

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 17, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *SMC*
RE: Docket No. 20011368-GU

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

Thank you.

Attachment

RECEIVED-FPSC
2018 SEP 17 AM 8:49
COMMISSION
CLERK

STATE OF FLORIDA

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OFFICE OF THE GENERAL COUNSEL
HAROLD A. MCLEAN
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

March 22, 2002

Mr. Matthew A. Sirmans, Esquire
Chief Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, FL 32399-1300

Dear Mr. Sirmans:

This letter responds to your letter dated March 13, 2002 containing comments regarding rule subsection 25-7.072(2)(c). You ask how the Commission has the authority to require separation of a regulated local distribution gas company's employees from those of its affiliated non-regulated, competitive marketing company. You further ask how the Commission would enforce the rule and what actions would be taken against violators. Finally, you note your concern that the phrase "selling gas to end users behind the city gate" might violate the requirements in Section 120.54(2)(b), F.S. as to being readable and would apparently need to be clarified.

Taking the last point first, our conversations concerning the phrase at issue indicated that the words "city gate" were the focus of your comment. As I indicated, other words could be substituted, though requiring more time for processing the change. However, subsequent to our conversation, I discovered that the legislature also uses the words "city gates" in a related statute, Section 368.105(3), F.S. It would seem that the use by the legislature itself of the same words, where those words were not deemed to need any special definition in Section 368.103, F.S., would establish "city gate" as readable and understandable for the purposes of Section 120.54(2)(b), F.S. in the context of gas company regulation.

As to the questions related to separation of employees, the explanation is inherent in the situation presented by regulated companies having non-regulated affiliates active in competitive markets adjacent to the regulated market. In this instance, the regulated companies are local gas distribution companies which distribute energy (gas molecules) which the regulated companies manufacture, as well as energy manufactured by other competitors. Thus, a given regulated company may be active in two adjacent markets. It would be a regulated monopoly in the local gas distribution market, since it would be inefficient for competitors to install duplicate distribution pipes. However, it would only be one provider among others in the competitive market for producing energy. As such, it may operate a non-regulated affiliate which markets its energy product in competition with others.

Mr. Matthew A. Sirmans
March 22, 2002
Page -2-

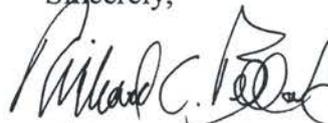
Section 366.05(1), F.S. authorizes the PSC to prescribe, inter alia, "fair and reasonable rates and charges..." Those rates are fair and reasonable in this case to the extent the monopoly provider of gas distribution service is reimbursed the cost of providing that service plus a reasonable return on the investment required to provide that service. Those rates would be neither fair nor reasonable if they also reflected costs expended by the company's unregulated marketing affiliate to sell the company's energy product in competitive markets.

Section 366.05(1), F.S. authorizes the Commission to "prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter." Requiring separation of employees in the regulated business from those in the unregulated sales affiliate is a necessary and appropriate rule to implement and enforce the "fair and reasonable rates" provision of Section 366.05(1), F.S. as well as other provisions. See, Sections 366.06(1) and (2); 366.07. Any expense from selling and marketing the company's energy products in competitive markets would be beyond the kinds of regulated charges for gas distribution service that the Commission can legally impose on ratepayers. If the location and activities of employees in the regulated and unregulated sides of the business were not separated, even heroic auditing efforts might be insufficient to assure that ratepayers were being charged only for the company's regulated service, rather than for cross-subsidizing the company's competitive sales of energy.¹ The companies subject to the rule understand that.

Violations would be addressed , as with other Commission rules, at Section 366.095. They would be discovered through auditing the company's books and operations and remedied through orders notifying the company of steps required to avoid further penalties or an order to show cause.

Please notify me if there are further questions or concerns.

Sincerely,

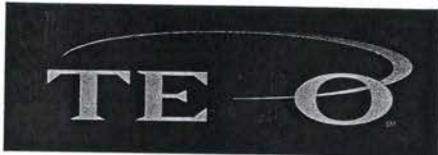


Richard C. Bellak
Senior Attorney

RCB

SIRMANS.RCB

¹ As we discussed, the incentive to cross-subsidize competitive activities with regulated resources are great. Therefore, experience may demonstrate that further amendments may be required.



PEOPLES GAS

August 9, 2001

2001 AUG 13 AM 11:04
DIVISION OF
COMPETITIVE SERVICES

2001 AUG 13 AM 9:43

DISTRIBUTION CENTER

VIA FEDEX

Mr. Wayne R. Makin
Bureau of Competition
Division of Competitive Services
Florida Public Service Commission
Capitol Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: UNDOCKETED – Rule 25-7.072, Codes of Conduct

Dear Mr. Makin:

We have reviewed the preliminary draft of Rule 25-7.072 (Codes of Conduct) and enclose a markup of the draft showing changes which Peoples Gas would suggest be made before the Commission Staff makes a recommendation to the Commission that a rule on this subject be proposed for adoption.

We believe that most of the changes are self-explanatory, and better convey the intent of the various provisions.

We have suggested that subparagraph (j) of the preliminary draft be deleted in its entirety because we have been unable to discern any possible justification for this provision. Even if there was some rationale for the provision, the other provisions of the draft rule would make this provision unnecessary. Finally, if proposed, we believe the provision would be subject to constitutional objections based on the First Amendment.

We hope the suggested changes will be helpful to the Commission Staff. Because the date of any rule development workshop on this draft rule has not yet been determined, we are hopeful most of the changes will be embraced by the Staff prior to any workshop which may be scheduled.

If you or other members of the Staff have any questions regarding the suggested changes, please feel free to call me at your convenience.

Sincerely,

Wraye Grimard
Manager, Regulatory Planning