

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-**

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**DATE:** May 15, 2019  
**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk  
**FROM:** Samantha Cibula, Office of the General Counsel *SMC*  
**RE:** Docket No. 19991754-GP

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Please file the attached materials in the docket file listed above.

Thank you.

Attachment

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# 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-

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**DATE:** 12/9/99

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF APPEALS (MOORE) *AM DS*  
DIVISION OF ELECTRIC AND GAS (MILLS) *CEU* *WEB* *RJT*

**RE:** DOCKET NO. 991754-GP - PETITION BY FRIENDS OF THE AQUIFER, INC. TO ADOPT RULES NECESSARY TO ESTABLISH SAFETY STANDARDS AND A SAFETY REGULATORY PROGRAM FOR INTRASTATE AND INTERSTATE NATURAL GAS PIPELINES AND PIPELINE FACILITIES LOCATED IN FLORIDA.

**AGENDA:** 12/21/99 - REGULAR AGENDA - RULE PETITION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 12/23/99 - 30-DAY STATUTORY DEADLINE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\APP\WP\991754.RCM

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### CASE BACKGROUND

Friends of the Aquifer, Inc., filed a petition to initiate rulemaking on November 23, 1999. The petitioner proposes that the Commission adopt rules regulating the safety of intrastate and interstate natural gas pipelines and hazardous liquid pipelines. Pursuant to section 120.54(7), F.S., the Commission has 30 calendar days following the date of filing to initiate rulemaking proceedings, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant the petition by Friends of the Aquifer, Inc., to initiate rulemaking to adopt rules governing the safety of intrastate and interstate natural gas pipelines and pipeline facilities?

**RECOMMENDATION:** No, the Commission should deny the petition. To the extent that the Commission has jurisdiction and the authority to adopt rules governing the safety of gas pipelines, it has done so.

**STAFF ANALYSIS:** The petitioner requests the Commission to adopt two rules. The first rule provides:

The Florida Public Service Commission accepts the delegation by the United States Department of Transportation, pursuant to 49 U.S.C.A. § 60105, to regulate Florida natural gas pipelines and pipeline facilities. The Commission will proceed to propose rules necessary to ensure the safe construction and operation of Florida natural gas pipelines and pipeline facilities.

(Petition at 4) The premise for this proposal is the petitioner's assertion that there is currently no natural gas safety program in existence as required by sections 368.03 and 368.05, F.S. It is obvious that the Petitioner has overlooked Chapter 25-12, Florida Administrative Code, titled "Safety of Gas Transportation by Pipeline." These rules implement sections 368.03 and 368.05, F.S. The Commission employs six full-time gas safety engineers to enforce the rules.

It is unnecessary to adopt a rule accepting delegation from the United States Department of Transportation (USDOT). Rule 25-12.005 adopts the minimum federal safety standards and reporting requirements prescribed by the USDOT. In addition, contrary to the petitioner's assertion, the Commission's pipeline safety program has been certified by the USDOT every year since 1971 pursuant to 49 U.S.C. § 60105.

The second rule requested by the petitioner provides:

The Florida Public Service Commission accepts the authority granted to it pursuant to 49

U.S.C.A. § 60106 to enter into an agreement with the United States Department of Transportation to implement the Federal Hazardous Liquid Pipeline Act with respect to intrastate and interstate pipeline facilities located within the State of Florida, to the extent authorized by certification or agreement with the Secretary under 49 U.S.C.A. § 60106. To carry out its responsibilities in implementing the Act, the PSC shall have the same powers act (sic) as given to the Secretary under the Federal Hazardous Liquid Pipeline Act. The PSC will forthwith initiate negotiations with the United States Department of Transportation in order to reach such an agreement.

The Commission does not have jurisdiction under Florida law to regulate hazardous liquid pipelines. In addition, federal law specifically provides that a state may not adopt safety standards for interstate pipeline facilities or interstate pipeline transportation. 15 U.S.C. § 60104(c).

To the extent the Commission has the jurisdiction to regulate the safety of gas pipelines, it is exercising that jurisdiction and has adopted comprehensive rules. The Commission should deny the petition of Friends of the Aquifer, Inc.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** If the Commission accepts staff's recommendation in Issue 1, the docket should be closed.

STATE OF FLORIDA

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FLORIDA PUBLIC SERVICE COMM. DIVISION OF APPEALS

FRIENDS OF THE AQUIFER, INC., )

Petitioner. )

No. 991754-TP

PETITION TO INITIATE RULEMAKING

COMES NOW the Petitioner, Friends of the Aquifer, Inc., and, pursuant to Fla. Stat. Ann § 120.54(7), petitions the Florida Public Service Commission ("PSC") to adopt the rules necessary to establish safety standards and a safety regulatory program for intrastate and interstate natural gas pipelines and pipeline facilities located within the State of Florida. In order to establish such safety standards and safety regulatory program, the Petitioner requests that the PSC adopt the rules necessary to accept delegation from the United States Department of Transportation, Office of Pipeline Safety, to implement the Federal Natural Gas Pipeline Safety Act and Hazardous Liquid Pipeline Act, 49 U.S.C. § 60101 et seq. ("the Act"). Currently, there are insufficient safety standards and safety regulatory programs with respect to intrastate and interstate natural gas pipelines and pipeline facilities located within the State of Florida to ensure the health and welfare of the citizens of Florida and to protect the environment of this state.

1. The Petitioner, a public-interest corporation consisting of concerned Florida citizens, has a substantial interest in the adoption of the proposed rules set forth herein. In the absence of the requested rules, the health and safety of the citizens of Florida, as well as

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the environment of this state, will be jeopardized due to inadequate regulation of the safety of intrastate and interstate natural gas pipelines and pipeline facilities located in Florida.

2. The responsibility to promulgate and to enforce safety standards with respect to Florida intrastate natural gas pipelines and pipeline facilities is conferred at the state level by Fla. Stat. Ann. § 368.03, which authorizes the PSC to establish safety standards for the installation, operation, and maintenance of natural gas transmission and distribution systems, including gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains, gas services up to the outlet of the customer's meter set assembly, gas-storage equipment of the closed-pipe type, and gas storage lines. Fla. Stat. Ann. § 368.03 states that it is intended that the requirements of the rules and regulations promulgated by the PSC be adequate for safety under conditions normally encountered in the gas industry. Fla. Stat. Ann. § 368.05 confers jurisdiction upon the PSC over all persons, corporations, partnerships, associations, public agencies, municipalities, and other legal entities engaged in the operation of gas transmission or distribution facilities with respect to rules and regulations governing safety standards established by the PSC pursuant to Fla. Stat. Ann. § 368.03. Currently, there is no natural gas safety program in existence as required by Fla. Stat. Ann. §§ 368.03 and 368.05.

3. The authority to promulgate and to enforce safety standards with respect to Florida intrastate natural gas pipelines and pipeline facilities is conferred at the federal level by 49 U.S.C.A. § 60105, which is part of the Federal Natural Gas Pipeline Safety Act and Hazardous Liquid Pipeline Act. The Act was adopted by Congress to establish and to enforce safety standards for both intrastate and interstate natural gas and hazardous liquid

pipelines and pipeline facilities. The Act was intended to protect citizens of a state by requiring that the responsible federal or state regulatory authority promulgate regulations to ensure that natural gas pipelines and pipeline facilities are constructed and operated safely. Pursuant to § 60105, a state agency having regulatory jurisdiction over safety standards and practices relating to intrastate pipeline facilities or pipeline transportation is authorized to adopt safety standards applicable to the construction and operation of intrastate natural gas pipelines and pipeline facilities.

4. 49 U.S.C.A. § 60106 provides that if the United States Secretary of Transportation does not receive a certification from the responsible state authority that such authority is asserting regulatory jurisdiction over pipeline facilities or pipeline transportation within its jurisdiction, then the Secretary may make an agreement with a state authority authorizing it to take necessary action with respect to safety standards for pipeline facilities and pipeline transportation. The Secretary of Transportation has not received such a certification from any responsible Florida state authority.

5. There are currently no federal or Florida state regulations that establish and enforce safety standards for the construction and operation of intrastate and interstate natural gas pipelines and pipeline facilities located within Florida adequately to protect the health and safety of the citizens of Florida and the environment of this state. Accordingly, the PSC is required to accept the delegation conferred upon it by 49 U.S.C.A. § 60105, as the responsible state authority, to promulgate regulations necessary to accomplish the purposes of the Federal Hazardous Liquid Pipeline Act.

6. The rule proposed by the Petitioner with respect to the PSC's acceptance of the federal delegation to regulate Florida intrastate pipelines and pipeline facilities is as follows:

The Florida Public Service Commission accepts the delegation by the United States Department of Transportation, pursuant to 49 U.S.C.A. § 60105, to regulate Florida natural gas pipelines and pipeline facilities. The Commission will proceed to propose rules necessary to ensure the safe construction and operation of Florida natural gas pipelines and pipeline facilities.

7. Moreover, the Petitioner requests that the PSC adopt the rules necessary to act for the United States Secretary of Transportation to implement the Federal Natural Gas Pipeline Safety Act and Hazardous Liquid Pipeline Act with respect to intrastate and interstate natural gas pipelines located within the State of Florida, to the extent authorized by certification or agreement with the Secretary pursuant to 49 U.S.C.A. § 60106. The Petitioner requests that such rules provide that the PSC will have the same powers as given to the Secretary under the Federal Natural Gas Pipeline Safety Act and Hazardous Liquid Pipeline Act to carry out its responsibilities in implementing the Act.

8. The rule proposed by the Petitioner with respect to the PSC's entry into an agreement with the United States Department of Transportation under § 60106 is as follows:

The Florida Public Service Commission accepts the authority granted to it pursuant to 49 U.S.C.A. § 60106 to enter into an agreement with the United States Department of Transportation to implement the Federal Hazardous Liquid Pipeline Act with respect to intrastate and interstate pipeline facilities located within the State of Florida, to the extent authorized by certification or agreement with the Secretary under 49 U.S.C.A. § 60106. To carry out its responsibilities in implementing the Act, the PSC shall have the same powers act as given to the Secretary under the Federal Hazardous Liquid Pipeline Act. The PSC will forthwith initiate negotiations with the United States Department of Transportation in order to reach such an agreement.

Respectfully submitted, this the 23<sup>d</sup> day November, 1999.



Friends of the Aquifer, Inc.

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