



Fort Lauderdale
Jacksonville
Los Angeles
Madison
Miami
New York
Orlando
Tallahassee
Tampa
Tysons Corner
Washington, DC
West Palm Beach

Suite 1200
106 East College Avenue
Tallahassee, FL 32301

www.akerman.com

850 224 9634 tel 850 222 0103 fax

ORIGINAL

June 29, 2007

VIA HAND DELIVERY

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED-FPSC
07 JUN 29 AM 10:41
COMMISSION
CLERK
R. V. N

Re: Docket No. 070135-GU - Petition for waiver of service line abandonment provisions of Rule 25-12.045, F.A.C. by Florida Natural Gas Association.

Dear Ms. Cole:

 Please accept for filing, in the above-referenced Docket, the original and 7 copies of the
CMP Florida Natural Gas Associations' Protest and/or Request for Clarification of Proposed Agency
COM 5 Action Order No. PSC-07-0488-PAA-GU.

- CTR
- ECR
- GCL 1
- OPC
- RCA 1
- SCR
- SGA
- SEC
- OTH

{FL130393;1}

DOCUMENT NUMBER-DATE

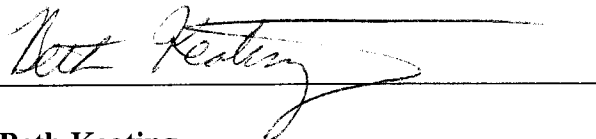
05186 JUN 29 08

FPSC-COMMISSION CLERK

Ann Cole
June 29, 2007
Page 2

If you have any questions whatsoever regarding this filing, please do not hesitate to call me.

Sincerely,



Beth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
Phone: (850) 521-8002
Fax: (850) 222-0103

cc: Mr. David Rogers (FNGA)
Mr. Ed Mills (RCA)

ORIGINAL

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:)
Petition for Waiver of Service Line)
Abandonment Provisions of Rule)
25-12.045, F.A.C. by the Florida Natural)
Gas Association.)

Docket No. 070135-GU
Filed: June 29, 2007

THE FLORIDA NATURAL GAS ASSOCIATION'S PROTEST AND/OR REQUEST FOR
CLARIFICATION OF PROPOSED AGENCY ACTION ORDER NO. PSC-07-0488-PAA-GU

Pursuant to Rule 25-22.029 (3), Florida Administrative Code, and in accordance with Rule 28-106.201, Florida Administrative Code, the Florida Natural Gas Association ("FNGA"), by and through its undersigned counsel, hereby submits this Protest of Proposed Agency Action Order No. PSC-07-0488-PAA-GU, issued June 8, 2007. By this Protest, FNGA specifically asks that the Commission clarify certain portions of its Order to remedy conflicting statements therein. In support thereof, FNGA hereby states:

1. The name, address, telephone number and fax number of the Petitioner are:

Florida Natural Gas Association
G. David Rogers, Executive Director
P.O. Box 11026
Tallahassee, FL 30302

2. The names and mailing addresses of the persons to whom notices, orders and correspondence regarding this Petition are to be sent are:

Beth Keating
Akerman Senterfitt
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
(850) 224-9634 (office)
(850) 222-0103 (fax)
beth.keating@akerman.com

3. The FNGA is a natural gas trade association representing investor-owned, special gas district and municipal Local Distribution Companies (LDCs), gas transmission companies, gas marketing companies and others affiliated with the natural gas industry. All of Florida's seven investor-owned gas distributors are FNGA members, as are 29 of the 31 special district and municipal distribution systems. Each of FNGA's LDC members are subject to the regulatory jurisdiction of this Commission for gas safety as prescribed in Chapter 368, Part I, Florida Statutes, and Commission Rule 25-12.045, F.A.C.

4. On March 1, 2007, the FNGA filed a Petition for Waiver of the service line abandonment provisions of Rule 25-12.045, Florida Administrative Code. The FNGA LDC members' substantial interests are affected by the Commission's disposition of the Petition for Waiver filed by the FNGA, and are consequently, directly impacted by any lack of clarity or ambiguity in the Proposed Agency Action Order addressing the Petition for Waiver. Any decision regarding the FNGA's Petition for Waiver will have a direct and immediate impact on the FNGA members' ability to temporarily defer the removal of meters and service lines in support of various LDC reconnection marketing efforts, under terms and conditions agreeable to the FNGA LDC members. The FNGA's members are subject to the regulatory jurisdiction of the FPSC.

5. Furthermore, Rule 25-12.045, Florida Administrative Code, applies directly to FNGA's LDC members, and FNGA meets the definition of "person," as referenced in Section 120.542, and defined in Section 120.52(13), Florida Statutes. The FNGA hereby submits this Protest and/or Request for Clarification on behalf of its member companies, who would otherwise have standing to petition the Commission in their own right. Furthermore, the relief requested herein does not require the participation of the individual members of the FNGA, and

is consistent and germane to the FNGA's organizational purpose. See Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333 (1977)(setting forth three prong test for associational standing).

6. By its March 1, 2007, Petition for Waiver, FNGA sought a waiver of portions of Rule 25-12.045, Florida Administrative Code, which provides for the physical abandonment of gas service lines that have been used but become inactive with no prospect for reuse. If there is no prospect for reuse the service line must be physically abandoned and retired within three (3) months of becoming inactive. The Rule also provides that, after two (2) years of inactivity, assuming the prospect of reuse does still exist, an LDC must take one of the following actions with six (6) months:

- Disconnect the service line from all sources of gas and abandon or remove.
- Lock off a service line valve and plug the line to prevent the flow of gas.
- Remove the meter and plug the service line.

After five (5) years of inactivity, an LDC has six (6) months to physically abandon and retire the service line. Sub-sections (2) and (3) of Rule 25-12.045 provide, respectively, detail on the procedures for physical abandonment of a service line and the records of service line stubs that must be maintained by the LDC.

7. Specifically, FNGA sought a waiver of the requirements in Rule 25-12.045 (1) (b) for any service line that has currently been inactive for a period of two (2) years or reaches such inactive status during 2007, as well as a waiver of the requirements in Rule 25-12.045 (1) (c) for any service line that has currently been inactive for a period of five (5) years or reaches such inactive status during 2007. While FNGA has sought this waiver for only 2 years per line, the

FNGA would like this waiver to apply to any and all similar such service lines that reach the two (2) or five (5) year inactive status cut-off mark anytime in the 2007 calendar year. The proposed waiver period would extend for a period of twenty-four (24) months from the date of the Commission Order for inactive service lines currently subject to the Rule's removal or abandonment requirements, or from the date during 2007 when a service line reaches the two or five year inactive dates specified in the Rule, but in no circumstances extend beyond December 31, 2009.¹

8. The specific statutory provision underlying Rule 25-12.045, Florida Administrative Code, is Section 368.05(2), Florida Statutes, which provides as follows:

The commission shall have the power to perform any and all acts necessary or appropriate to the exercise of the authority granted under the provisions of this law. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring duties upon it. The commission 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; 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; and may exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its safety orders and rules adopted pursuant to this law.

The general purpose, as provided in Section 368.03, Florida Statutes, is:

. . . that the requirements of such rules and regulations shall be adequate for safety under conditions normally encountered in the gas industry, but requirements for abnormal or unusual conditions or all details of engineering and construction need not be specifically provided for or prescribed.

¹ FNGA notes that while all its member LDCs support this Petition for Waiver, certain LDCs may elect to continue to apply the current rule provisions and standards in certain neighborhoods or throughout their territory.

June 29, 2007
Florida Natural Gas Association

In accordance with Section 120.542(2), Florida Statutes, the FNGA stated in its Petition for Waiver that the purpose of the underlying statutes would still be fulfilled should the Commission grant FNGA's request for a temporary waiver. The 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 deferral of the service abandonment provisions will arise, because the lines will be closely monitored. As stated in the underlying Petition, if the Waiver were not granted, it could result in unnecessary, 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 new marketing programs discussed herein, if such marketing programs prove to be as successful as anticipated.

9. On June 8, 2007, the Commission issued Order No. PSC-07-0488-PAA-GU, specifically granting the FNGA's Petition for Waiver of Rule 25-12.045(1)(b) and (c), Florida Administrative Code. However, at page 3 of the Order, the following statement is found in the first paragraph,

For example, FNGA members will still be required to disconnect the service line from all sources of gas, they will still be required to lock the valve in a closed position and plug the service line to prevent the flow of gas, and they will still be required to disconnect the service line from all sources of gas at the nearest point to the gas main.

The above-referenced sentence appears to require the FNGA members to comply with the provisions of Rule 25-12.045(1)(b), Florida Administrative Code, which FNGA does not believe was the Commission's intent. In fact, the Commission specifically voted to grant the FNGA's

Petition for Waiver of both Rule 25-12.045(1)(b) and 25-12.045(1)(c), Florida Administrative Code.

10. The FNGA members will be substantially and detrimentally affected if the Commission does not clarify that FNGA's Petition was granted in its entirety, and that the specific requirements of Rule 25-12.045(1)(b), Florida Administrative Code, do not apply. Furthermore, if the Commission in fact determined that the FNGA's Petition for Waiver should be denied as it pertained to Rule 25-12.045(1)(b), Florida Administrative Code, it should so clarify. Without clarification on this point, FNGA's members will be subject to regulatory uncertainty as to how to proceed regarding inactive service lines, which will result in the unnecessary incurrence of additional costs to comply with the provisions of Rule 25-12.045(1)(b). This will negate the value of the waiver granted by Order No. PSC-07-0488-PAA-GU.

REQUEST FOR RELIEF

For all the foregoing reasons, the Florida Natural Gas Association requests that the Commission clarify that FNGA members are not required to comply with the provisions of Rule 25-12.045 (1)(b), and that by Order No. PSC-07-0488-PAA-GU, the Commission granted a waiver of both Rule 25-12.045(1)(b) and 25-12.045(1)(c), Florida Administrative Code.

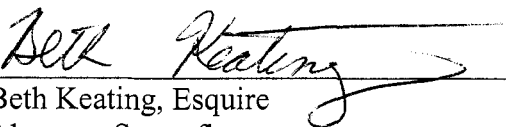
In the alternative, should the Commission determine that the requested waiver is not

June 29, 2007
Florida Natural Gas Association

appropriate, the FNGA asks that this matter be set for a Section 120.57, Florida Statutes, hearing.

Respectfully submitted this 29th day of June, 2007.

Florida Natural Gas Association


Beth Keating, Esquire
Akerman Senterfitt
106 East College Avenue, Suite 1200
P.O. Box 1877 (32302)
Tallahassee, Florida 32301
(850) 521-8002
beth.keating@akerman.com

Attorneys for the FNGA