

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: September 13, 2007

TO: Office of Commission Clerk

FROM: Office of Regulatory Compliance and Consumer Assistants (Mills)
Office of the General Counsel (Young)

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.

AGENDA: 09/25/07 – Regular Agenda – Interested Persons May Participate.

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\070135.RCM.DOC

Case Background

The Florida Natural Gas Association (FNGA) is a natural gas trade association representing investor-owned Local Distribution Companies (LDCs), special gas districts, municipal distribution systems, gas transmission companies, gas marketing companies, and others affiliated with the natural gas industry. FNGA's members include Florida's seven investor-owned gas distributors and twenty-nine of the thirty-one special district and municipal distribution systems. Each LDC member is subject to the regulatory jurisdiction of this Commission for gas safety under Chapter 368, Part I, Florida Statutes, and Rule 25-12.045, Florida Administrative Code (F.A.C.). Rule 25-12.045, F.A.C., applies directly to FNGA's LDC members, and FNGA meets the definition of "person" as referenced in Section 120.542, Florida Statutes, and defined in Section 120.52(13), Florida Statutes.

On March 1, 2007, FNGA filed a petition on behalf of its member companies to temporarily waive the service line abandonment provisions of Rule 25-12.045, F.A.C. By Order No. PSC-07-0488-PAA-GU, issued June 8, 2007, the Commission approved FNGA's temporary

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waiver of Rule 25-12.045(1)(b) and (1)(c). On June 29, 2007, FNGA filed a Protest and/or Request for Clarification of Proposed Agency Action (“PAA”) Order No. PSC-07-0488-PAA-GU. In its protest, FGNA asserted that its members will be directly impacted by ambiguity in the PAA Order addressing the Petition for Waiver.

On July 30, 2007, Commission staff held an informal meeting with FNGA to discuss FNGA’s concerns set forth in its Protest. On August 31, 2007, after additional discussions with Commission staff, FNGA submitted a Settlement Proposal, attached as Appendix A. This recommendation addresses FNGA’s Settlement Proposal. The Commission has jurisdiction pursuant to Sections 120.542 and 368.05(1), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the Florida Natural Gas Association's Settlement Proposal?

Recommendation: Yes. The Settlement Proposal filed by the Florida Natural Gas Association should be approved. The Commission should clarify that Order No. PSC-07-0488-PAA-GU granted the temporary waiver of Paragraphs (1)(b) and (1)(c) of Rule 25-12.045, F.A.C., in their entirety. If the Commission approves FNGA's Settlement Proposal without modification, FNGA's Protest of Order No. PSC-07-0488-PAA-GU should be deemed withdrawn. (Young, Mills)

Staff Analysis: Rule 25-12.045, F.A.C., pertains to actions that must be taken by LDCs for inactive gas service lines that have been used, but became inactive with no prospect for reuse. Paragraph (1)(a) of Rule 25-12.045, states that if there is no prospect for reuse, the service line must be physically abandoned and retired within three months of becoming inactive. Paragraph (1)(b) of Rule 25-12.045, provides that, after two years of inactivity and the prospect of reuse still exists, the gas service provider must within a six month period complete one of the following: disconnect the service line from all sources of gas and abandon or remove the line, lock the valve on the service line in a closed position and plug the line to prevent the flow of gas, or remove the meter and plug the service line. Paragraph (1)(c) states that after five years of inactivity, the service line provider must retire and physically abandon the line within six months. Subsections (2) and (3) of Rule 25-12.045, F.A.C., detail the procedures for physical abandonment of a service line and the record keeping procedure for service line stubs that must be maintained by the LDC.

FNGA requested a temporary waiver of Paragraphs (1)(b) and (1)(c) of Rule 25-12.045, F.A.C. FNGA stated that the rule waiver was necessary to establish the marketing and incentive tools needed to improve the retention of existing customers and attract inactive customers back to gas services.

By Order No. PSC-07-0488-PAA-GU, issued June 8, 2007, the Commission granted FNGA's request for temporary waiver of Rule 25-12.045(1)(b) and (1)(c), F.A.C., for a period of two years (until December 31, 2009). The Commission found, pursuant to Section 120.542, Florida Statutes, that FNGA would still meet the underlying purpose of Section 368.05, Florida Statutes, and that FNGA would suffer a substantial hardship if the rule waiver was denied. After the expiration of the waiver period, the Commission allowed the LDCs two years to return to full compliance with Rule 25-12.045(1)(b) and (1)(c), F.A.C.

FNGA protested Order No. PSC-07-0488-PAA-GU. The basis of FNGA's Protest was the following statement, which appeared on page 3 of Order No. PSC-07-0488-PAA-GU:

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.

In its Protest, FNGA asserted that this language conflicts with the temporary waiver of Rule 25-12.045 (1)(b), F.A.C., granted by Order No. PSC-07-0488-PAA-GU.

On August 31, 2007, FNGA submitted a Settlement Proposal to resolve its Protest. In the Settlement Proposal, FNGA states that if the Commission clarifies that FNGA's Petition for waiver of Rule 25-12.045(1)(b) and (1)(c), F.A.C., was granted in their entirety, the Commission may deem FNGA's Protest of Order No. PSC-07-0488-PAA-GU withdrawn. FNGA states that, without such an clarification, FNGA's members will be subject to regulatory uncertainty and unnecessarily incur additional costs to comply with the provisions of Rule 25-12.045(1)(b), F.A.C. The Settlement Proposal is conditioned on the Commission accepting the proposal without modification.

As stated above, the Commission granted FNGA a temporary waiver of the requirements of Rule 25-12.045(1)(b) and (1)(c), F.A.C. Staff believes that the intent of the language on page 3 of the Order was to remind FNGA members that, despite the temporary waiver of Rule 25-12.045(1)(b) and (1)(c), they are still required to disconnect gas service in a safe manner. In fact, Rule 25-12.044, requires the operator to either lock, in the closed position, the valve on the service line or plug the service line to prevent the flow of gas when gas service is turned off or when the operator becomes aware that the supply of gas to the customer has been interrupted. FNGA did not request a temporary waiver of Rule 25-12.044, F.A.C.

Although there are other Commission rules imposing safety requirements on FNGA's members, Staff understands how the statement on page 3 of the Order could be misconstrued to require FNGA to still adhere to the requirements of Rule 25-12.045(1)(b), F.A.C., even though the Commission granted the temporary waiver of that rule. Thus, Staff recommends that the Commission accept FNGA's Settlement Proposal and clarify that Order No. PSC-07-0488-PAA-GU granted the temporary waiver of Paragraphs (1)(b) and (1)(c) of Rule 25-12.045, F.A.C., in their entirety. If the Commission accepts FNGA's Settlement Proposal without modification, FNGA's Protest should be deemed withdrawn.

Staff notes that, in the Settlement Proposal, FNGA confirms that LDCs will continue to comply with Rule 25-12.044, F.A.C., when a gas line becomes inactive. FNGA acknowledges that Rule 25-12.044, F.A.C., requires that the valve or service line either be closed and locked, or plugged, when gas service to a customer is turned off or interrupted. FNGA states that LDC operators meet this rule requirement through the use of a meter lock. Moreover, FNGA states that LDCs will continue to comply with all other federal and state gas safety requirements other than Rule 25-12.045(1)(b) and (1)(c), F.A.C.

Staff believes FNGA's Settlement Proposal demonstrates FNGA's awareness that gas service must be disconnected in a safe manner despite the temporary waiver of Paragraphs (1)(b) and (1)(c) of Rule 25-12.045, F.A.C. As stated above, Staff believes this was the intent of the statement of on page 3 of Order No. PSC-07-0488-PAA-GU.

Issue 2: Should this docket be closed?

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Recommendation: If the Commission approves Staff's recommendation in Issue 1, FNGA's Protest of Order No. PSC-07-0488-PAA-GU will be deemed withdrawn and Order No. PSC-07-0488-PAA-GU will become final. Thus, the docket should be closed. If the Commission denies Staff's recommendation, this docket should remain open to proceed to hearing on FNGA's Protest of Order No. PSC-07-0488-PAA-GU. (Young, Mills)

Staff Analysis: If the Commission approves Staff's recommendation in Issue 1, FNGA's Protest of Order No. PSC-07-0488-PAA-GU will be deemed withdrawn and Order No. PSC-07-0488-PAA-GU will become final. Thus, the docket should be closed. If the Commission denies Staff's recommendation, this docket should remain open to proceed to hearing on FNGA's Protest of Order No. PSC-07-0488-PAA-GU.

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In the Matter of:)	
Petition for Waiver of Service Line)	Docket No. 070135-GU
Abandonment Provisions of Rule)	Filed: August 31, 2007
25-12.045, F.A.C. by the Florida Natural)	
Gas Association.)	

THE FLORIDA NATURAL GAS ASSOCIATION'S SETTLEMENT PROPOSAL

The Florida Natural Gas Association ("FNGA"), by and through its undersigned counsel, hereby submits this Settlement Proposal with regard to its Protest of Proposed Agency Action Order No. PSC-07-0488-PAA-GU, issued June 8, 2007. As set forth in FNGA's Protest, the FNGA filed its protest of the Commission's Proposed Agency Action Order No. PSC-07-0488-PAA-GU, because the FNGA and its members were concerned that certain language on page 3 of that Proposed Agency Action Order could be construed contrary to the Commission's otherwise apparent intent to grant FNGA's request for waiver of subparts (b) and (c) of Rule 25-12.045, F.A.C. In light of productive settlement discussions with PSC Staff, the FNGA proposes the following:

1. The Commission will issue an Order clarifying that the FNGA's Petition for Waiver of Rule 25-12.045(1)(b) and (c), F.A.C., is granted in its entirety.
2. If the requested clarification is made and the Waiver is granted, LDCs that avail themselves of the terms of the Waiver will continue to comply with Rule 25-12.044, F.A.C., when a gas line becomes inactive. Rule 25-12.044, F.A.C., requires that the valve or service line either be closed and locked, or plugged, when gas service to a customer is turned off or interrupted. Currently, LDC operators meet the requirements of this Rule through the use of a meter lock.

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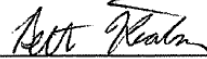
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3. If the clarification is made and the Waiver is granted, LDCs that avail themselves of the terms of the requested Waiver will continue to comply with all other federal and state safety requirements, unless and until a waiver of such requirements has been requested from and granted by the appropriate regulatory authority.

By submitting the foregoing, the FNGA hopes to assure the Commission that FNGA's member operators will continue to apply prudent safety precautions throughout the duration of the requested Waiver, and will, as such, continue to meet the underlying requirements of Section 368.05(2), Florida Statutes. Thus, the FNGA respectfully requests that the Commission accept the FNGA's Settlement Proposal set forth herein, and approve the FNGA's Petition for Waiver of Rule 25-12.045, Florida Administrative Code, in its entirety. If the proposal set forth herein is accepted, FNGA suggests that there will be no need for a Section 120.57, Florida Statutes, hearing; consequently, if the Commission accepts this Proposal of Settlement without modification, the Commission may deem the FNGA's Protest of Order No. PSC-07-0488-PAA-GU withdrawn.

Respectfully submitted this 31th day of August, 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