



Public Service Commission  
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION  
CLERK

DATE: FEBRUARY 4, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (BELLAK) *PB by DS*  
DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT (MAKIN) *[Signature]*  
DIVISION OF ECONOMIC REGULATION (HEWITT) *[Signature]*

RE: DOCKET NO. 011368-GU - PROPOSED ADOPTION OF RULE 25-7.072,  
F.A.C., CODES OF CONDUCT.

AGENDA: FEBRUARY 19, 2002 - REGULAR AGENDA - INTERESTED PERSONS  
MAY PARTICIPATE

RULE STATUS: PROPOSAL MAY BE DEFERRED

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\011368.RCM

CASE BACKGROUND

On June 6, 2001, staff requested that new Rule 25-7.072, F.A.C., Codes of Conduct, should be proposed. The purpose of the rule is to provide guidelines for investor-owned natural gas utility companies in dealing with their affiliates to ensure that such affiliates do not gain an unfair advantage over their non-affiliated competitors. In response to the Notice of Proposed Rule Development, no one asked for a workshop, but Peoples Gas suggested a number of drafting changes incorporated by staff.

DOCUMENT NUMBER-DATE

01472 FEB-78

FPSC-COMMISSION CLERK

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission propose new Rule 25-7.072, Florida Administrative Code, entitled "Codes of Conduct"?

**RECOMMENDATION:** Yes, the Commission should propose the attached rule.

**STAFF ANALYSIS:** Revenues from regulated services are designed to compensate providers at fair and reasonable rates, not to cross-subsidize competitive, unregulated activities of their affiliates. By preventing cross-subsidization, the rule will help to keep regulated rates low and, as well, to insure the benefits of competition.

**STATUTORY AUTHORITY:** Section 366.05(1), Florida Statutes, provides, in pertinent part, that

the Commission shall have power to prescribe fair and reasonable rates...

The fairness and reasonableness of rates could be negatively affected if providers of regulated services could use regulated revenues to subsidize activities of their affiliates in competitive markets. Section 366.05(1) and 350.127(2), Florida Statutes, authorize the Commission to adopt rules, including new Rule 25-7.072, to implement and enforce such requirements as fair and reasonable rates.

**STATEMENT OF ESTIMATED REGULATORY COSTS**

The ratepayers of the gas utilities would benefit if the proposed rule prevented the subsidization of unregulated affiliates with resources derived from regulated activities. Regulated natural gas companies responding to a data request estimated compliance costs to range from immaterial to a variety of costs for an additional employee or relocation of current employees.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, if no requests for hearing or comments are filed, the rule as proposed should be filed for adoption with the Secretary of State and the docket be closed.

**STAFF ANALYSIS:** Unless comments or requests for hearing are filed, the rule as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

RCB

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3 25-7.072 CODES OF CONDUCT

4 (1) Definition. Marketing Affiliate means an unregulated business  
5 entity that is a subsidiary of a gas utility or is owned by or  
6 subject to control by the gas utility's parent company, and sells  
7 gas at the retail level to a transportation customer on the gas  
8 utility's system.

9 (2) Application of Tariff Provisions. A gas utility will apply  
10 tariff provisions relating to gas transportation service in the  
11 same manner to similarly situated marketers, brokers, or agents,  
12 whether or not they are affiliated with the gas utility. In  
13 addition, a gas utility:

14 (a) will not, through a tariff provision or otherwise, give  
15 its Marketing Affiliate or its Marketing Affiliate's customers,  
16 preference over non-affiliated marketers or their customers in  
17 matters relating to gas transportation or curtailment priority,  
18 specifically including the manner and timing of the processing of  
19 requests for transportation service;

20 (b) will not disclose, or cause to be disclosed, to any  
21 marketer, broker or agent,

22 (1) previously non-public information about a customer  
23 without that customer's prior authorization, or

24 (2) previously non-public information the gas utility  
25

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

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3 receives through its processing of requests for or  
4 provision of transportation service,  
5 unless such information is contemporaneously made available to  
6 similarly situated market participants;

7 (c) will not share with its Marketing Affiliate any of its  
8 employees having direct responsibility for the day-to-day  
9 operations of a gas utility's transportation operations, including  
10 employees involved in:

11 (1) receiving transportation service requests or tariff  
12 sales requests from customers (customer service inquiry  
13 employees);

14 (2) scheduling gas deliveries on the gas utility's  
15 system;

16 (3) making gas scheduling or allocation decisions;

17 (4) purchasing gas or capacity; and/or

18 (5) selling gas to end users behind the city gate, and

19 such employees will be physically separated from the gas utility's  
20 Marketing Affiliate.

21 (d) will charge the Marketing Affiliate the fully allocated  
22 costs for any general and administrative and support services  
23 provided to Marketing Affiliate.

24 (e) will not condition or tie an offer or agreement to provide  
25

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3 a transportation discount to a customer to a requirement that the  
4 gas utility's Marketing Affiliate is involved in the transaction.

5 (f) will not give preference to its Marketing Affiliate  
6 regarding temporarily available gas or capacity, but will make  
7 temporarily available gas or capacity available to all similarly  
8 situated market participants;

9 (g) will maintain its books and records separately from those  
10 of its Marketing Affiliate; and

11 (h) may not promote or advertise its affiliate's relationship  
12 with the utility nor allow the utility's logo or name to be used by  
13 the affiliate in all forms of media.

14 Specific Authority:

15 Law Implemented:

16 History: New  
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MEMORANDUM

January 15, 2002

TO: DIVISION OF APPEALS (BELLAK)

FROM: DIVISION OF ECONOMIC REGULATION (HEWITT) *CBW* *YCS*  
*10/2*

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR PROPOSED  
RULE 25-7.072, F.A.C., CODES OF CONDUCT, DOCKET NO. 011368-GU

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SUMMARY OF THE RULE

The purpose of proposed Rule 25-7.072, F.A.C., Codes of Conduct, is to establish guidelines for investor-owned natural gas utility companies in dealing with their affiliates. The intent is to ensure that no natural gas utility or affiliate gain an unfair competitive advantage over nonaffiliated competitors.

ESTIMATED NUMBER OF ENTITIES REQUIRED TO COMPLY AND  
GENERAL DESCRIPTION OF INDIVIDUALS AFFECTED

There are eight investor-owned natural gas utility companies operating in Florida. Each would have to comply with the proposed rule. When the gas companies comply with the codes of conduct with respect to their affiliates, their affiliates would also be complying with the codes of conduct. The total number of affiliates is unknown. The ratepayers of the gas utilities would benefit if the proposed rule prevented the subsidization of unregulated affiliates with resources derived from regulated activities.

RULE IMPLEMENTATION AND ENFORCEMENT COST AND IMPACT ON REVENUES  
FOR THE AGENCY AND OTHER STATE AND LOCAL GOVERNMENT ENTITIES

The Public Service Commission and other state entities are not expected to experience implementation costs other than the costs associated with promulgating a proposed rule. Existing Commission staff would handle the monitoring and review of gas company compliance.

Local government entities should have no additional cost or impact but may share in any benefits if they are customers of the regulated companies.

ESTIMATED TRANSACTIONAL COSTS TO INDIVIDUALS AND ENTITIES

Regulated natural gas companies responding to a data request had divergent estimated costs to comply with the proposed rule. Peoples Gas System stated that costs to implement the proposed rule are immaterial.

Central Florida Gas believes that to implement the provisions of subsection 2, subparagraph (c), (physical separation of utility and marketing affiliate employees), it would have to add one additional employee to manage the utility functions related to the provisions of the subparagraph. The estimated salary of the new employee would be \$50,000 with an additional 40% for benefits, or \$70,000 per year. Providing office furniture and computer would add a one time cost of \$8,000. In addition, two existing employees would have to be relocated for a one-time cost of \$7,500.

City Gas (City) also stated that it would incur additional costs separating employees including one-time costs to find space, negotiate a lease and relocate those employees. Also, there would be ongoing costs such as utilities, insurance, management fees, computer servers and associated communications costs, cleaning services, and miscellaneous overheads. Specific costs were not given by City. City submits that the same objective could be achieved if the physical separation is merely a separate floor or area within the same building, so long as the full cost of occupying the facilities is allocated to the marketing affiliate.

City Gas would also incur costs complying with Section (h) to rename either the utility or the marketing affiliate. City submitted that the same objective could be achieved by making the utility or the marketing affiliate to include certain disclaimers in its written material to avoid confusion by the consumer. Printing costs would still be incurred for this alternative. No specific costs were given.

#### IMPACT ON SMALL BUSINESSES, SMALL CITIES, OR SMALL COUNTIES

Small businesses, small cities, and small counties may be affected positively if they are a customer of a natural gas utility or a competitor of an affiliate and benefitted from the implementation of the rule.

#### ALTERNATIVE METHODS

Several alternatives were suggested by parties and included in the transactions cost section above.

Cc: Mary Bane  
Hurd Reeves  
Wayne Makin

gascode.cbh