

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - FLORIDA**

### **Citizens of State v. Florida Public Service Commission**

**Supreme Court of Florida - June 4, 2026 - So.3d - 2026 WL 1596209 - 51 Fla. L. Weekly S151**

Office of Public Counsel (OPC) appealed Public Service Commission's partial approval of natural gas utility's petition for rate increase, challenging approval of two accounting measures and Commission's continuation of accounting adjustment related to utility's prior acquisition.

The Supreme Court held that:

- Commission's approval of utility's use of accounting measure that resulted in reserve surplus was not inconsistent with Commission's depreciation rule;
- Commission's statement in a prior order that a reserve imbalance violates the matching principle and should be corrected did not qualify as an officially stated agency policy;
- Commission's decision to approve utility's use of depreciation parameter that would result in reserve surplus and its approval of corrective measure to account for surplus fell within range of permissible policy choices;
- Commission's approval of utility's use of depreciation parameter that resulted in reserve surplus was supported by competent, substantial evidence;
- Commission's approval of corrective measure to account for reserve surplus created by utility's proposed depreciation parameter was supported by competent, substantial evidence; and
- Commission's decision to continue utility's accounting adjustment related to previous acquisition of utility was supported by competent, substantial evidence.

Public Service Commission's approval of natural gas utility's use of accounting measure that resulted in reserve surplus was not inconsistent with Commission's depreciation rule, which governed utilities' obligation to account for depreciation in the ratemaking process; nothing in depreciation rule prohibited Commission from adopting depreciation parameters that resulted in a reserve imbalance, but rule instead provided for corrective measures in the event of an imbalance, and utility complied with its obligations by filing depreciation study and proposing accounting measure to correct surplus.

Public Service Commission's statement in a prior order that a reserve imbalance violates the matching principle and should be corrected did not qualify as an officially stated agency policy, and thus Commission's approval of natural gas utility's use of accounting measure that resulted in reserve surplus was not inconsistent with any official policy; Commission had taken a variety of approaches to correcting imbalances, and in more recent order, Commission had stated that its depreciation rule did not require reserve transfers to be performed, but only that reserve imbalances be identified.

Public Service Commission's decision to approve natural gas utility's use of depreciation parameter that would result in reserve surplus and its approval of corrective measure to account for surplus fell within range of permissible policy choices and thus within Commission's delegated discretion; Commission recognized that depreciation parameter would result in reserve surplus and then

considered what corrective measures should be taken with regard to surplus, Commission heard testimony on utility's proposed corrective measure and Office of Public Counsel's (OPC) proposed corrective measure, and Commission concluded that utility's proposed method would allow it to manage day-to-day fluctuations as well as take on risk of both actual current as well as potential future increases in rates and inflation.

Public Service Commission's approval of natural gas utility's use of depreciation parameter that resulted in reserve surplus and corrective measure to account for that surplus did not contravene prior Commission practice, despite fact that Commission had previously only approved such accounting techniques when they were advanced in context of a settlement agreement; Commission reasonably explained its action, legislature's grant of authority to Commission to fix fair and reasonable rates did not condition that authority on whether a case was litigated or settled, and there were not prior cases identified where Commission refused to approve accounting techniques at issue.

Public Service Commission's approval of natural gas utility's use of depreciation parameter that resulted in reserve surplus was supported by competent, substantial evidence, including testimony that depreciation parameter was based on parameters for similar assets recently approved by Commission, parameter was within reasonable range of alternative depreciation parameters typically proposed by other parties litigating depreciation studies before Commission, parameter was generally in line with depreciation parameters proposed by Office of Public Counsel's (OPC) witness, and service lives and net salvage estimates used in depreciation parameter were not outside overall range of reasonableness of similar depreciation studies.

Public Service Commission's approval of corrective measure to account for reserve surplus created by natural gas utility's proposed depreciation parameter used in setting new utility rates was supported by competent, substantial evidence, including testimony of utility's witness that using corrective measure would enable utility to avoid increasing base rates for several years, providing customers with rate stability and certainty, avoiding repetitive and costly rate proceedings, and enabling utility to continue to focus on providing safe, reliable, and affordable service, and testimony that corrective measure, along with depreciation parameter, would save customers nearly \$10.8 million over four-year rate plan.

Public Service Commission's prior statements in previous rate-approval proceedings that acquisition adjustments do not survive subsequent transfers or purchases of a utility's assets did not establish an official policy concerning the continuation of acquisition adjustments that would have precluded Commission from continuing natural gas utility's accounting adjustment related to previous acquisition of utility in approving utility's proposed rate increase; Commission's prior statements involved water and wastewater utilities, which operated under different regulatory scheme than gas utilities, gas utilities were not subject to any acquisition adjustment rules, and Commission had previously allowed gas utilities to continue acquisition adjustments after subsequent acquisitions.

Public Service Commission's decision to continue natural gas utility's accounting adjustment related to previous acquisition of utility, in approving utility's proposed rate increase, was supported by competent, substantial evidence, including testimony that utility's acquisition adjustment had already survived previous purchase of utility and that the 30-year amortization period for the acquisition adjustment had not yet ended.

