

State of Florida

Commissioners:
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Division of Appeals
David E. Smith, Director
(904) 488-7464

Public Service Commission

RECEIVED
OCT 19 1990

October 19, 1990

Mr. Carroll Webb
Joint Administrative Procedures
Committee
120 Holland Building
Tallahassee, Florida 32399

FPSC-RECORDS / REPORTING

Re: ~~DOCKET NO. 900532-GU~~, RULES 25-7.047, 25-7.0471, 25-7.0472,
and 25-7.0473, F.A.C., Regarding Territorial Agreements
and Disputes for Natural Gas Utilities

Dear Mr. Webb:

Enclosed are 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 comparison statement.
5. A statement of the impact of the rule on small business.
6. An economic impact statement.

ACK _____
 AFA _____
 APP _____
 CAF _____
 CMU _____
 CTR _____
 EAG _____
 LEG _____
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 OPC _____
 RCH _____
 SEC 1 MCB/cp
 WAS _____ Enclosures
 OTH _____ cc: Steve Tribble, Director, Division of Records & Reporting
 vi7047

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

Sincerely,

Martha C. Brown

MARTHA C. BROWN
Associate General Counsel

DOCUMENT NUMBER-DATE
09356 OCT 19 1990
FPSC-RECORDS/REPORTING

1 25-7.047 Territorial Agreements and Disputes for Natural Gas
2 Utilities - Definitions.

3 For the purpose of Rules 25-7.0471, 25-7.0472 and 25-7.0473
4 the following terms shall have the following meaning:

5 (1) "territorial agreement" means the entire agreement
6 between two or more natural gas utilities which identifies the
7 geographical areas to be served by each natural gas utility party
8 to the agreement, the terms and conditions pertaining to
9 implementation of the agreement, and any other terms and conditions
10 pertinent to the agreement;

11 (2) "territorial dispute" means a disagreement as to which
12 utility has the right and the obligation to serve a particular
13 geographical area.

14 (3) "Natural Gas Utility" will be defined as the term is
15 defined in section 366.04(3)(c), Florida Statutes, 1989.

16 Specific Authority: 366.04(3)(a)(b)(c)(4), Florida Statutes.

17 Law Implemented: 366.04, Florida Statutes.

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

1 25-7.0471 Territorial Agreements for Natural Gas Utilities.

2 (1) All territorial agreements between natural gas utilities
3 shall be submitted to the Commission for approval. Each
4 territorial agreement shall clearly identify the geographical area
5 to be served by each utility. The submission shall include:

6 (a) a map and a written description of the area,

7 (b) the terms and conditions pertaining to implementation of
8 the agreement; and any other terms pertaining to the agreement,

9 (c) the number and class of customers to be transferred,

10 (d) assurance that the affected customers have been contacted
11 and the difference in rates explained, and

12 (e) information with respect to the degree of acceptance by
13 affected customers, i.e., the number in favor and those opposed to
14 the transfer. Upon approval of the agreement, any modification,
15 changes, or corrections to this agreement must be approved by this
16 Commission.

17 (2) Standards for Approval. In approving territorial
18 agreements, the Commission may consider, but not be limited to
19 consideration of:

20 (a) the reasonableness of the purchase price of any facilities
21 being transferred;

22 (b) the reasonable likelihood that the agreement, in and of
23 itself, will not cause a decrease in the reliability of natural gas
24 service to the existing or future ratepayers of any utility party
25 to the agreement, and

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1 (c) the reasonable likelihood that the agreement will
2 eliminate existing or potential uneconomic duplication of
3 facilities.

4 (3) The Commission may require additional relevant information
5 from the parties of the agreement, if so warranted.

6 Specific Authority: 366.04(3)(a)(b)(c)(4), Florida Statutes.

7 Law Implemented: 366.04, Florida Statutes.

8 History: New

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1 25-7.0472 Territorial Disputes for Natural Gas Utilities.

2 (1) A territorial dispute proceeding may be initiated by a
3 petition from a natural gas utility, requesting the Commission to
4 resolve the dispute. Additionally the Commission may, on its own
5 motion, identify the existence of a dispute and order the affected
6 parties to participate in a proceeding to resolve it. Each utility
7 which is a party to a territorial dispute shall provide a map and
8 written description of the disputed area along with the conditions
9 that caused the dispute. Each utility party shall also provide a
10 description of the existing and planned load to be served in the
11 area of dispute and a description of the type, additional cost, and
12 reliability of natural gas facilities and other utility services to
13 be provided within the disputed area.

14 (2) In resolving territorial disputes, the Commission may
15 consider, but is not limited to consideration of:

16 (a) The capability of each utility to provide reliable
17 natural gas service within the disputed area with its existing
18 facilities and gas supply contracts and the extent to which
19 additional facilities are needed;

20 (b) The nature of the disputed area and the type of utilities
21 seeking to serve it and degree of urbanization of the area and its
22 proximity to other urban areas, and the present and reasonably
23 foreseeable future requirements of the area for other utility
24 services;

25 (c) The cost of each utility to provide natural gas service

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1 to the disputed area presently and in the future; which includes
2 but is not limited to the following:

- 3 1. Cost of obtaining rights-of-way and permits.
- 4 2. Cost of capital.
- 5 3. Amortization and depreciation.
- 6 4. Labor; rate per hour and estimated time to perform
7 each task.
- 8 5. Mains and pipe; the cost per foot and the number of
9 feet required to complete the job.
- 10 6. Cost of meters, gauges, house regulators, valves,
11 cocks, fittings, etc., needed to complete the job.
- 12 7. Cost of field compressor station structures and
13 measuring and regulating station structures.
- 14 8. Cost of gas contracts for system supply.

15 (d) customer preference if all other factors are substantially
16 equal.

17 (3) The Commission may require additional relevant
18 information from the parties of the dispute if so warranted.

19 Specific Authority: 366.04(3)(a)(b)(c)(4), Florida Statutes.

20 Law Implemented: 366.04, Florida Statutes

21 History: New.

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1 25-7.0473 Customer Participation.

2 (1) Any customer located within the geographic area in
3 questions shall have an opportunity to present oral or written
4 communications in Commission proceedings to approve territorial
5 agreements or resolve territorial disputes. If the Commission
6 proposes to consider such material, then all parties shall be
7 given a reasonable opportunity to cross-examine or challenge or
8 rebut it.

9 (2) Any substantially affected customer shall have the
10 right to intervene in such proceedings.

11 (3) In any Commission proceeding to approve a territorial
12 agreement or resolve a territorial dispute, the Commission shall
13 give notice of the proceeding in the manner provided by Rule 25-
14 22.0405, Florida Administrative Code.

15 Specific Authority: 366.04(3)(a)(b)(c)(4), Florida Statutes

16 Law Implemented: 366.04, Florida Statutes

17 History: New

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FLORIDA PUBLIC SERVICE COMMISSION

Division of Appeals

DOCKET NO. 900532-GU

RULE TITLE:

RULE NO.:

Territorial Agreements and Disputes

25-7.047

for Natural Gas Utilities - Definitions.

Territorial Agreements for Natural Gas

25-7.0471

Utilities.

Territorial Disputes for Natural Gas

25-7.0472

Utilities.

Customer Participation.

25-7.0473

PURPOSE AND EFFECT: The purpose and effect of the proposed new rules is to implement Section 366.04(3) and (4), Florida Statutes and to codify current Commission policy and practice regarding territorial agreements and disputes between Natural Gas Utilities.

SUMMARY: Proposed Rule 25-7.047 defines "territorial agreement", "territorial dispute", and "natural gas utility" as those terms are to be used in the rules. Proposed Rule 25-7.0471 codifies current Commission filing requirements and practices regarding territorial agreements and their approval by the Commission. Proposed Rule 25-7.0472 sets out requirements for initiating a territorial dispute proceeding before the Commission, and it delineates the factors the Commission may consider in resolving territorial disputes. Proposed Rule 25-7.0473 provides for customer participation in territorial agreement and dispute proceedings.

RULEMAKING AUTHORITY: 366.05(1), F.S.

LAW IMPLEMENTED: 366.04(3)(a)(b)(c), 366.04(4), F.S.

SUMMARY OF THE ESTIMATE OF ECONOMIC IMPACT OF THESE RULES: The proposed new territorial agreement and dispute rules are not expected to have a significant economic impact on the Commission or the natural gas utilities.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING. IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:
TIME AND DATE: 9:30 A.M., December 5, 1990

PLACE: Room 122, 101 East Gaines Street, Tallahassee, Florida.
THE PERSON TO BE CONTACTED REGARDING THESE RULES AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399
THE FULL TEXT OF THE RULE IS:

25-7.047 Territorial Agreements and Disputes for Natural Gas Utilities - Definitions.

For the purpose of Rules 25-7.0471, 25-7.0472 and 25-7.0473 the following terms shall have the following meaning:

(1) "territorial agreement" means the entire agreement between two or more natural gas utilities which identifies the geographical areas to be served by each natural gas utility party to the agreement, the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertinent to the agreement;

(2) "territorial dispute" means a disagreement as to which utility has the right and the obligation to serve a particular

geographical area.

(3) "Natural Gas Utility" will be defined as the term is defined in section 366.04(3)(c), Florida Statutes, 1989.

Specific Authority: 366.04(3)(a)(b)(c)(4), F. S.

Law Implemented: 366.04, F. S.

History: New.

25-7.0471 Territorial Agreements for Natural Gas Utilities.

(1) All territorial agreements between natural gas utilities shall be submitted to the Commission for approval. Each territorial agreement shall clearly identify the geographical area to be served by each utility. The submission shall include:

- (a) a map and a written description of the area;
- (b) the terms and conditions pertaining to implementation of the agreement, and any other terms pertaining to the agreement,
- (c) the number and class of customers to be transferred,
- (d) assurance that the affected customers have been contacted and the difference in rates explained, and
- (e) information with respect to the degree of acceptance by affected customers, i.e., the number in favor and those opposed to the transfer. Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by this Commission.

(2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

- (a) the reasonableness of the purchase price of any facilities being transferred;

(b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of natural gas service to the existing or future ratepayers of any utility party to the agreement, and

(c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

(3) The Commission may require additional relevant information from the parties of the agreement, if so warranted.

Specific Authority: 366.05(1), F. S.

Law Implemented: 366.04(3)(a)(b)(c), 366.04(4), F. S.

History: New

25-7.0472 Territorial Disputes for Natural Gas Utilities.

(1) A territorial dispute proceeding may be initiated by a petition from a natural gas utility, requesting the Commission to resolve the dispute. Additionally the Commission may, on its own motion, identify the existence of a dispute and order the affected parties to participate in a proceeding to resolve it. Each utility which is a party to a territorial dispute shall provide a map and written description of the disputed area along with the conditions that caused the dispute. Each utility party shall also provide a description of the existing and planned load to be served in the area of dispute and a description of the type, additional cost, and reliability of natural gas facilities and other utility services to be provided within the disputed area.

(2) In resolving territorial disputes, the Commission may consider, but is not limited to consideration of:

(a) The capability of each utility to provide reliable natural gas service within the disputed area with its existing facilities and gas supply contracts and the extent to which additional facilities are needed;

(b) The nature of the disputed area and the type of utilities seeking to serve it and degree of urbanization of the area and its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services;

(c) The cost of each utility to provide natural gas service to the disputed area presently and in the future; which includes but is not limited to the following:

1. Cost of obtaining rights-of-way and permits.
2. Cost of capital.
3. Amortization and depreciation.
4. Labor; rate per hour and estimated time to perform each task.
5. Mains and pipe; the cost per foot and the number of feet required to complete the job.
6. Cost of meters, gauges, house regulators, valves, cocks, fittings, etc., needed to complete the job.
7. Cost of field compressor station structures and measuring and regulating station structures.
8. Cost of gas contracts for system supply.

(d) customer preference if all other factors are substantially equal.

(3) The Commission may require additional relevant

information from the parties of the dispute if so warranted.

Specific Authority: 366.04(3)(a)(b)(c)(4), F. S.

Law Implemented: 366.04, F. s.

History: New.

25-7.0473 Customer Participation.

(1) Any customer located within the geographic area in questions shall have an opportunity to present oral or written communications in Commission proceedings to approve territorial agreements or resolve territorial disputes. If the Commission proposes to consider such material, then all parties shall be given a reasonable opportunity to cross-examine or challenge or rebut it.

(2) Any substantially affected customer shall have the right to intervene in such proceedings.

(3) In any Commission proceeding to approve a territorial agreement or resolve a territorial dispute, the Commission shall give notice of the proceeding in the manner provided by Rule 25-22.0405, Florida Administrative Code.

Specific Authority: 366.04(3)(a)(b)(c)(4), F. S.

Law Implemented: 366.04, F. S.

History: New

NAME OF PERSON ORIGINATING PROPOSED RULE: Max Fulford

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED

RULES: Florida Public Service Commission

DATE PROPOSED RULES APPROVED: October 02, 1990

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.

Rules 25-7.047, 25-7.0471,
25-7.0472, 25-7.0473
Docket No. 900532-GU

**STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE**

In 1989 the Florida Legislature explicitly recognized the Commission's inherent authority to approve territorial agreements and resolve territorial disputes among natural gas utilities, Section 366.04(3) and (4), Florida Statutes (1989). To implement that explicit authority, and to codify existing Commission policy, the Commission proposes these new rules.

STATEMENT ON FEDERAL STANDARDS

No federal standards apply to these proposed rules.

STATEMENT OF IMPACT ON SMALL BUSINESS

This rule is not expected to adversely affect small businesses because costs identified with compliance are minimal, territorial agreements and disputes occur infrequently among natural gas utilities, and only one gas utility qualifies as a small business.

M E M O R A N D U M

August 27, 1990

TO: DIVISION OF APPEALS (BROWN)

FROM: DIVISION OF RESEARCH (HOPPE) *OMA* *JMB*

SUBJECT: ECONOMIC IMPACT STATEMENT FOR DOCKET NO. 900532-GU, PROPOSAL OF RULES 25-7.047, 25-7.0471, 25-7.0472, AND 25-7.0473, FAC, REGARDING TERRITORIAL AGREEMENTS AND DISPUTES FOR NATURAL GAS UTILITIES

SUMMARY OF THE RULE

The proposed rules implement the current statutory requirements for the Florida Public Service Commission (FPSC) to exercise jurisdictional authority in approving territorial agreements and resolving territorial disputes for natural gas utilities (Section 366.04(3),(4), FS 1989). For the purposes of implementing this authority, the statutory definition of a natural gas utility "includes gas public utilities, gas districts, and natural gas utilities, or municipalities or agencies thereof."

Specifically, proposed Rule 25-7.047, FAC, Territorial Agreements and Disputes for Natural Gas Utilities - Definitions, provides the definition of terms to be used in Rules 25-7.0471 through 25-7.0473.

Proposed Rule 25-7.0471, Territorial Agreements for Natural Gas Utilities, requires all territorial agreements between natural gas utilities to be approved by the Commission and details the filing requirements. In addition, the rule specifies the standards which the Commission will use in approving these agreements.

Proposed Rule 25-7.0472, Territorial Disputes for Natural Gas Utilities, provides for the petitioning of the Commission by a natural gas utility for resolution of a territorial dispute. In addition, the Commission, on its own motion, may initiate proceedings for resolution of identified territorial disputes. The rule provides for the associated filing requirements and specifies the issues which the Commission will consider in resolving these disputes.

Proposed Rule 25-7.0473, Customer Participation, implements the specific statutory requirements allowing affected customers the opportunity to participate in a territorial agreement or dispute proceeding. (Section 366.04(4), FS 1989) and requires proper Commission notice of such a proceeding.

DIRECT COSTS TO THE AGENCY

Compliance with the proposed rules would result in minimal additional workload for the Commission. The additional workload is associated with the review requirements of all agreements and disputes and the notification, by the Commission, of resulting proceedings. However, because of the infrequent occurrence of territorial agreements and disputes in the natural gas industry, the additional workload can be absorbed by the current staff and minimal additional costs would be incurred.

The Commission has participated in all three of the identified territorial disputes between investor-owned natural gas utilities (IOUs) for the past ten years. Therefore the proposed rule simply codifies existing practice of FPSC resolution when IOUs are involved in a territorial dispute. No other disputes have been identified for the past ten years. Eight territorial agreements have been identified for the past ten years. Additional time

associated with review and notification is not quantifiable, however, due to the infrequent occurrence of such agreements, the impact appears to be immaterial.

COSTS AND BENEFITS TO THOSE PARTIES DIRECTLY AFFECTED BY THE RULE

Summary. Survey responses indicated that increases in utility costs associated with implementing these rules would be minimal and infrequent in nature. Twenty-three gas utilities responded to the data request. Only eleven territorial disputes/agreements were identified for the past ten years. No additional costs were identified for disputes between investor-owned gas utilities, because current practice is to use Commission participation in resolution of these disputes. Other types of territorial disputes (e.g., IOU vs. non-IOU) would have to be resolved in some manner. Indications are that the additional costs associated with resolution of these disputes before the Commission are minimal and, in some instances, an FPSC proceeding may be less costly.

There are additional costs associated with the statutory requirement of Commission approval for territorial agreements. However, the infrequency of such agreements as highlighted by the survey, and the immateriality of these additional costs when compared to total operating costs, would tend to minimize any impact on a utility.

The Investor-Owned Natural Gas Utilities. To assess the impact of the proposed rules, all the investor-owned natural gas utilities (IOUs) were surveyed. Eight IOUs responded to this survey. All eight utilities indicated that the additional costs associated with implementation of these rules would be on a per occurrence basis and would have minimal impact on the utilities.

Additional costs associated with petitions regarding territorial

disputes are difficult to quantify. Indications are that because territorial disputes are historically resolved through FPSC intervention, additional costs attributable to FPSC dispute resolution may not exist. In addition, the occurrence of disputes is infrequent and the total costs associated with such disputes have not been significant when compared to overall utility costs of operation.

In the past ten years only three territorial disputes, all resolved with FPSC intervention, were identified by responding utilities. One utility, Florida Public Utilities (FPUC), estimated the total cost of settling territorial disputes to be between \$500-\$1,000 per occurrence, with additional costs to be incurred for hearings outside their service territory. The other seven IOUs responding to the survey either did not quantify a dollar amount or indicated "none" or no significant costs. Two respondents indicated the potential for cost savings associated with the proposed rule due to FPSC establishment of a clear framework for dispute resolution, thereby avoiding the possibility of another potentially more costly jurisdiction resolving such disputes. This would particularly be true in the case of a dispute between an IOU and a non-IOU gas utility.

There would be increased costs associated with the statutory requirement of the filing of territorial agreements with the FPSC. FPUC estimated the total cost of filing territorial agreements with the Commission to be \$500-\$1,000. The other utilities did not quantify these costs but indicated they would vary on a case-by-case basis. However, the impact of this requirement is minimal due to the infrequent occurrence of such agreements.

The major territorial agreements in the past ten years, identified by the responding IOUs, resulted from resolutions of disputes brought before the

FPSC. The only other reported agreements, were two franchise agreements that South Florida Natural Gas Company identified.

No additional quantifiable costs were identified in association with customer participation. However, if any costs did exist, they would vary based on the size of the service area in dispute/agreement. The rule provides for the FPSC, not the utilities, to give proper notice of a proceeding approving territorial agreements or resolving territorial disputes. Therefore additional costs associated with notification may not affect the utilities involved.

Non-Investor-Owned Natural Gas Utilities. All of the municipal gas utilities, special gas districts, intrastate transmission companies, and housing authorities listed in the FPSC Directory of Utilities were surveyed. Fifteen responses were received.

There were no territorial disputes identified. The responding municipal gas utilities indicated they are the only companies operating within their city corporate limits and therefore have had no territorial disputes and that any additional costs associated with this rule would be "negligible" or nonexistent. The City of Quincy did indicate that "regulation costs money," but did not quantify any additional costs.

No additional costs were quantified in association with FPSC approval of territorial agreements. Six agreements in the past ten years were identified by the responding utilities. Most respondents indicated the additional costs would be "negligible" or nonexistent. The exception was Lake Apopka Natural Gas District. They did not quantify any dollar costs, but indicated substantial increases in staff, consulting, and legal expenses. However, Lake Apopka Natural Gas District indicated it has had only five territorial agreements in the last ten years.

Based on the infrequency of territorial agreements and the general agreement by respondents that the costs would be immaterial, the cost impact of this rule on noninvestor-owned natural gas utilities appears to be minimal.

IMPACT ON SMALL BUSINESSES

None of the respondents to the data request are small businesses subject to Chapter 120 FS requirements. One IOU, Indiantown Gas Company, Inc., qualifies as a small business. This rule is not expected to adversely affect small businesses because of the minimal costs identified with compliance and the infrequent occurrence of territorial agreements/disputes.

IMPACT ON COMPETITION

Compliance with the proposed rules would impose some additional costs on the utilities, particularly with the requirement to file territorial agreements with the FPSC. However, these costs are minimal and infrequent in occurrence. Therefore it is unlikely that these costs will have a noticeable effect on the ability of a utility to compete with alternative sources or erode the financial viability of the utility.

In the long run, compliance with the proposed rules may result in cost savings to the natural gas industry as uneconomic duplication of facilities is avoided and a streamlined framework for settlement of future disputes is established.

IMPACT ON EMPLOYMENT

Compliance with the proposed rules is not expected to have any significant impact on employment in the natural gas industry or on Florida's

general economy. The minimal estimates of additional costs of compliance combined with the infrequent occurrence of territorial agreements/disputes, make it unlikely that employment would be impacted significantly.

METHODOLOGY

Data requests were mailed to all five investor-owned electric utilities. General information concerning natural gas territorial agreements/disputes was obtained from the Bureau of Natural Gas, Division of Electric and Gas. Standard microeconomic theory was used to assess the effects on employment and competition.

DH:jn/E-TERDIS