

BMC  
FILE 09A

October 11, 1996

Blanca Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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**Re: Docket No. 960725-GU - Natural Gas Unbundling**

Dear Director Bayo:

Enclosed for filing are the original and 20 copies of the comments of Enron Capital & Trade Resources in the above referenced matter.

If you require additional information, please contact me.

Sincerely,

*Steve Montovano / sm*

Steve Montovano  
Director, State Regulatory Affairs  
614-792-6030

ACK \_\_\_\_\_ cc: Beth Culpepper, Attorney  
AFA \_\_\_\_\_ Cheryl Banks, Chief, Bureau of Gas Regulations

APP \_\_\_\_\_ Enclosure

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

IN THE MATTER OF NATURAL )  
GAS UNBUNDLING PROPOSED ) DOCKET NO. 960725-GU  
ISSUES )

These are the comments of Enron Capital & Trade Resources ("ECT") in the above referenced docket. All communications concerning these comments should be directed to:

Steven Montovano  
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Enron Capital & Trade Resources Corp.  
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**INTRODUCTION**

ECT is comprised of a number of business entities which are subsidiaries of ECT Corp. In the natural gas industry, ECT's activities include buying and selling gas, providing a broad array of services for gas producers, supplying gas to LDCs and municipalities, industrial and commercial end users, electric generation loads, and other consumers, offering price hedging and risk management services to gas buyers and sellers, and offering producers and other market participants various financing options. The ECT companies purchase and sell over 8 Bcf daily under a mix of spot, intermediate, and long-term contracts.

ECT has been an active participant in proceedings in a number of states where the issue of "life after Order No. 636" has been discussed. ECT firmly believes that competition will bring the highest level of service at the best possible price to all natural gas customers and that the Florida Public Service Commission ("Commission") should act quickly to permit that competition to develop. ECT suggests that after considering the comments filed in this docket, the Commission should issue an order establishing guidelines for the unbundling of LDC services, mandating roundtable discussions for each LDC by all interested parties for the development of tariffs responsive to those guidelines, and establishing a date certain by which those tariffs must be filed.

Public utility regulation grew from a need to regulate the monopoly supplier of natural gas. Today, the way gas is sold is different from the scenario which was intended to be regulated.

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Consequently, regulations should change to fit the emerging market. Regulation of the monopoly distribution function and gas sales by the monopoly distributor can be supported, but regulation of sales by non-utility merchants cannot. Hundreds of marketers of natural gas exist, and it is their existence which gives rise to the need for changed regulation.

ECT believes that in an ideal world, all gas consumers, even residential customers, should be permitted to choose their gas supplier. After the customer chooses a gas supplier, the gas would be delivered by the LDC under a transportation agreement between the LDC and the end user after the gas is delivered to the city gate by the supplier. Under such an arrangement, there would be no bypass. Rather, the LDC would maintain all its customers but would serve them as transportation customers rather than as sales customers. The supplier could be a producer, a marketer, or a marketing affiliate of the LDC. The "obligation to serve" would be a contractual one between the supplier and the customer and would not be a regulatory one.

## ISSUES

### OBLIGATION TO SERVE /SERVICE OFFERINGS

1. *Should the Local Distribution Company (LDC) be required to be the supplier of last resort?*

This is a "comfort" issue and must be addressed in order to achieve a completely unbundled, competitive industry. Default customers can be defined as customers who will neither choose or be chosen. The latter includes customers who have a history of nonpayment. Currently, utilities are the only entities who have a remedy for dealing with this issue, they are able to collect bad debt expense from other ratepayers. Since this guaranteed remedy is not available in the competitive marketplace, unregulated suppliers are opposed to any type of mandatory service offerings. In fact, any obligation to serve is counterintuitive to the development of a competitive market. In a competitive market obligation to serve is replaced by a contractual relationship between the supplier and the customer.

In the long term, it does not make sense for LDCs to remain in the merchant function solely to provide service to default customers, i.e., be the supplier of last resort.

Ultimately, the competitive marketplace will be able to adequately provide service to all customers.

2. *Should the LDC be required to offer transportation service to all classes of customers?*

Yes. Enron believes that the primary objectives for restructuring Florida's gas utility industry should be the establishment of rates and terms and conditions for transportation service that will enable ECT and other suppliers to sell natural gas and related services to small commercial customers and ultimately to residential customers. Eventually all gas consumers, regardless of class, size, or the designation of "essential human needs," should be permitted to choose their gas supplier. Class distinction in no way determines nor

influences the potential benefit of choice. Moreover, any physical attributes used to group customers will become transparent if LDC transportation programs are designed appropriately (i.e., effectively deal with aggregation, pooling, balancing, metering, and billing issues).

3. *Should the LDC have the obligation to offer back-up or no-notice service for firm transportation customers?*

No, since the ultimate goal is to replace the LDC's regulated merchant function with a competitive supply market. Any type of backup services would thus be available in the competitive marketplace. In the interim, however, LDCs may continue to provide *optional* backup service, but in no way should subscription to such service be tied to the ability to receive transportation service.

4. *Should the LDC be relieved of its obligation to transport if the customer fails to secure firm supplies or back-up service?*

Yes, transportation service provided by the LDC is solely a delivery service. In other words, it is a rental service by which the customer is simply renting space in the LDCs pipes behind the city gate. Customers who choose to transport either assume the responsibility for securing their own gas supplies, assign this responsibility to a third party i.e., a marketer, or contract for backup service to replace its primary gas supply in the case of nondelivery. Furthermore, the LDC should not have any interest in the manner in which gas is transported prior to delivery to its city gate.

5. *Should the LDC be allowed to use transportation Customers' gas in critical need situations?*

Yes, only to the extent that "critical need situations" are defined by a force majeure and the gas is used to meet essential human needs, and then only if the LDC provides transportation customers with the appropriate compensation. Such compensation may include actual, premium, and opportunity costs.

6. *Should LDCs be allowed to curtail gas service to a firm transportation customer who has demonstrated that their gas supply arrived at the LDC city gate?*

Redelivery by the LDC should always be on a firm basis except for interruption due to a force majeure that requires the diversion of transportation gas to meet essential human needs. In this case, the LDC should not treat transportation customers any differently than it would similarly situated sales customers. Again, the LDC must provide transportation customers with adequate compensation including but not limited to any actual, premium, and opportunity costs.

7. *Should the LDC be allowed to require transportation customers using gas for "essential human needs" to contract for standby service?*

No, subscription to standby service should not impede or in any way be tied to a customer's ability to transport. Transportation customers should be able to choose only those services it desires and take full responsibility for those choices. It is not inconceivable that small commercial customers may be willing to be interrupted in order

to obtain lower rates for their service. Moreover, to the extent that the customer chooses to contract for these types of auxiliary services, they would be available within the competitive marketplace.

8. *Should the LDC be required to offer customers the ability to combine unbundled and bundled services?*

LDCs should only be required to offer bundled services to the extent that they remain in the merchant function as a regulated supplier and then only to the extent that these bundled services are cost-based.

9. *Should the LDCs be permitted to stream gas on a competitive basis using a negotiated rate?*

No. ECT opposes “streaming” transactions by LDCs in the competitive marketplace. Streaming is the practice by which an LDC utilizes upstream pipeline capacity ostensibly held by the LDC to serve core sales customers and/or low-priced gas either held in its existing portfolio (including storage gas) or purchased on the spot market to make sales to customers in the competitive market. Streamed sales provide an LDC with an effective tool to limit competition behind the city gate and cause the real cost of streamed supply and capacity to be subsidized by non-participating customers.

Regulatory oversight to prevent subsidization will be difficult, if not impossible, to accomplish. For example, will the Commission compare the upstream transportation cost component of each streamed sale to prices posted on the appropriate interstate pipeline’s electronic bulletin board at the time of the sale? Will it ensure that an LDC served by more than one interstate pipeline has released the capacity for which it could receive the highest value? Will the Commission compare the cost of the gas supply component of each streamed sale to both the LDC’s weighted average cost of gas supply component of each streamed sale to both the LDC’s weighted average cost of gas at the time of the sale and to the applicable spot market indices at the time of the sale? The better way for the Commission to ensure that an LDC receives the greatest value for capacity and gas supply is to expose those commodities and services to the marketplace by separation and unbundling. Regulation should be used to protect consumers from monopoly abuses, not to shield a monopolist from the rigors of the competitive marketplace.

Allowing an LDC to market gas and pipeline capacity at “streamed” prices is tantamount to allowing it to circumvent FERC Order No. 636, thereby providing no assurance that LDCs will obtain the highest market value for the capacity, and will surely serve to limit the development of a robust secondary market for interstate pipeline capacity to the ultimate detriment of Florida customers.

10. *Should all LDCs be subject to unbundling?*

Yes, all customers regardless of where they reside or who is their LDC should be given the ability to procure competitive natural gas supplies.

11. *Should all LDC services be performed pursuant to filed tariffs and should any desired rate flexibility be effected under a filed rider?*

Any regulated services that an LDC offers must be cost-based. To the extent that an LDC wants to offer competitive services it should be able to do so through the creation of a

marketing affiliate and then only if proper standards of conduct are in place. ECT provides the appropriate guidelines for standards of conduct as Attachment 1.

12. *Should the LDCs have the right to unilaterally terminate transportation agreements without cause?*

No, a contract represents a negotiated arrangement between two parties that acts to define and subsequently govern the relationship between the parties, including circumstances surrounding termination of the contract by either party. Giving LDCs the ability to unilaterally terminate a transportation agreement without cause is completely without merit and will destroy the foundations on which a competitive marketplace is built.

13. *Should LDCs be required to "act reasonable" and should "sole discretion" provisions in the tariffs read "reasonable discretion"?*

ECT cannot comprehend any situation in which LDCs should act unreasonably. However, whether or not tariff provisions give the LDC the ability to make decisions based on its "sole discretion" or its "reasonable discretion" would depend on the specific circumstance governed by the tariff provision. Individual tariff provisions are part of a regulated agreement and should therefore balance and consider the interests of all parties that will be affected by such provision to result in the best possible outcome.

14. *Should the LDC be allowed to require a waiting period to transportation customers wanting to return to bundled service?*

An LDC should treat transportation customers wishing to return to sales service in the same manner by which it treats new customers wishing to obtain sales service. Therefore, arbitrary waiting periods are unfounded in that their only purpose may be to frustrate customers, i.e., to discourage them from transporting. The only circumstance under which an LDC would have a legitimate reason for requiring a waiting period would be if it did not have capacity available to meet the immediate needs of that converting customer. Notwithstanding, converting customers and new customers should be treated on a nondiscriminatory, first come first serve basis.

15. *Should the price for transportation service be based on cost of service principles?*

Yes, any rates and charges for service provided by a regulated LDC should be cost-based.

#### AGGREGATION

27. *Should LDCs be required to have aggregation tariffs?*

Yes, aggregation is critical to the effectiveness of a small consumer transport program. Specifically, this means that individual gas loads of numerous small consumers would be aggregated into a pool on the servicing LDC's system. Suppliers would provide gas to this aggregated pool. No minimum usage requirement should be imposed upon any individual account. In cases where LDCs had minimum usage requirements, these could be met through the aggregation of loads, however, there should be no restrictions on the number of customers that can participate in a buyer group.

28. *Should capacity releases to aggregators be subject to recall to correct any mismatch between customer load and assigned capacity outside a determined tolerance?*

ECT believes that the secondary market, i.e., the ability to re-release capacity, will act to manage capacity in the most efficient way possible. However, to the extent that LDCs recall capacity under critical need circumstances, the aggregator and/or its customers should be appropriately compensated.

29. *Should aggregators become the customer of the LDC, rather than the individual customer whose loads are being aggregated?*

ECT believes this to be an inconsequential distinction and that, in fact, both aggregators and individual customers are “customers” of the LDC.

30. *Do LDCs tell suppliers, marketers, and brokers how much gas to deliver into LDCs’ systems for aggregation customers, or do the suppliers, marketers, and brokers tell the LDC how much gas they are delivering? (a) How are imbalances handled and (b) who has financial responsibility?*

The responsibility for nomination depends on the type of balancing that is available from the LDC. If the LDC offers a balancing service then it would be responsible for telling suppliers how much to nominate, in which case the supplier’s performance would be measured by the difference between nominations and actual deliveries. Conversely, if the LDC does not offer balancing services then it is the supplier’s responsibility to make nominations for its customers. Here, imbalances would be measured by comparing amounts of gas delivered to amounts of gas consumed.

Typically, LDCs require that aggregators be financially responsible for any imbalance charges. From this point, any customer responsibility would be defined contractually between the aggregator and each individual customer.

31. *Should aggregators be able to order transportation service by phone or simply ask their agents to take care of the details of arranging service?*

Part of the success of any transportation program relies on its ease of administration. Therefore, customers should have the option to give aggregators broad agency authority including (a) the right to obtain historic usage data, current usage data, billing information, and the like from the LDC, (b) the ability to execute agreements with the LDC on its behalf, and (c) permission to terminate its participation in the transportation program. Additionally, the LDC should provide the aggregator with the exact date on which a customer will begin receiving transportation service rather than the current practice of guessing at an effective date.

32. *Should aggregators be afforded the same load management tools used by the LDC in its capacity as supplier of bundled sales service:*

- *hold the upstream capacity of their customers, if asked to do so*
- *receive and pay their customer’s transportation bills*
- *balance all their customers’ usage as one pool*
- *choose to have all LDC penalties and operational orders directed to their pools, rather than their customers*

- *aggregate any collection of customers*
- *aggregate upstream capacity for the purpose of submitting one city gate nomination for their customers*

As an answer to this question, ECT provides the guidelines for enhancing small consumer transport as Attachment 2.

ECT thanks the Commission for the opportunity to offer these comments and looks forward to participating in the continuation of this docket.

Sincerely,



Steve Montovano  
Director, State Regulatory Affairs

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Attachment



Attachment 1

Standards of Conduct For LDC Marketing Affiliates  
and  
Internal Merchant Operations

- LDCs must apply any tariff provision relating to transportation service in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.
- LDCs must strictly enforce a tariff provision for which there is no discretion in the application of the provision.
- LDCs may not, through a tariff provision or otherwise, give their marketing affiliates or customers of affiliates preference over non-affiliated gas suppliers or customers in matters relating to transportation service including, but not limited to, scheduling, balancing, metering, storage, standby service or curtailment policy.
- LDCs must process all similar requests for transportation in the same manner and within the same period of time.
- LDCs shall not disclose to their affiliates any information which an LDC receives from (i) a non-affiliated customer or supplier, (ii) a potential customer or supplier, (iii) any agent of such customer or potential customer, or (iv) a marketer or other entity seeking to supply gas to a customer or potential customer.
- LDCs shall not provide leads to marketing affiliates and shall refrain from giving any appearance that the LDC speaks on behalf of its affiliate. If a customer requests information about marketers, an LDC should provide a list of all marketers operating on the system, including its affiliate, but should not promote its affiliate.
- To the extent an LDC provides a marketing affiliate information related to the transportation, sales or marketing of natural gas, including but not limited to LDC customer lists, it must provide that information contemporaneously to all potential shippers, affiliated and non-affiliated, on its system.
- To the maximum extent practicable, an LDC's operating employees and the operating employees of its marketing affiliate must function independently of each other.
- LDCs shall not disclose, condition, or tie their agreements to release interstate pipeline capacity to any agreement by a gas supplier, customer or other third party relating to any service in which their marketing affiliate are involved.
- LDCs and their marketing affiliates shall keep separate books of accounts and records.
- If an LDC offers its affiliate or a customer of its affiliate a discount, rebate or fee waiver for transportation services, balancing, meters or meter installation, storage, standby service or any other service offered to shippers, it must contemporaneously offer the same discount, rebate or fee waiver to all similarly situated non-affiliated suppliers or customers and must file with the Commission procedures that will enable the Commission to determine how the LDC is complying with this standard.

- Neither LDC nor marketing affiliate personnel shall communicate with any customer, supplier or third parties that any advantage may accrue to such customer, supplier or third party in the use of the LDC's services as a result of that customer, supplier or other third party dealing with the marketing affiliate.
- LDCs shall establish a complaint procedure. All complaints, whether written or verbal, shall be referred to general counsel of the LDC. The general counsel shall verbally acknowledge such complaint within five (5) working days of receipt. The general counsel shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim. The general counsel shall communicate the results of the preliminary investigation to the complainant in writing within thirty (30) days after the complaint was received including a description of any course of action which was taken.

## Attachment 2

### Enhancing Small Consumer Transport

#### Aggregation

- A small consumer transport program would be effected on an aggregated load basis. Specifically, this means that the individual gas loads of numerous small consumers would be aggregated into a pool on the servicing LDC's system. Gas would be sold to this aggregated pool by a marketer/aggregator.
- Individual purchase and sale arrangements would be entered into between the aggregator and each member of the pool.
- The gas provided by the aggregator to the LDC's city gate would be redelivered by the LDC to the individual members of the pool pursuant to a master transportation agreement between the LDC and the aggregator, as agent for the specific pool members. Once such an agreement is in place, updates would be accomplished via a closed computer network.
- The aggregator would indemnify the LDC from any and all liability that might arise as a result of the aggregator's misrepresentation that a specific end user had, in fact, opted to become a member of the pool.

#### The Effects Of Aggregation:

- The aggregator would place nominations for gas deliveries on behalf of the entire aggregated pool.
- Gas provided by the aggregator to the city gate for the account of the pool members would be allocated by the LDC to each of those members on a pro rata basis, unless the LDC were otherwise directed by the aggregator.
- The LDC's balancing requirements would apply to the entire pool as opposed to any one member of the pool. In effect, the individual imbalances of the pool members would be netted out to determine one overall pool imbalance position, and the LDC's balancing requirements would be applied against that overall position. Imbalance trading among buyer groups would be permitted.
- The aggregated pool would have a single gas bank and/or storage account on the LDC system. Such gas bank and/or storage account would be administered by the aggregator for the account of the pool members. Inputs to, and withdrawals from, the gas bank and/or storage account would be effected on a pro rata basis to all pool members, unless the LDC were otherwise directed by the aggregator.

#### The Aggregator:

- Any "creditworthy" seller of the gas commodity would be able to serve as an aggregator.
- A "creditworthy" seller is one that (a) demonstrates a net worth, or a parent's net worth (where the ownership interest of the parent is at least 80%), of \$100 million or more, or (b) provides to the LDC a performance bond or letter of credit in an amount equal to the following:

- the cumulative MDQ of all members of the aggregator's pool multiplied by the LDC's total delivered per/Mcf cost of system supply sales gas to a "core" sales customer multiplied by 120.
- Having indemnified the LDC, the aggregator would be given broad agency authority to fully represent the members of its aggregated pool in the LDC's program. That authority would (a) include the right to obtain historic usage data, current usage data, billing information, and the like from the LDC, (b) enable the aggregator to execute agreements with the LDC on behalf of the pool members, and (c) permit the aggregator to terminate any pool member's participation in the program.

Billing:

- The LDC could continue to bill pool members, including billing pool members for the commodity supplied by the aggregator.
- Alternatively, the LDC could have the aggregator do all of the billing and pursue collection from each of the members of the aggregator's pool.
- To effect the alternative plan, the aggregator would receive, via electronic data interchange, all pertinent billing information from the LDC. The aggregator would pay to the LDC all amounts due and owing from the pool members to the LDC. The aggregator would bill each member of the pool for reimbursement of the amounts paid over by the aggregator to the LDC.

Supply Reliability:

- The LDC would not take on the burden of, or the potential liability resulting from, reviewing the aggregator's upstream arrangements regarding gas supplies to be provided to the LDC's city gate for the account of the members of the aggregator's pool. The aggregator creditworthiness standard, discussed above, would apply in lieu of any such review process.
- To facilitate the delivery of the aggregator's gas supply to the city gate, the LDC would release to the aggregator (and the aggregator would accept within the context of a FERC Order 636 "prearranged deal"), as agent for the aggregated pool members, the LDC's firm upstream mainline capacity in an amount sufficient to cover the cumulative MDQ of all members of the aggregator's pool. This released mainline capacity would be subject to recall only in the event that a pool member returns to system supply, and in such event the recalled capacity would be equal to the MDQ of that particular pool member. This release of the LDC's upstream mainline capacity would eliminate the need for any "essential human needs" pool member to possess any alternate fuel capability or buy any mandatory backup or standby supply service from the LDC.
- A similar release mechanism would be available with respect to the LDC's upstream (as well as on-system, if any) storage capacity, with one critical difference -- the release of such storage capacity would be made by the LDC only if requested by the aggregator.

Behind the City Gate:

- The LDC would redeliver to the members of the pool all of the transport gas that the aggregator delivers to the LDC's city gate. Such redelivery would be made on a firm basis,

except for interruption due to a force majeure occurrence requiring the diversion of the pool's gas to meet essential human needs requirements.

- The LDC would provide an optional backup supply service that is variable in nature, giving the aggregator the ability to choose the level of backup, if any, it wishes to obtain from the LDC for the aggregator's pool.
- The LDC would offer a reasonably-priced balancing service option to the small consumer transport pools. The LDC would also cooperate with the aggregator to accommodate any balancing arrangement that the aggregator might put in place with an upstream pipeline.
- Aggregators would be required to respond to any reasonable operational flow order ("OFO") issued by the LDC. OFOs would be issued by the LDC in a manner that is consistent with the LDC's handling of its own small consumer sales load. If an aggregator failed to respond to a valid OFO issued by the LDC, the proceeds of any performance bond or letter of credit posted by the defaulting aggregator could be called upon and used to purchase gas, at a premium if necessary, in the open market in an amount sufficient to cover the OFO requirement. In effect, the marketplace would be permitted to respond to, and cure, the default situation.
- As long as base load nominations and corresponding city gate deliveries for the account of the pool are reflective of historical usage, and the aggregator has responded on behalf of the pool to all validly-issued OFOs, (a) the members of the pool and the aggregator would not be subject to any daily balancing penalties, although the pool as a whole would have to remain within the LDC's otherwise applicable banking and/or monthly balancing tolerances, and (b) the members of the pool would not be subject to curtailment, unless the same is necessitated by a force majeure occurrence requiring the diversion of the pool's gas to meet essential human needs requirements.
- Consistent with the foregoing and the LDC's treatment of its own small consumer system supply sales load, no daily metering requirement would be imposed upon any of the individual members of the pool.
- No incremental administrative fees or customer charges would be imposed by the LDC upon its small consumer transport program.
- Ultimately, all rates applicable to the LDC's "behind the city gate" monopoly (that is, non-competitive) services would be cost-based.

CERTIFICATE OF SERVICE

Docket No. 960725-GU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail  
this 11th day of October, 1996, on the following:

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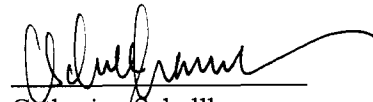
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