

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Friends of the Aquifer, Inc. to adopt rules necessary to establish safety standards and a safety regulatory program for intrastate and interstate natural gas pipelines and pipeline facilities located in Florida.

DOCKET NO. 991754-GP
ORDER NO. PSC-00-1094-FOF-GP
ISSUED: June 6, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

ORDER DENYING PETITION TO INITIATE RULEMAKING PROCEEDINGS

BY THE COMMISSION:

Friends of the Aquifer, Inc., ("the petitioner") filed a Petition to Initiate Rulemaking regarding gas pipelines on November 23, 1999. A petition to intervene was filed on December 20, 1999, by Buccaneer Gas Pipeline Co., L.L.C. ("Buccaneer"). At the agenda conference on December 21, 1999, Friends of the Aquifer agreed to waive the 30-day statutory time for us to act on its petition in order for Friends of the Aquifer to respond to the petition to intervene. No response to Buccaneer's petition to intervene was filed within the time authorized and an order granting the intervention was issued on January 4, 2000.

On January 5, 2000, Friends of the Aquifer, Inc., filed an Amended Petition to Initiate Rulemaking. The Amended Petition asked us to adopt rules establishing safety and environmental standards for intrastate and interstate natural gas pipelines and pipeline facilities. Buccaneer filed a response on January 13, 2000, opposing the petition. We deferred a decision on the original petition at the January 18, 2000, agenda conference.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-00-1094-FOF-GP
DOCKET NO. 991754-GP
PAGE 2

Pursuant to the petitioner's request, we again deferred a decision to the February 29, 2000, agenda.

On February 24, 2000, the petitioner filed a brief in support of its amended petition. We deferred a decision on the amended petition in order to review the brief. On March 7, 2000, Buccaneer filed a reply to the brief. A decision was further deferred until May 16, 2000, at petitioner's request.

The petitioner asks the Commission to adopt two rules. The first rule provides:

The Florida Public Service Commission accepts the delegation by the United States Department of Transportation, pursuant to 49 U.S.C.A. § 60105, to regulate Florida natural gas pipelines and pipeline facilities. The Commission will proceed to propose rules necessary to ensure the safe construction and operation of Florida natural gas pipelines and pipeline facilities. The Public Service Commission recognizes that its acceptance of such delegation is necessary for the protection of persons and the environment from the risks of harm presented by the construction and operation of natural gas pipelines in Florida.

The second rule requested by the petitioner provides:

The Florida Public Service Commission accepts the authority granted to it pursuant to 49 U.S.C.A. § 60106 to enter into an agreement with the United States Department of Transportation to implement the Federal Hazardous Liquid Pipeline Act with respect to intrastate and interstate pipeline facilities located within the State of Florida, to the extent authorized by certification or agreement with the Secretary under 49 U.S.C.A. § 60106. To carry out its responsibilities in implementing the Act, the PSC shall have the same powers act (sic) as given to the Secretary under the Federal Hazardous Liquid Pipeline Act. The PSC will forthwith initiate

negotiations with the United States Department of Transportation in order to reach such an agreement. The Public Service Commission recognizes that its entry into such an agreement is necessary for the protection of persons and the environment from the risks of harm presented by the construction and operation of natural gas pipelines in Florida.

The premise for this proposal is the petitioner's assertion that the Public Service Commission is responsible for the promulgation and enforcement of safety and environmental standards for intrastate natural gas pipelines and pipeline facilities. Although the amended petition acknowledges that the Commission has adopted Chapter 25-12, Florida Administrative Code, titled "Safety of Gas Transportation by Pipeline", the petitioner asserts that the rules are deficient because they do not address any environmental risks presented by natural gas pipelines in Florida. The petitioner further asserts that in order for the Commission to discharge its regulatory obligations under Florida law, we are required to enforce the environmental requirements of the Federal Hazardous Liquid Pipeline Act. For the following reasons, the petition is denied.

First, by protecting life and property from the unintentional release of natural gas, the Commission's natural gas pipeline safety rules act to safeguard the environment. The petitioner is mistaken, however, that section 368.03, Florida Statutes, delegates to the Commission the authority or responsibility to promulgate environmental standards for natural gas pipelines. That section, and section 368.05, prescribing the Commission's jurisdiction, authorizes the Commission to prescribe safety standards for the design and construction of natural gas pipelines and their operation and maintenance. We have implemented this statute by adopting Chapter 25-12, Florida Administrative Code, and we employ six full-time gas safety engineers to inspect pipelines and enforce the rules. In addition, contrary to petitioner's assertion, the Commission's enforcement of its safety regulations is not "substantially unfunded." Inspections are made of all operations under the Commission's jurisdiction and we collect regulatory assessment fees to fund our activities pursuant to sections 350.113 and 366.14, Florida Statutes, and Rule 25-7.0131, Florida Administrative Code. No discernible purpose would be served in adopting another rule to state that "[t]he Commission will proceed to propose rules necessary to ensure the safe construction and

ORDER NO. PSC-00-1094-FOF-GP
DOCKET NO. 991754-GP
PAGE 4

operation of Florida natural gas pipelines and pipeline facilities."

Second, it is unclear why we should adopt a rule accepting delegation from the United States Department of Transportation (USDOT). The Commission cannot by rule expand its jurisdiction beyond that which is provided by Florida Statute. In addition, no rule is required for the Commission to seek and obtain certification by USDOT in order to enforce its safety regulations or the federal safety regulations that the Commission has incorporated into its rules. The Commission's pipeline safety program is already certified by the USDOT pursuant to 49 U.S.C. § 60105 and has been since 1971, contrary to the petitioner's assertion.

Third, as Buccaneer asserts in its response, numerous other laws govern the siting of pipelines and the environmental aspects of pipeline construction and operations, and agencies other than the Commission are charged with administering and enforcing those laws. It is therefore incorrect that absent the Commission's adoption of the requested rules, pipelines will avoid regulation designed to address environmental concerns.

Fourth, the Commission does not have jurisdiction over hazardous liquid pipelines. To the extent the petitioner is asking the Commission to regulate hazardous liquid pipelines in addition to natural gas pipelines, we cannot by rule expand our jurisdiction beyond what Florida Statutes provide.

In its amended petition, the petitioner suggests that we consider several other states' regulations and attaches copies of Virginia, California, and Washington laws. The fact that several other state legislatures have chosen to implement federal pipeline regulations, however, has no relevance to this Commission's regulatory authority. Petitioner does not address the fact that the Florida Statutes do not confer jurisdiction over hazardous liquid pipelines on the Commission, however, or that section 368.03, the statute at issue with respect to adopting the rules in question, only confers the authority to establish safety standards.

Based upon the foregoing, it is


ORDERED by the Florida Public Service Commission that the amended petition asking the Commission to adopt rules establishing safety and environmental standards for intrastate and interstate

ORDER NO. PSC-00-1094-FOF-GP
DOCKET NO. 991754-GP
PAGE 5

natural gas pipelines and pipeline facilities is denied. It is further

ORDERED by the Florida Public Service Commission that this docket be closed.

By ORDER of the Florida Public Service Commission this 6th day of June, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-00-1094-FOF-GP
DOCKET NO. 991754-GP
PAGE 6

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.