

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 5, 2012

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Cowdery)
Division of Economics (McNulty, Stallcup)
Division of Engineering (Black, Moses)
Division of Accounting & Finance (Dowds, Mouring)

RE: Docket No. 120068-GU – Petition to initiate rulemaking to amend Rule 25-12.045, F.A.C., by Florida Natural Gas Association.

AGENDA: 07/17/12 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\120068.RCM.07-05.12.DOC

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Handwritten signatures and initials:
VC, MC, ST, CL, AB, MD, CC

Case Background

On March 30, 2012, the Florida Natural Gas Association (FNGA) filed a Petition to Initiate Rulemaking to amend Rule 25-12.045, Florida Administrative Code (F.A.C.), Inactive Gas Service Lines (Petition). Pursuant to Commission Order No. PSC-12-0253-NOR-GU, issued May 24, 2012 in this docket, the Commission granted the Petition and initiated rulemaking.

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In addition to requesting that rulemaking be initiated, FNGA requested relief related to a temporary waiver¹ granted to FNGA's local distribution company members from the service line abandonment provisions of Rule 25-12.045(b) and (c), F.A.C., in Docket No. 070135-GU. In Docket No. 070135-GU, FNGA requested that its local distribution company members be granted a temporary waiver from Rule 25-12.045, so that they would have an opportunity to establish the marketing and incentive tools needed to improve the retention of existing customers and attract inactive customers back to gas services. FNGA also stated that the costs to remove a meter, plug the service line, and complete the applicable recordkeeping requirements could be reduced if FNGA and its members were given an opportunity to establish the marketing and incentive tools needed to improve the retention of existing customers and attract inactive customers back to using gas. FNGA outlined several marketing and incentive activities to improve the retention and attraction of customers. FNGA also stated that the cost to cut and cap service lines that are physically abandoned could result in a duplicative and unnecessary cost because FNGA members would have to reinitiate the same service lines for new customers if the new marketing programs were to be successful. The Commission found that the request met the underlying purpose of the law and that there was a demonstration of substantial economic hardship if the provisions of Rule 25-12.045(1)(b) and (c) were strictly applied. The Commission, therefore, granted FNGA's local distribution company members a temporary waiver from Rule 25-12.045, until December 31, 2009, provided that upon expiration of the December 31, 2009 waiver period, each company was required to come into compliance with Rule 25-12.045 by December 31, 2011, if the waiver was not extended.²

FNGA filed a Petition for Extension of Waiver of the Service Line Abandonment Provisions of Rule 25-12.045, F.A.C., on December 2, 2009. FNGA stated that the then-current economic slowdown and high foreclosure rate had resulted in an increase in inactive lines. FNGA also stated that the marketing programs allowed by the initial waiver of the abandonment provisions of the rule appeared to be working. FNGA sought an additional two-year extension of the temporary waiver of Rule 25-12.045(1)(b) and (c) in order to ensure the effectiveness of the marketing and incentive programs. Pursuant to Order No. PSC-10-0158-PAA-GU³ (the Waiver Order), the Commission granted an extension of the waiver until December 31, 2011. The Commission found that FNGA's members would incur a substantial hardship if the waiver extension were not granted, and that granting the waiver would not prevent the Commission from meeting its statutory requirements to obtain data reasonably necessary to determine whether the companies were complying with all applicable safety standards. The Waiver Order provides

¹ A waiver means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver is required to conform to the standards for waiver set forth in Chapter 120 and in the uniform rules of procedure. Section 120.52(22), F.S.

² Order No. PSC-07-0488-PAA-GU, Notice of Proposed Agency Action Order Granting Temporary Rule Waiver, issued June 8, 2007, In re: Petition for waiver of service line abandonment provisions of Rule 25-12.045, F.A.C. by Florida Natural Gas Association, Docket No. 070135-GU. Following FNGA filing a protest and/or request for clarification of this order, the Commission issued Order No. PSC-07-0830-AS-GU, Order Approving Settlement Proposal and Clarifying and Finalizing Order No. PSC-07-0488-PAA-GU, issued October 15, 2007, which clarifies that the temporary waiver granted by Order No. PSC-07-0488-PAA-GU applies to paragraphs (1)(b) and (c) of Rule 25-12.0145 F.A.C., in their entirety.

³ Docket No. 090522-GU, In re: Petition for extension of waiver of service line abandonment provisions of Rule 25-12.045, F.A.C., by Florida Natural Gas Association, was opened to process this petition, and relief was granted in Order No. PSC-10-0158-PAA-GU, issued March 22, 2010.

that, upon expiration of the December 31, 2011 waiver period, each FNGA member must complete all necessary activities to return to compliance with Rule 25-12.045 by December 31, 2013, unless the rule waiver were to be again extended upon petition of FNGA.

In its Petition to initiate rulemaking to amend Rule 25-12.045, F.A.C., in this docket (Docket No. 120068-GU), FNGA requested that the Commission toll the Waiver Order's December 31, 2013 deadline for compliance with Rule 25-12.045, F.A.C., pending resolution of this rulemaking docket, and also requested that the compliance deadline be extended by four years if this docket does not result in changes to Rule 25-12.045, F.A.C. On April 20, 2012, staff held an informal meeting concerning this requested relief. Representatives from FNGA and the Office of Public Counsel attended this meeting. At that meeting, FNGA agreed that if the Commission were to grant a one-year extension of time, until December 31, 2014, to come into compliance with Rule 25-12.045, FNGA's local distribution company members would give priority to those lines which have been inactive for more than five years. Based upon discussion at the April 20, 2012 meeting, FNGA, by letter dated May 14, 2012, withdrew its request for tolling of the December 31, 2013 compliance period and for the requested additional four-year compliance period, and, instead, requested that the Commission grant a one-year extension of the December 31, 2013 compliance period of the Waiver Order, until December 31, 2014.

This recommendation addresses whether the Commission should grant FNGA's request that its local distribution company members be granted a one-year extension of the two-year compliance period of the Waiver Order, such that those members are required to bring their inactive service lines into compliance with Rule 25-12.045, F.A.C., by December 31, 2014. The Commission has jurisdiction pursuant to sections 120.54 and 368.05(2), Florida Statutes.

Discussion of Issues

Issue 1: Should the December 13, 2013 compliance date of the Waiver Order be extended by one year, such that Florida Natural Gas Association's local distribution company members will be required to bring their inactive service lines into compliance with Rule 25-12.045, F.A.C., by December 31, 2014?

Recommendation: Yes. Staff recommends that the December 31, 2013 compliance date of the Waiver Order should be extended by one year until December 13, 2014, to give the local distribution companies additional time to come into compliance with Rule 25-12.045, F.A.C. (Cowdery, Moses, Black)

Staff Analysis:

FNGA requests that the Commission grant a one-year extension of time, from December 31, 2013 to December 31, 2014, for its local distribution company members to come into compliance with Rule 25-12.045(1)(b) and (c), F.A.C., pursuant to the Waiver Order. These rule provisions, from which FNGA obtained a temporary waiver, apply when inactive gas service lines have been used, but have become inactive without reuse. In this situation, Rule 25-12.045(1)(b) requires a utility to take one of three listed actions within six months if there is a prospect for reuse of the line.

The three actions available under Section 25-12.045(1)(b), F.A.C., are: (1) Disconnect the service line from all sources of gas and abandon or remove; (2) Lock and plug a valve on the service line in the closed position and to prevent the flow of gas; or (3) Remove the meter and plug the end of the service line to prevent the flow of gas. After five years of inactivity, service lines must be retired and physically abandoned within six months.⁴ In order to physically abandon a service line, the rule requires the operator to disconnect the service line from all sources of gas at the nearest point to the gas main.⁵ In addition, the rule requires that records be kept of the size, material, and location of all remaining service line stubs. These records must be readily available to personnel assigned to pipeline locating activities.⁶

In support of its request for a one-year extension of time to come into compliance with Rule 25-12.045, FNGA states that the additional one-year period will lessen the anticipated spike in maintenance costs that will occur if the affected companies are required to come into strict compliance with Rule 25-12.045 by December 31, 2013. FNGA alleges that virtually all local distribution companies elect to remove the meter and plug the service line after two years of inactivity, and that the cost for such removal ranges from approximately \$75 to \$100 per meter. FNGA states that the cost for physical abandonment of a service line ranges from approximately \$350 to \$500 per service, and is more if pavement cuts or other significant restoration activities are required. FNGA states that the ability to spread those costs over the longer period will better

⁴ Section 25-12.045(1)(c), F.A.C.

⁵ The rule also states that if a governmental authority prohibits cutting pavement, the service line shall be disconnected at the nearest point not under a paved surface. The stub of the service line, the short section of the remaining service line to the main, shall be disconnected closer to the main or at the main, if at some later date it becomes accessible during normal operations. Section 25-12.045(2), F.A.C.

⁶ Section 25-12.045(3), F.A.C.

enable local distribution companies to account for these costs without unintended detrimental impacts on the companies or their customers.

FNGA further states that if the one-year extension for compliance with the rule is denied, the gas industry will incur significant expense to remove the meters on vacant, foreclosed homes for which they believe inactive service lines will be activated or reactivated as the economy improves. In addition, FNGA states that the one-year extension of time will enable local distribution companies to come into compliance with Rule 25-12.045 without jeopardizing adherence to their distribution integrity management plans.⁷ FNGA states that the purpose of the underlying statutes, Sections 368.03 and 368.04, F.S., will continue to be met if the request for extension of time is granted because the local distribution companies will continue monitoring inactive lines to ensure no negative customer impacts will occur and that safety will not be compromised.

Staff believes that FNGA's request for a one-year extension of time to come into compliance with Rule 25-12.045 is reasonable and should be granted. Spreading the compliance time over a three-year period instead of a two-year period should not compromise customer safety, since the local distribution companies will be removing inactive lines from service during the entire time period and have represented to staff that they will give special attention to those service lines which have been inactive for more than five years.

⁷ Distribution integrity management plans were initiated by the Pipeline Hazardous Materials Safety Administration and require operators to identify and invest in risk control measures beyond core regulatory requirements.

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Issue 2: Should this docket be closed?

Recommendation: No. Docket No. 120068-GU should remain open to allow staff to proceed with the rulemaking process. (Cowdery)

Staff Analysis: The Commission granted FNGA's Petition to Initiate Rulemaking on Rule 25-12.045, F.A.C., by Order No. PSC-12-0253-NOR-GU, Order Granting Petition to Initiate Rulemaking, issued in this docket on May 24, 2012. Therefore, this docket should remain open to allow staff to proceed with the rulemaking process.