

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:** May 10, 2007

**TO:** Office of Commission Clerk

**FROM:** Division of Economic Regulation (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:** 05/22/07 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:**

**CRITICAL DATES:** 6/01/07 (Statutory deadline for waiver waived until this date)

**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, special gas district, municipal Local Distribution Companies (LDCs), 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),

Docket No. 070135-GU

Date: May 10, 2007

Florida Statutes. FNGA filed this petition on behalf of its member companies, who would otherwise have standing to petition the Commission on their own rights.

On March 1, 2007, FNGA filed a petition on behalf of its member companies to waive the service line abandonment provisions of Rule 25-12.045, F.A.C. Pursuant to Section 120.542, Florida Statutes, notice of the rule waiver petition for Rule 25-12.045, F.A.C., was filed with Florida Administrative Weekly (FAW) on March 13, 2007; and subsequently published on March 23, 2007. Comments on FNGA's petition were due on April 6, 2007. No written comments were received and the time for filing such has expired.

This recommendation addresses the petition for temporary variances from or temporary waiver of Rule 25-12.045, F.A.C. The Commission has jurisdiction pursuant to Sections 120.542 and 368.05(1), Florida Statutes.

**Discussion of Issues**

**Issue 1:** Should the Commission grant FNGA's petition to temporarily waive parts of Rule 25-12.045, F.A.C.?

**Recommendation:** Yes. FNGA's petition for temporary waiver of Rule 25-12.045 (1) (b) and (c) , F.A.C., should be granted until December 31, 2009. Upon expiration of the waiver period, all LDCs should be in compliance by December 31, 2011, if the waiver is not extended. (Young, Mills)

**Staff Analysis:** Rule 25-12.045, F.A.C., which is attached, requires the physical abandonment of gas service lines that have been used, but became inactive with no prospect for reuse. If there is no prospect for reuse, the service line must be physically abandoned and retired within three months of becoming inactive. Rule 25-12.045, F.A.C., also provides that, after two years of inactivity and the prospect of reuse still does not exist, the gas service provider must within a six month period 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. 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., provide, respectively, details on 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 has asked for a waiver of Rule 25-12.045, F.A.C., to establish the marketing and incentive tools needed to improve the retention of existing customers and attract inactive customers back to gas services.

In its petition, FNGA seeks to specifically waive the requirements in Rule 25-12.045 (1) (b), F.A.C., for any service line that has currently been inactive for a period of two years or reaches such inactive status during 2007. Also, FGNA seeks a waiver of the requirements in Rule 25-12.045 (1) (c), F.A.C., for any service line that has currently been inactive for a period of five years or reaches such inactive status during 2007.

Section 120.542, Florida Statutes, authorizes the Commission to grant variances or waivers to the requirements of its rules where the person subject to the rule has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rule would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship.

The law being implemented is Section 368.05(2), Florida Statutes. Section 368.05(2) provides that the Commission may require the filing of periodic reports and all other data reasonably necessary to determine whether the safety standards prescribed by it are being complied with, and may require repairs and improvements to the gas transmission and distribution piping systems subject to this law which are reasonably necessary to promote the protection of the public. Waiver of the parts of Rule 25-12.045, F.A.C., which provide for the physical abandonment of gas services lines that have not been used but become inactive with no prospect for re-use, will not prevent the Commission from meeting its statutory requirements

under Section 368.05(2), Florida Statutes. During the two year waiver period requested by FNGA, the LDCs' will closely monitor the service abandonment lines and maintain records, in addition to those specified in Rule 25-12.045(3), F.A.C., on the location of each deferred inactive service line and any reported line breaks or other incidents related to each service line. Staff does not object to the precautionary measures LDCs' will be taking because the general public will be protected during the waiver period. All other safety requirements under Rule 25-12.045, F.A.C., will still apply. For example, the LDCs will still be required to disconnect the service line from all sources of gas, the LDCs will still be required to lock the valve in a closed position and plug the service line to prevent the flow of gas, and the LDCs will still be required to disconnect the service line from all sources of gas at the nearest point to the gas main.

Moreover, FNGA will incur a substantial hardship if parts of Rule 25-12.045, F.A.C., are not waived. As stated, substantial hardship is defined as a person incurring an economic, technological, legal, or other hardship. Here, FNGA members will experience an economic hardship. For example, it costs approximately \$75 to \$100 per meter to remove a meter in the field, plug the service line, and complete the applicable recordkeeping requirements. To physically abandon a service line costs approximately \$350 to over \$500, depending on the location of the service line. By the end of 2007, FNGA members will be required to remove thousands of meters, and cut and cap thousands of service lines. These costs could be reduced if FNGA and its members are given an opportunity to establish the marketing and incentive tools needed to improve the retention of existing customers and attract inactive customers back to using gas. FNGA, along with its members, has outlined several marketing and incentive activities it has taken or plans to take, to improve the retention of existing customers, and attract inactive customers back to using gas. These activities include increasing the number of contractors qualified to provide gas installations and services, increasing the quantity and model selection of gas appliances available at Florida appliance retailers, and funding gas energy conservation advertising and consumer education. Also, the cost to cut and cap service lines that are physically abandoned could result in a duplicative and unnecessary cost. Reason being, the LDCs would have to reinitiate the same services lines for new customers if the new marketing programs prove to be as successful.

At the expiration of the proposed waiver period, which is December 31, 2009, FNGA will consolidate information from each LDC member and submit a summary report to the Commission by March 30, 2010, describing the results achieved by each LDC for any deferred inactive service line to reactivate such facilities, and including a proposal for further Commission action. Also, at the expiration of the waiver period, if the FNGA's waiver is not extended<sup>1</sup>, Staff recommends that each LDC should have until December 31, 2011, to complete all necessary activities to return to compliance with the current rule provisions. Initially, FNGA requested that its members be given a sufficient period of time to return to compliance with the provisions of Rule 25-12.045 F.A.C. Staff believes that a specific date should set for FNGA's members to return to compliance. FNGA now agrees to the December 31, 2011, date to complete all necessary activities to return to compliance with the current rule provisions.

When a person has met the criteria set forth in Section 120.542, Florida Statutes, the Commission can grant a temporary waiver of a rule as long as the general purpose of the

---

<sup>1</sup> FNGA would have to file another petition to extend the rule waiver.

underlying statutory provision is satisfied. Here, FNGA and its members have met the general purpose regarding Section 368.05(2), Florida Statutes. FNGA and its members have demonstrated that they will suffer a substantial economic hardship if the provisions of Rule 25-12.045, F.A.C., are strictly applied.

As stated, FNGA and its members have requested a waiver of the Rule 25-12.045, F.A.C., to establish the marketing and incentive tools needed to improve the retention of existing customers and attract inactive customers back to gas services. FNGA states that its members will maintain records, in addition to those specified in Rule 25-12.045(3), F.A.C., on the location of each deferred inactive service line, and any reported line breaks or other incidents related to the service line. Staff recommends that FNGA has met the requirements found in Section 120.542, Florida Statutes, and the Commission should grant FNGA's petition for temporary waiver of Rule 25-12.045, F.A.C. until December 31, 2009.

Docket No. 070135-GU

Date: May 10, 2007

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummation order. (Young)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummation order.