proposed revisions would bring rules pertaining to gas IOUs into a greater degree of conformity with similar rules for electric IOUs. The draft rule amendments are not expected to result in additional regulatory requirements for the industry. Incremental transactions costs, if any, are expected to be insignificant since utilities have access to their historical billing data.

Estimated Number of Entities Required to Comply and General Description of the Types of Individuals Likely to be Affected

Paragraph 120.541(2)(b), F.S., requires a good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule. Proposed changes to Rules 25-7.0851 and 25-7.0852, F.A.C., would affect 7 gas IOUs in Florida. The number of utility customers that would be affected (e.g., those receiving refunds as a result of being overbilled) is difficult to estimate.

Rule Implementation and Enforcement Costs to the Agency and State and Local Government Entities, and Effect on State or Local Revenues

Paragraph 120.541(2)(c), F.S., requires a good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues. The proposed revisions are not expected to cause increases in costs related to their implementation or enforcement, nor are they expected to have any effect on state or local revenues.

Estimated Transactional Costs to Individuals and Entities Including Local Governments

Paragraph 120.541(2)(d), F.S., requires a good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. It is anticipated that the adoption of the proposed revisions will provide benefits to gas IOUs and to ratepayers. Again, the current language in Rule 25-7.0851, F.A.C., only addresses rebilling when the customer has been underbilled due to utility error. It does not address refunds when the customer has been overbilled. Proposed revisions to the rule add language to address overbillings as well as underbillings due to company error and specify the process for issuing refunds when a customer has been overcharged. It is anticipated that the proposed rule revisions will add additional clarity and certainty to typical industry business practices. Incremental transactions costs to gas IOUs, if any, are expected to be insignificant since the utilities have access to their historical billing data.

Gas utilities do not currently have an explicit rule dealing with unauthorized usage, where service has been obtained fraudulently. The proposed new rule 25-7.0852, F.A.C., explicitly allows a utility to rebill for an estimated amount of usage based on a customer's past consumption where unauthorized usage has occurred. The proposed rule would allow utilities to better recoup costs from customers fraudulently using service, and would avoid shifting these costs to other ratepayers. Rates to all customers are kept lower if all customers are properly billed for the gas they use. Incremental transactions costs to gas IOUs, if any, are expected to be insignificant since the utilities have access to their historical billing data.

The proposed revisions are not expected to introduce new transactional costs to local government entities.

Impact on Small Businesses, Small Cities, or Small Counties

Paragraph 120.541(2)(e), F.S., requires an analysis of the impact of the proposed changes on small businesses as defined in Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined in Section 120.52, F.S. It is anticipated that the adoption of the proposed revisions will provide benefits to gas IOUs and to ratepayers. No adverse economic impacts to small businesses, small cities or small counties are anticipated as a result of the proposed revisions.

Additional Information Deemed Useful by the Agency

No workshop has been requested in conjunction with the proposed revisions. No regulatory alternatives have been submitted pursuant to Paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in Paragraph 120.541(2)(a), F.S., will be exceeded as a result of the proposed revisions.

cc: Jim Dean
Elisabeth Draper
SERC File
Cheryl Bulecza-Banks