

STATE OF FLORIDA

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OFFICE OF THE GENERAL COUNSEL
HAROLD A. MCLEAN
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

March 4, 2002

Mr. Carroll Webb
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

RE: Docket No. 011368-GU - Proposed Adoption of Rule 25-7.072, F.A.C., Codes of Conduct

Dear Mr. Webb:

Enclosed is an original copy of the following materials concerning the above referenced proposed rule:

1. A copy of the rule.
2. A copy of the F.A.W. notice.
3. A statement of facts and circumstances justifying the proposed rule.
4. A federal standards statement.
5. A statement of estimated regulatory costs.

If there are any questions with respect to this rule, please do not hesitate to call on me.

Sincerely,

Richard C. Bellak
Appeals, Rules and Mediation Bureau

ADM7072.RCB

Enclosures

cc: Division of the Commission Clerk
and Administrative Services

DOCUMENT NUMBER - DATE

02485 MAR -4 02

FPSC-COMMISSION CLERK

1 25-7.072 CODE OF CONDUCT

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

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

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

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

20 1. previously non-public information about a customer
21 without that customer's prior authorization, or

22 2. previously non-public information the gas utility
23 receives through its processing of requests for or
24 provision of transportation service, unless such
25 information is contemporaneously made available to

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

1 similarly situated market participants;

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

6 1. receiving transportation service requests or tariff
7 sales requests from customers (customer service inquiry
8 employees);

9 2. scheduling gas deliveries on the gas utility's
10 system;

11 3. making gas scheduling or allocation decisions;

12 4. purchasing gas or capacity; or

13 5. selling gas to end users behind the city gate, and
14 such employees will be physically separated from the gas utility's
15 Marketing Affiliate.

16 (d) will charge the Marketing Affiliate the fully allocated
17 costs for any general and administrative and support services
18 provided to Marketing Affiliate.

19 (e) will not condition or tie an offer or agreement to
20 provide a transportation discount to a customer to a requirement
21 that the gas utility's Marketing Affiliate is involved in the
22 transaction.

23 (f) will not give preference to its Marketing Affiliate
24 regarding temporarily available gas or capacity, but will make
25 temporarily available gas or capacity available to all similarly

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1 situated market participants;

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

4 (h) may not affirmatively promote or advertise its
5 affiliate's relationship with the utility for the purpose of
6 soliciting subscribership.

7 Specific Authority: 350.127(2), 366.05(1), F.S.

8 Law Implemented: 366.05(1), F.S.

9 History: New _____

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NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 011368-GU

RULE TITLE:

RULE NO.:

Code of Conduct

25-7.072

PURPOSE AND EFFECT: The purpose and effect of the rule is to prevent cross-subsidization by natural gas utilities of their unregulated marketing affiliates to avoid giving them an unfair advantage over competitors.

SUMMARY: The rule defines marketing affiliate as an unregulated subsidiary of a gas utility that sells gas to a transportation customer on the gas utility's system. The rule requires that tariff provisions be applied in the same manner to affiliated and non-affiliated marketers, including as to transportation or curtailment priority matters. Non-public information is not to be shared with affiliates unless made available contemporaneously to non-affiliate market participants. The rule prohibits sharing of employees directly responsible for gas transportation operations of the utility with the marketing affiliate and requires that the marketing affiliate be charged fully allocated costs for services provided by the utility. The rule further requires that there be no tying of discounts for transportation to participation of an affiliate, no preferences toward affiliates regarding temporarily available gas or capacity, separate books and records from the

affiliate and no affirmative promotion or advertising of the relationship between the utility and affiliate for the purpose of soliciting subscribership.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Statement of Estimated Regulatory Costs (SERC) summarizes the rule, and estimates that 8 natural gas utilities and an unknown number of affiliates are affected. The SERC finds that ratepayers will benefit if the rule prevents cross-subsidization. The SERC states that neither the PSC nor other state agencies will experience costs other than those involved in rule promulgation. Peoples Gas estimated that costs from the rule would be immaterial. Central Florida Gas estimated the cost of an additional employee, furniture, and relocation of existing employees to total \$85,500. City Gas noted a variety of costs without specifying amounts. Small businesses, small cities and small counties might benefit to the extent they are customers of a natural gas utility or a competitor of an affiliate.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.05(1), F.S.

LAW IMPLEMENTED: 366.05(1), F.S.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE

SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING.

A HEARING WILL BE HELD AT THE TIME, DATE, AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 a.m., Thursday, April 4, 2002

PLACE: Room 152, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Director of Appeals, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-7.072 CODE OF CONDUCT

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

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

(a) will not, through a tariff provision or otherwise, give

its Marketing Affiliate or its Marketing Affiliate's customers, preference over non-affiliated marketers or their customers in matters relating to gas transportation or curtailment priority, specifically including the manner and timing of the processing of requests for transportation service;

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

1. previously non-public information about a customer without that customer's prior authorization, or
2. previously non-public information the gas utility receives through its processing of requests for or provision of transportation service, unless such information is contemporaneously made available to similarly situated market participants;

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

1. receiving transportation service requests or tariff sales requests from customers (customer service inquiry employees);
2. scheduling gas deliveries on the gas utility's system;
3. making gas scheduling or allocation decisions;

4. purchasing gas or capacity; or

5. selling gas to end users behind the city gate, and

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

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

(e) will not condition or tie an offer or agreement to provide a transportation discount to a customer to a requirement that the gas utility's Marketing Affiliate is involved in the transaction.

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

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

(h) may not affirmatively promote or advertise its affiliate's relationship with the utility for the purpose of soliciting subscribership.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne Makin

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:
Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: February 19, 2002

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 27, Number 30, July 27, 2001

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

**STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE**

The participation by unregulated affiliates of natural gas utilities in competitive markets requires that cross-subsidization by the utilities of their affiliates be prevented. The rule will aid in preserving reasonable regulated rates for utility service by avoiding such cross-subsidization.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.

MEMORANDUM

January 15, 2002

TO: DIVISION OF APPEALS (BELLAK)

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

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR PROPOSED
RULE 25-7.072, F.A.C., CODES OF CONDUCT, DOCKET NO. 011368-GU *102*

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