

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for extension of waiver of service line abandonment provisions of Rule 25-12.045, F.A.C., by Florida Natural Gas Association.	DOCKET NO. 090522-GU ORDER NO. PSC-10-0158-PAA-GU ISSUED: March 22, 2010
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The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING EXTENSION OF
TEMPORARY RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

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, 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), F.S. FNGA filed its petition on behalf of its member companies, who would otherwise have standing to petition this 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, we issued

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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 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 Order addresses the petition for extension of temporary variances from or temporary waiver of Rule 25-12.045, F.A.C. We have jurisdiction pursuant to Sections 120.542 and 368.05(1), F.S.

DECISION

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, we 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, FGNA 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.

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

Section 120.542, F.S., authorizes us 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 we 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., we find 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 this 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, we believe 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. We find 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 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 we find that each LDC shall 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., we 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 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. We find that FNGA has met the requirements found in Section 120.542, F.S., and we shall grant FNGA's petition for temporary waiver of Rule 25-12.045(1)(b) and (c), F.A.C., until December 31, 2011. We further find that each LDC shall have until December 31, 2013, to complete all necessary activities to return to compliance with the current rule provisions.

Based on the foregoing, it is

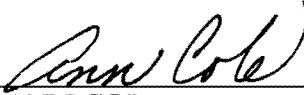
ORDERED by the Florida Public Service Commission that Florida Natural Gas Association's petition for temporary waiver of Rule 25-12.045(1)(b) and (c), F.A.C., is hereby granted until December 31, 2011. Upon expiration of the waiver period, each FNGA member must be in compliance by December 31, 2013, if the waiver is not extended. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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

By ORDER of the Florida Public Service Commission this 22nd day of March, 2010.



ANN COLE
Commission Clerk

(S E A L)

CMK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 12, 2010.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.