

State of Florida



Public Service Commission

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

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

DATE: February 18, 2010

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Klancke) *CMK* *FB*
Division of Service, Safety & Consumer Assistance (Fletcher, Mills) *AM* *AMA*

RE: Docket No. 090522-GU – Petition for extension of waiver of service line abandonment provisions of Rule 25-12.045, F.A.C. by Florida Natural Gas Association.

AGENDA: 03/02/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 03/02/10 (statutory deadline for rule waiver)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\090522.RCM.DOC

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Case Background

The Florida Natural Gas Association (“FNGA”) is a natural gas trade association representing investor-owned, special gas district, municipal Local Distribution Companies (LDC), gas transmission companies, gas marketing companies, and others affiliated with the natural gas industry. FNGA’s members include Florida’s seven investor-owned gas distributors and twenty-nine of the thirty-one special district and municipal distribution systems. Each LDC member is subject to the regulatory jurisdiction of this Commission for gas safety under Chapter 368, Part I, Florida Statutes (F.S.), and Rule 25-12.045, Florida Administrative Code (F.A.C.). Rule 25-12.045, F.A.C., applies directly to FNGA’s LDC members, and FNGA meets the definition of “person” as referenced in Section 120.542, F.S., and defined in Section 120.52(13),

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F.S. FNGA filed this petition on behalf of its member companies, who would otherwise have standing to petition the Commission on their own rights.

On March 1, 2007, FNGA filed a petition on behalf of its member companies to waive the service line abandonment provisions of Rule 25-12.045, F.A.C. On June 8, 2007, the Commission issued Order No. PSC-07-0488-PAA-GU¹ in Docket No. 070135-GU granting FNGA's request for temporary waiver through December 31, 2009. This order further specified that upon the expiration of the waiver period, each FNGA member must be in compliance by December 31, 2011, if the waiver is not extended.

On December 2, 2009, FNGA filed its Petition for Extension of Waiver of the Service Line Abandonment Provisions of Rule 25-12.045, Florida Administrative Code (petition). Pursuant to Section 120.542, F.S., notice of the rule waiver petition for Rule 25-12.045, F.A.C., was filed with Florida Administrative Weekly (FAW) on December 21, 2009; and subsequently published on December 21, 2009. Comments on FNGA's petition were due on January 14, 2010. No written comments were received and the time for filing such has expired.

This recommendation addresses the petition for extension of temporary variances from or temporary waiver of Rule 25-12.045, F.A.C. The Commission has jurisdiction pursuant to Sections 120.542 and 368.05(1), F.S.

¹ On October 15, 2007, the Commission issued Order No. PSC-07-0830-AS-GU in Docket No. 070135-GU, clarifying and finalizing Order No. PSC-07-0488-PAA-GU.

Discussion of Issues

Issue 1: Should the Commission grant the Florida Natural Gas Association's petition for extension of the waiver of the service line abandonment provisions of Rule 25-12.045, F.A.C.?

Recommendation: Yes. The Florida Natural Gas Association's petition for extension of the temporary waiver of Rule 25-12.045(1)(b) and (c), F.A.C., should be granted until December 31, 2011. Upon expiration of the waiver period, all LDCs should be in compliance by December 31, 2013, if the waiver is not extended. (Klancke)

Staff Analysis: Rule 25-12.045, F.A.C., requires the physical abandonment of gas service lines that have been used, but became inactive with no prospect for reuse. If there is no prospect for reuse, the service line must be physically abandoned and retired within three months of becoming inactive. Rule 25-12.045(1)(b), F.A.C., provides that, after two years of inactivity and the prospect of reuse still does not exist, the gas service provider must within a six month period either disconnect the service line from all sources of gas and abandon or remove the line or lock the valve on the service line in a closed position and plug the line to prevent the flow of gas or remove the meter and plug the service line. Pursuant to Rule 25-12.045(1)(c), F.A.C., after five years of inactivity, the service line provider must retire and physically abandon the line within six months.

By Order No. PSC-07-0488-PAA-GU, the Commission granted FNGA members a two-year waiver from the requirements of Rule 25-12.045(1)(b) and (c), F.A.C. The current economic slowdown and high foreclosure rate has resulted in an increase in inactive lines. The marketing programs allowed by the initial waiver of the abandonment provisions of the rule appear to be working. In order to ensure the effectiveness of the current marketing and incentive programs, FNGA is seeking an additional two-year extension of the waiver of Rule 25-12.045(1)(b) and (c), F.A.C.

In its petition, FNGA seeks an extension of the waiver of the requirements in Rule 25-12.045(1)(b), F.A.C., for any service line that has currently been inactive for a period of two years or reaches such inactive status during 2011. Also, FNGA seeks an extension of the waiver of the requirements in Rule 25-12.045(1)(c), F.A.C., for any service line that has currently been inactive for a period of five years or reaches such inactive status during 2011.

Section 120.542, F.S., authorizes the Commission to grant variances or waivers to the requirements of its rules where the person subject to the rule has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rule would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

The law being implemented is Section 368.05(2), F.S. Section 368.05(2), F.S., provides that the Commission may require the filing of periodic reports and all other data reasonably necessary to determine whether the safety standards prescribed by it are being complied with, and may require repairs and improvements to the gas transmission and distribution piping

systems subject to this law which are reasonably necessary to promote the protection of the public. In accordance with Section 120.542(2), F.S., staff believes that the extension of the temporary waiver approved in Order No. PSC-07-0488-PAA-GU of the parts of Rule 25-12.045, F.A.C., which provide for the physical abandonment of gas services lines that have not been used but become inactive with no prospect for re-use, will not prevent the Commission from meeting its statutory requirements under Section 368.05(2), F.S. During the two-year waiver extension period requested by FNGA, its member LDCs will be monitoring and actively endeavoring to re-initiate service on these inactive service lines, as well as compiling information regarding attempts to encourage new service on such lines. Consequently, it is unlikely that any safety issues related to further deferral of the service abandonment provisions will arise, because the lines will be closely monitored. If the extension of the waiver is granted, FNGA states that the LDCs will continue to comply with all other federal and state gas safety requirements other than the requirements of Rule 25-12.045(1)(b) and (c), F.A.C.

Moreover, staff believes that FNGA will incur a substantial hardship if the extension of the waiver of the specified provisions of Rule 25-12.045, F.A.C., is not granted. As stated, substantial hardship is defined as a person incurring an economic, technological, legal, or other hardship. Staff believes that FNGA members will experience an economic hardship if the proposed extension is not granted. In particular, the denial of the extension could result in unnecessary and duplicative costs associated with those lines that are physically abandoned and capped, but upon which service is subsequently re-initiated as a result of the success of the new marketing campaigns currently being implemented by FNGA's members. These costs could be reduced if FNGA and its members are given an opportunity to establish the marketing and incentive tools needed to improve the retention of existing customers and attract inactive customers back to using gas. In its petition, FNGA outlined several marketing and incentive activities its members have taken or plan to take, to improve the retention of existing customers, and attract inactive customers back to using gas. These activities include increasing the number of contractors qualified to provide gas installations and services, increasing the quantity and model selection of gas appliances available at Florida appliance retailers, and funding gas energy conservation advertising and consumer education.

At the expiration of the proposed waiver extension period, which is December 31, 2011, FNGA will consolidate information from each LDC member and submit a summary report to the Commission, describing the results achieved by each LDC for any deferred inactive service line to reactivate such facilities, and including a proposal for further Commission action. Also, at the expiration of the waiver extension period, if the FNGA's waiver is not further extended,² staff recommends that each LDC should have until December 31, 2013, to complete all necessary activities to return to compliance with the current rule provisions.

When a person has met the criteria set forth in Section 120.542, F.S., the Commission can grant a temporary waiver of a rule as long as the general purpose of the underlying statutory provision is satisfied. Here, FNGA and its members have met the general purpose underlying Section 368.05(2), F.S. In addition, FNGA and its members have demonstrated that they will

² FNGA would have to file another petition to extend the rule waiver.

suffer a substantial economic hardship if the provisions of Rule 25-12.045, F.A.C., are strictly applied.

As stated, FNGA and its members have requested an extension of the waiver of the Rule 25-12.045, F.A.C., to continue the marketing and incentive programs adopted to improve the retention of existing customers and attract inactive customers back to gas services. FNGA states that its members will maintain records, in addition to those specified in Rule 25-12.045(3), F.A.C., on the location of each deferred inactive service line, and any reported line breaks or other incidents related to the service line. Staff recommends that FNGA has met the requirements found in Section 120.542, F.S., and the Commission should grant FNGA's petition for temporary waiver of Rule 25-12.045(1)(b) and (c), F.A.C., until December 31, 2011. Staff further recommends that each LDC should have until December 31, 2013, to complete all necessary activities to return to compliance with the current rule provisions.

Docket No. 090522-GU
Date: February 18, 2010

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummation order. (Klancke)

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummation order.