



Public Service Commission

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

DATE: March 20, 2000
TO: Division of Records and Reporting
FROM: Mary Anne Helton, Division of Appeals *MAH*
RE: Docket No. 960725-GU

Attached is a letter from the Joint Administrative Procedures Committee concerning Rule 25-7.0335, F.A.C., that should be included in the above-referenced docket file.

cc: Cheryl Bulecza-Banks
 Craig Hewitt
 Wayne Makin

- AFA _____
- APP _____
- CAF _____
- CMU _____
- QTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- RRR _____
- SEC _____
- WAW _____
- OTH _____

DOCUMENT NUMBER-DATE

03534 MAR 20 8

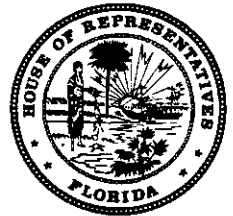
FPSC-RECORDS/REPORTING

TONI JENNINGS
President



Representative Bill Posey, Chairman
Senator Walter "Skip" Campbell, Vice Chairman
Senator Ginny Brown-Waite
Senator Lisa Carlton
Representative O. R. "Rick" Minton, Jr.
Representative Adam H. Putnam

JOHN THRASHER
Speaker



THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

February 25, 2000

Ms. Mary Anne Helton
Associate General Counsel
Public Service Commission
2540 Shumard Boulevard
Tallahassee Florida 32399-0862

RECEIVED
00 MAY 1 AM 10:39
FLORIDA PUBLIC SERVICE COM.
DIVISION OF APPEALS

Re: Public Service Commission Rule No: 25-7.0335 F.A.C.

Dear Mary Anne,

I have completed my review of the above-referenced rule that was published in the February 25, 2000 edition of the Florida Administrative Weekly and have the following concerns:

25-7.0335(1). This subsection states in part, "Each utility may offer the transportation of natural gas to residential customers when it is cost-effective to do so." The use of the word "may" connotes that the utility "may not" offer the gas to residential customers. Under what circumstances would the utility not offer the transportation of natural gas? Section 120.52(8)(d), F.S., states that a rule is an invalid exercise of delegated legislative authority if the rule vests unbridled discretion in the agency. The use of the phrase, "cost-effective," to describe when the utility may offer the transportation of natural gas does not clarify the conditions. To whom is it cost-effective to transport the gas? Who decides the parameters, the Public Service Commission or the utility? What criteria are to be considered when making this determination? Without objective criteria, this rule would vest the PSC with unbridled discretion and this is objectionable. See City of Miami v. Save Brickell Ave., Inc., 426 So. 2d 1100 (Fla. 3d DCA 1983).

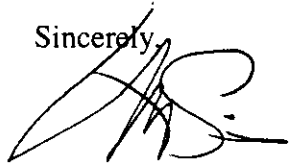
25-7.0335(2)(a). This subsection states that if a customer's agent fails to provide the customer with natural gas, "[T]he utility may disconnect service to the customer or provide natural gas under its otherwise applicable tariff provision." Under what circumstances would the utility disconnect? The use of the word "may" without any objective criteria setting forth the conditions upon which the utility would or would not disconnect service, is objectionable.

Ms. Mary Anne Helton
February 25, 2000
Page 2

25-7.0335(2)(c). This subsection states in part, that, "The utility may charge a cost-based fee," for a historical monthly usage summary. Under what conditions would the utility charge this fee? There should be objective criteria, so that the customer will know when the fee will be assessed.

Please do not hesitate to contact me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Sirmans', with a stylized flourish at the end.

Matthew A. Sirmans
Chief Attorney

#121456
MS:yw C:\DATA\WP61\MS\25\25-7.LTR