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Public Service Commission

March 21, 2000

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

**Re: PSC Docket No. 960725-GU - Proposed Rule 25-7.0335, F.A.C.,
Transportation Service**

Dear Mr. Sirmans:

I am writing to respond to your letter dated February 25, 2000, as required by Section 120.54(3)(e)4., Florida Statutes. You expressed concerns about the Commission's decision to give utilities the option of providing transportation service to non-residential customers when it is cost-effective to do so, about the provision that allows utilities to disconnect transportation service if the customer has no natural gas to transport, and about the cost-based fee a utility may charge customers for providing usage summaries. These concerns are addressed below.

The purpose of Rule 25-7.0335 is to require all investor-owned natural gas utilities to offer transportation service to all non-residential customers. This requirement follows the trend across the United States stimulated by Congress's and the Federal Energy Regulatory Commission's decisions to promote open access. The federal goal is to open up competition in the natural gas industry. The Commission followed this trend for non-residential customers, but decided against requiring utilities to offer transportation service to all residential customers because such an across the board requirement would not be cost-effective.

You asked, "[u]nder what circumstances would the utility not offer the transportation of natural gas?" In Florida, utilities have always been able to seek Commission approval to provide transportation service, and have done so 1986. Now utilities must offer transportation service to all non-residential customers. The Commission is not requiring transportation service for residential

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customers, but a utility is authorized to provide this service if it is cost-effective. A utility may not choose to offer transportation service to residential customers if the cost of doing so would be greater than the provision of sales service. In making this decision, the utility would analyze the cost of the additional administrative functions necessary to provide transportation service. Because winters in Florida are historically mild, residential customers usually do not consume enough gas to make transportation service cost-effective to the utility or the customer. Only in cases where the residential customer consumes large quantities of gas because the customer has a large number of natural gas-consuming appliances would it be cost-effective for the utility to provide transportation service. Or, it may be cost-effective in gated communities, where there are commercial and large residential properties that use large amounts of natural gas.

You also asked several questions about the cost-effectiveness criterion -- "[t]o whom is it cost-effective to transport the gas?;" "[w]ho decides the parameters, the Public Service Commission or the utility?;" and "[w]hat criteria are to be considered when making this determination?" Subsection (1) requires that it must be cost-effective for the utility to transport gas because the Commission's jurisdiction is over the utility. The Commission requires cost-effectiveness because higher costs mean higher rates. In addition, a transportation service that is not cost-effective could harm both the utility and the customer. That would be the case if a sales service customer had an average bill of \$25 a month, yet it would cost a utility \$30 a month to provide transportation service to the same customer, excluding the cost of gas. The utility would incur higher costs serving the customer, and the customer would incur higher costs, even without including the cost of the gas he would have to buy from another source. Concerning the parameters, the utility would develop a transportation service tariff for residential customers that it would bring to the Commission for approval. The Commission would approve the tariff only if it was cost-effective. The criteria that would be used to determine cost-effectiveness is a comparison of the costs of providing the transportation service to the benefits or revenues of providing the service. A utility cannot offer a service at a specific rate unless it is tarified.

Cost-effectiveness requirements abound throughout the Florida Statutes and Florida Administrative Code. Of the approximately 298 times the Legislature uses the term cost-effective or cost-effectiveness in the Florida Statutes (1999), it is defined only once. See Section 377.709(2)(b), Florida Statutes (1999). Similarly, of the approximately 159 times the term cost-effective or cost-effectiveness is used in the Florida Administrative Code, it is defined only seven times. See Rules 25-6.0438(3)(c), 59G-7.032(4) and (5), 62-302.300(12), 62-503.200(5), 62-504.200(5), 62-505.200(2), and 62-522.200(9), Florida Administrative Code. Moreover, in both the Florida Statutes and the Florida Administrative Code, the parameters and criteria for determining cost-effectiveness are rarely established. This is because the determination of cost-effectiveness is fact-intensive, and governing parameters or criteria are not necessary. It is well understood that the determination of cost-effectiveness is a balancing of the costs against the benefits received.

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The Commission disagrees that subsection (1) of the proposed rule vests unbridled discretion in the agency. This subsection merely establishes the Commission's policy choices concerning the transportation of natural gas. The rule requires utilities to transport gas for all non-residential customers, and imposes the condition of cost-effectiveness upon transportation service offered to residential customers. The only discretion in subsection (1) is a utility's option of providing transportation service to residential customers, an option that utilities have always had. The Commission simply codified that option, along with the condition that the service must be cost-effective.

Next, you inquire about paragraph (2)(a) of Rule 25-7.0335. In particular, you express a concern about the provision that allows a utility to "disconnect service to the customer or provide natural gas under its otherwise applicable tariff provision" if a customer's marketer, broker, or agent fails to provide the customer with natural gas. You asked, "[u]nder what circumstances would the utility disconnect?" If a customer elects transportation service, the utility is obligated only to transport the natural gas that the customer obtains through other means. If the customer has no gas to transport, there is no service for the utility to perform for the customer. Therefore, the Commission determined that the utility should have the right to disconnect service if the customer's gas supply does not arrive at the city gate. However, the Commission recognized that it may be less costly for the utility to obtain additional gas supply for the customer instead of disconnecting service due to the cost of sending personnel to the customer's location to physically disconnect service. Once again, the Commission has provided the utilities with discretion to use when offering transportation service to their customers. This discretion, however, is not without parameters. Paragraph (2)(a) requires the utility to include in its tariff the criteria for disconnection and the alternate choice of providing natural gas. The tariff must be approved by the Commission before it can become effective. As long as the utility treats all customers in the same manner, the utility should have the discretion to either obtain supply or disconnect service. In practice, because utilities do not want to lose revenues from their customers, utilities take the necessary actions to find gas for transportation customers who have not obtained gas on their own.

Finally, you commented on the provision in paragraph (2)(c) of Rule 25-7.0335 that a utility "may charge a cost-based fee" for a historical monthly usage summary. This provision gives utilities the authority to charge a cost-based fee for this service. You asked, "[u]nder what conditions would the utility charge this fee?" A utility is not required to charge this fee. However, if a utility chooses to do so, it must set out the terms, conditions, and charge for this fee in its tariff, which must be approved by the Commission before it can become effective. The utility must apply this tariff to all customers in a similar fashion. This tariff would give transportation customers the requisite notice of the fee they would be charged for the usage summary.

I hope that this letter resolves your stated concerns about proposed Rule 25-7.0335, F.A.C. The comment period and time for requesting a Section 120.54 hearing have now expired. Since no

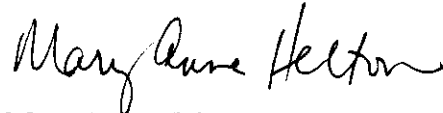
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comments were filed and no hearing requested, the Commission plans to soon file the rule for adoption.

Sincerely,

A handwritten signature in cursive script that reads "Mary Anne Helton".

Mary Anne Helton
Associate General Counsel

cc: PSC Docket File
Cheryl Bulecza-Banks
Craig Hewitt
Wayne Makin