



# Public Service Commission

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

**DATE:** 12/9/99

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

**FROM:** DIVISION OF APPEALS (MOORE) *OTM DAS*  
DIVISION OF ELECTRIC AND GAS (MILLS) *CEB*

**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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RECORDS AND REPORTING

### 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.

DOCUMENT NUMBER-DATE

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**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

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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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