

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



OFFICE OF THE GENERAL COUNSEL
HAROLD A. MCLEAN
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

April 10, 2003

Joint Administrative Procedures
Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

RE: Docket No. 030163-GU - Proposed amendment of Rule 25-7.072, F.A.C., Code of Conduct

Dear Mr. Webb:

Enclosed is an original copy of the following material 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 standards statement.

A statement of estimated regulatory costs was not prepared. If there are any questions with respect to this rule, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script that reads "Marlene K. Stern".

Marlene Stern
Senior Attorney

ADM7-072.MKS
Enclosures
cc: Division of the Commission Clerk
and Administrative Services

DOCUMENT NUMBER-DATE
03358 APR 10 8
FPSC-COMMISSION CLERK

1 25-7.072 Code of Conduct

2 (1) Definition. Marketing Affiliate means an business
3 entity, unregulated by the Commission, ~~business entity~~ that is a
4 subsidiary of a gas utility or is owned by or subject to control by
5 the gas utility's parent company, and sells gas at the retail level
6 to a transportation customer on the gas utility's system.

7 (2) Application of Tariff Provisions. A gas utility will
8 apply tariff provisions relating to gas transportation service in
9 the same manner to similarly situated marketers, brokers, or
10 agents, whether or not they are affiliated with the gas utility.
11 In addition, each ~~a~~ gas utility:

12 (a) Will not, through a tariff provision or otherwise, give
13 its Marketing Affiliate or its Marketing Affiliate's customers,
14 preference over non-affiliated marketers or their customers in
15 matters relating to: ~~gas transportation or curtailment priority,~~
16 ~~specifically including the manner and timing of the processing of~~
17 ~~requests for transportation service,~~

18 1. Receiving and processing transportation service
19 requests or tariff sales requests from customers
20 (customer service inquiry employees);

21 2. Scheduling gas deliveries on the gas utility's
22 system;

23 3. Making gas scheduling or allocation decisions;

24 4. Purchasing gas or capacity; or

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

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

1 (b) Will not disclose, or cause to be disclosed, to any
2 marketer, broker or agent,

3 1. Previously non-public information about a customer
4 without that customer's prior authorization, or

5 2. Previously non-public information the gas utility
6 receives through its processing of requests for or
7 provision of transportation service, unless such
8 information is contemporaneously made available to
9 similarly situated market participants;

10 ~~(c) Will not share with its Marketing Affiliate any of its~~
11 ~~employees having direct responsibility for the day-to-day~~
12 ~~operations of a gas utility's transportation operations, including~~
13 ~~employees involved in:~~

14 1. ~~Receiving transportation service requests or tariff~~
15 ~~sales requests from customers (customer service inquiry~~
16 ~~employees);~~

17 2. ~~Scheduling gas deliveries on the gas utility's~~
18 ~~system;~~

19 3. ~~Making gas scheduling or allocation decisions;~~

20 4. ~~Purchasing gas or capacity, or~~

21 5. ~~Selling gas to end users behind the city gate, and~~
22 ~~such employees will be physically separated from the gas~~
23 ~~utility's Marketing Affiliate.~~

24 (c)(d) Will charge the Marketing Affiliate the fully
25 allocated costs for any general and administrative and support

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

1 services provided to Marketing Affiliate.

2 (d) Will prevent the flow of any type of subsidy from the
3 utility to the Marketing Affiliate;

4 (e) Will not condition or tie an offer or agreement to
5 provide a transportation discount to a customer to a requirement
6 that the gas utility's Marketing Affiliate is involved in the
7 transaction.

8 (f) Will not give preference to its Marketing Affiliate
9 regarding temporarily available gas or capacity, but will make
10 temporarily available gas or capacity available to all similarly
11 situated market participants;

12 (g) Will maintain its books and records separately from those
13 of its Marketing Affiliate; and

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

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

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

19 History: New 07/23/02, amended.

20
21
22
23
24
25
CODING: Words underlined are additions; words in ~~struck~~
through type are deletions from existing law.

NOTICE OF PROPOSED RULEMAKING

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030163-GU

RULE TITLE:

RULE NO.:

Codes of Conduct

25-7.072

PURPOSE AND EFFECT: The purpose and effect of the proposed amendment is to ensure that no natural gas utility or marketing affiliate gain an unfair competitive advantage over non-affiliated competitors.

SUMMARY: Subparagraph 25-7.072(c)(1-5) is being deleted and part of that subparagraph is being added to subparagraph 25-7.072(a). Subparagraph 25-7.072(c)(1-5) currently requires that a regulated gas utility not share, with a marketing affiliate, "employees having direct responsibility over the day-to-day operations of the gas utility's transportation operations". A non-exclusive list identifies five specific areas of operation (numbered 1 through 5 in the rule) in which employees may not be shared. Subparagraph 25-7.072(a) provides that a gas utility will not "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". The effect of this change is that a gas utility will no longer be

directed on how to handle its employees involved in day-to-day transportation operations. Instead the rule will delineate areas in which preference cannot be shown to marketing affiliates. It will be up to each utility to decide how to ensure it avoids giving preference to its marketing affiliate. The new provision will be 25-7.072(2)(d) and requires that a gas utility "[w]ill prevent the flow of any type of subsidy from the utility to the Marketing Affiliate." This provides another mechanism for ensuring that gas utilities and their market affiliates maintain a degree of independence from each other. Here again, it is up to the gas utility to decide how best to ensure this does not happen.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement was not prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 350.127(2), 366.05(1), FS

LAW IMPLEMENTED: 366.05(1), FS

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES, 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 SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Marlene Stern, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0862, (850) 413-6245.

THE FULL TEXT OF THE PROPOSED RULE IS:

25-7.072 Code of Conduct

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

(b) 1. and 2. No change;

~~(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.~~

~~(c)(d)~~ 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 from the utility to the Marketing Affiliate;

(e) - (h) No Change.

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

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

History: New 07/23/02, amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Wayne Makin

NAME OF SUPERVISOR OR PERSONS WHO APPROVED THE PROPOSED RULE:

Florida Public Service Commission.

DATE PROPOSED RULE APPROVED: March 18, 2003

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: Volume 28, Number 51, December 20, 2002

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.

Any person requiring some accommodation at this hearing because of a physical impairment should call the Division of the Commission Clerk and Administrative Services at (850) 413-6770 at least 48 hours prior to the hearing. Any person who is hearing or speech impaired should contact the Florida Public Service

Commission by using the Florida Relay Service, which can be reached at: 1-800-955-8771 (TDD).

Rule 25-7.072

Docket No. 030163-GU

**STATEMENT OF FACTS AND CIRCUMSTANCES
JUSTIFYING RULE**

Codes of conduct are used to establish guidelines governing the interaction between a natural gas utility and its affiliates who market energy and energy-related products or services. The guidelines should prevent the affiliates of natural gas utilities from gaining an unfair market advantage by being subsidized with resources derived from regulated activities, or by engaging in self-dealing or other discriminatory behavior.

STATEMENT ON FEDERAL STANDARDS

There is no federal standard on the same subject.