



Public Service Commission

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[Handwritten initials: MKS, MAKIN, HEWITT, JDT]

DATE: MARCH 6, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (STERN) MKS
DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT (MAKIN) [Handwritten initials]
DIVISION OF ECONOMIC REGULATION (HEWITT) [Handwritten initials]

RE: DOCKET NO. 030163-GU - PROPOSED ADOPTION OF AMENDMENTS TO RULE 25-7.072, F.A.C., CODES OF CONDUCT.

AGENDA: 03/18/03 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030163.RCM

CASE BACKGROUND

By Order dated July 5, 2002, the Commission adopted new Rule 25-7.072, Florida Administrative Code, titled "Codes of Conduct". Based on subsequent communication with the Joint Administrative Procedures Committee (JAPC), the rule was revisited. Staff consulted JAPC's attorney and has now developed amendments to the rule, which are proposed for adoption in this recommendation.

The amendments do not alter the purpose of the rule, but slightly modify how that purpose will be achieved. The purpose of the rule is to provide guidelines for investor-owned natural gas utility companies in dealing with their affiliates to ensure that such affiliates do not gain an unfair advantage over their non-affiliated competitors.

As originally adopted, the rule prohibited gas utilities from sharing with marketing affiliates, employees who fulfill certain

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functions. The rule lists specific functions. JAPC questioned whether the Commission had authority to regulate the employees of gas utilities. Staff determined that the rule could be amended to address this concern and still serve its purpose.

As amended herein, the rule simply states that gas utilities cannot give their marketing affiliates preference in the listed functional areas. Under the proposed amendments, gas utilities have more discretion to decide how to ensure that their marketing affiliates are not given preference. In addition, a sentence was added that expressly prohibits gas utilities from allowing any subsidy or value to flow to their marketing affiliates without compensation. Finally, several minor changes were made to make the language of the rule more precise. JAPC has no objections to these amendments.

The Notice of Proposed Rule Development for the amendments proposed herein was published in the Florida Administrative Weekly on December 20, 2002. A workshop was not requested and none was held.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose amendments to Rule 25-7.072, Florida Administrative Code, titled "Codes of Conduct"? (STERN, MAKIN, HEWITT)

RECOMMENDATION: Yes, the Commission should propose that the rule be amended as shown in the attachment to this recommendation.

STAFF ANALYSIS: Revenues from regulated services are designed to compensate providers at fair and reasonable rates, not to cross-subsidize competitive, unregulated activities of their affiliates. The amendments to the rule prevent cross-subsidization, and the amendments will help to ensure the benefits of competition.

STATUTORY AUTHORITY: Section 366.05(1), Florida Statutes, provides, in pertinent part, that

the Commission shall have power to prescribe fair and reasonable rates...

The fairness and reasonableness of rates could be negatively affected if providers of regulated services could use regulated revenues to subsidize activities of their affiliates in competitive markets. Section 366.05(1) and 350.127(2), Florida Statutes, authorize the Commission to adopt rules, including the proposed amendments to Rule 25-7.072, to implement and enforce such requirements as fair and reasonable rates.

STATEMENT OF ESTIMATED REGULATORY COSTS

Attachment 1 to this recommendation explains that the proposed amendments are not expected to create an increase in compliance costs.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if no requests for hearing or comments are filed, the rule as proposed should be filed for adoption with the Secretary of State and the docket be closed. (STERN)

STAFF ANALYSIS: Unless comments or requests for hearing are filed, the rule as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

MKS
Attachment

25-7.072 Code of Conduct

(1) Definition. Marketing Affiliate means an business entity, unregulated ~~business entity by the Commission~~, 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~~ each 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;~~ :

1. Receiving and processing transportation service requests or tariff sales requests from customers;
2. Scheduling gas deliveries on the gas utility's system;

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3. Making gas scheduling or allocation decisions;

4. Purchasing gas or capacity; or

5. Selling gas to end users behind the city gate.

(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) (c) Will charge the Marketing Affiliate the fully allocated costs for any general and administrative and support services provided to Marketing Affiliate.~~

~~(d) Will prevent the flow of any type of subsidy or value from the utility to the Marketing Affiliate, for which the Marketing Affiliate does not compensate the utility;~~

~~(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~~

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

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

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

History: New 07/23/02, amended.

MEMORANDUM

November 14, 2002

TO: DIVISION OF APPEALS (STERN)

FROM: DIVISION OF ECONOMIC REGULATION (HEWITT) *BA Kes 120*

SUBJECT: STATEMENT OF ESTIMATED REGULATORY COSTS FOR PROPOSED
AMENDMENTS TO RULE 25-7.072, F.A.C., CODES OF CONDUCT

Rule 25-7.072, F.A.C., Codes of Conduct, contains the standards for investor-owned gas utilities when dealing with its marketing affiliate or market affiliate's customers. The purpose of the rule is to prevent unfair and discriminatory practices and any subsidies flowing from the regulated utilities to their affiliates.

The proposed amendments would eliminate the requirements on a gas utility on how to handle its employees involved in day-to-day transportation activities. Instead, the rule would make clear the areas in which preference may not be shown to marketing affiliates and leave it up to each utility to decide how it avoids giving any preference. Another provision would be added that makes it explicitly clear that a gas utility must prevent the flow of any type of subsidy or value from the utility to the marketing affiliate, for which the market affiliate does not compensate the utility.

The Florida Administrative Procedures Act encourages an agency to prepare a Statement of Estimated Regulatory Costs (SERC). However, because gas utilities are already prevented from giving uncompensated benefits to their marketing affiliates, there should be no additional costs other than the costs to promulgate a rule amendment and no significant negative impacts on utilities, small businesses, small cities, or small counties. Therefore, a SERC will not be prepared for the proposed rule amendments.

cc: Mary Andrews Banc
Wayne Makin
Hurd Reeves
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