

CHAPTER 368

GAS TRANSMISSION AND DISTRIBUTION

PART I GAS SAFETY LAW OF 1967 (ss. 368.01-368.061)

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INTRASTATE REGULATORY ACT (ss. 368.101-368.112)

PART I

GAS SAFETY LAW OF 1967

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368.01 Short title.—This law may be known and cited as "The Gas Safety Law of 1967."

History.—s. 1, ch. 59-304; s. 1, ch. 67-379.

368.021 Applicability.—The provisions of this law and all orders, rules, and regulations adopted pursuant thereto shall apply to every person, corporation, partnership, association, public agency, municipality, cooperative, gas district, or other legal entity and their lessees, trustees, or receivers, now or hereafter owning, operating, managing, or controlling any gas transmission or distribution facilities or any other facility supplying natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substance by pipeline to or for the public within this state; provided, however, that the terms of this law shall not apply to those supplying liquefied petroleum gas in either the liquid or gaseous form, or to an entity supplying compressed natural gas for use as a motor fuel or any other application requiring the introduction of the product into transportable containers.

History.—s. 2, ch. 67-379; s. 1, ch. 69-248; s. 13, ch. 82-25; s. 12, ch. 93-35.

368.03 Purpose and legislative intent.—This law authorizes the establishment of rules and regulations covering the design, fabrication, installation, inspection, testing and safety standards for installation, operation and maintenance of gas transmission and distribution systems, including gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains, and gas services up to the outlet of the customer's meter set assembly, gas-storage equipment of the closed-pipe type fabricated or forged from pipe or fabricated from pipe and fittings, and gas-storage lines. It is intended that the requirements of such rules and regulations shall be adequate for safety under conditions normally encountered in the gas industry, but requirements for abnormal or unusual conditions or all details of engineering and construction need not be specifically provided for or prescribed. It is not intended that the rules and regulations adopted pursuant hereto be applied retroactively to existing installations so far as design, fabrication, installation, establishing operating pressure

and testing are concerned. It is intended, however, that the provisions of the rules and regulations shall be applicable to the operation, maintenance and uprating of existing installations. This law, and the rules and regulations adopted pursuant to it, are declared to be in the public interest and are deemed to be an exercise of the police power of the state for the protection of the public welfare and shall be liberally construed for the accomplishment of that purpose.

History.—s. 2, ch. 59-304; s. 3, ch. 67-379.

368.05 Commission jurisdiction, rules and regulations.—

(1) In addition to its existing functions, the Florida Public Service Commission shall have jurisdiction over all persons, corporations, partnerships, associations, public agencies, municipalities, or other legal entities engaged in the operation of gas transmission or distribution facilities with respect to their compliance with the rules and regulations governing safety standards established by the commission pursuant to this law. The jurisdiction conferred upon the commission hereby shall be exclusive of and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties; and in case of conflict therewith all lawful safety acts, orders, rules, and regulations of the commission shall in each instance prevail.

(2) The commission shall have the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations not inconsistent herewith as it may find necessary or appropriate to the exercise of the authority granted under the provisions of this law. 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; 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; and may exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its safety orders and rules and regulations adopted pursuant to this law.

(3) The jurisdiction conferred upon the commission by this part does not extend to the distribution of gas beyond the last meter prior to consumption.

History.—ss. 48, 49, ch. 59-304; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 4, ch. 67-379; s. 14, ch. 82-25.

Note.—The word "part" was substituted by the editors for a reference to the word "chapter" to conform to the division of chapter 368 into parts incident to the compilation of ch. 92-284.

368.061 Penalty.—

(1) Any person who violates any provision of this part, or any regulation issued hereunder, shall be subject to a civil penalty not to exceed \$25,000 for each violation for each day that such violation persists, except that the maximum civil penalty shall not exceed \$500,000 for any related series of violations.

(2) Any such civil penalty may be compromised by the commissioners. In determining the amount of such penalty or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation shall be considered. Each penalty shall be a lien upon the real and personal property of said persons and enforceable by the commission as statutory liens under chapter 85, the proceeds of which shall be deposited in the general revenue fund of the state.

(3) The commissioners may, at their discretion, cause to be instituted in any court of competent jurisdiction in this state proceedings for injunction against any person subject to the provisions of this part to compel the observance of the provisions of this part or any rule, regulation or requirement of the commission made thereunder.

History.—s. 2, ch. 69-248; s. 13, ch. 93-35.

Note.—The word "part" was substituted by the editors for a reference to the word "chapter" to conform to the division of chapter 368 into parts incident to the compilation of ch. 92-284.

PART II**NATURAL GAS TRANSMISSION PIPELINE
INTRASTATE REGULATORY ACT**

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368.101 Short title.—Sections 368.101–368.112 may be cited as the "Natural Gas Transmission Pipeline Intrastate Regulatory Act."

History.—s. 2, ch. 92-284.

368.102 Legislative declaration.—The Legislature has determined that regulation of natural gas intrastate transportation and sale is in the public interest and ss. 368.101–368.112 shall be deemed to be an exercise of the police power of the state for the protection of the

public welfare. The Legislature intends that the provisions of chapter 120 apply to ss. 368.101–368.112 and to proceedings pursuant to those sections except as otherwise expressly exempted.

History.—s. 3, ch. 92-284.

368.103 Definitions.—As used in ss. 368.101–368.112, the term:

(1) "Affiliated," when used in relation to any person, means another person who owns or controls, is owned by or controlled by, or is under common ownership or control with, such person.

(2) "Commission" means the Florida Public Service Commission.

(3) "Natural gas" means either natural gas in a gaseous state unixed or any mixture of natural and artificial gas.

(4) "Natural gas transmission company" means any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas, but shall not include any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof or a special district created by special act to distribute natural gas.

(5) "Person" means a natural person, corporation, partnership, association, or other legal entity and its lessee, trustee, or receiver.

(6) "Rate" means every compensation, tariff, charge, fare, toll, rental, and classification, or any of them, demanded, observed, charged, or collected whether directly or indirectly by any natural gas transmission company for any service relating to the transmission or sale of natural gas in this state, and any rules, regulations, practices, terms and conditions, or contracts relating to any such transmission or sales service.

History.—s. 4, ch. 92-284.

368.104 Jurisdiction, authority to ensure compliance; rate regulation.—Subject to ss. 368.101–368.112, the commission is vested with all authority and power of the state to ensure compliance of natural gas transmission companies with the obligations imposed by ss. 368.101–368.112. For this purpose, the commission is empowered to fix and regulate rates and services of natural gas transmission companies, including, without limitation, rules and regulations for determining the classification of customers and services, for determining the applicability of rates, and for ensuring that the provision (including access to transmission) or abandonment of service by a natural gas transmission company is not unreasonably preferential, prejudicial, or unduly discriminatory. In the exercise of its jurisdiction, the commission shall have the power to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of ss. 368.101–368.112.

History.—s. 5, ch. 92-284.

368.105 Rates and services; just and reasonable and not unduly discriminatory.—

(1) Every natural gas transmission company shall file with the commission rates which are subject to the jurisdiction of the commission and which are in force at the time of any service offered by the natural gas transmission company. Such filing may include minimum and maximum rates for any service offered. Each natural gas transmission company shall file with and as a part of those schedules all rules and regulations relating to or affecting the rates or service furnished by the natural gas transmission company. It is unlawful for any natural gas transmission company to charge, collect, or receive any rate for service which is not on file.

(2) It shall be the duty of the commission to ensure that all rates and services made, demanded, or received by any natural gas transmission company are just and reasonable and are not unreasonably preferential, prejudicial, or unduly discriminatory. Rates must be sufficient, equitable, and consistent in application to each class of customers. For ratemaking purposes, the commission may treat two or more customers served by a natural gas transmission company as a single class if the commission considers that treatment to be appropriate.

(3) Rates charged or offered to be charged by any natural gas transmission company for transactions with other natural gas transmission companies, transportation customers, and industrial, power plant, and other similar large-volume contract customers, but excluding direct sales-for-resale to gas distribution utilities at city gates, unless suspended and modified pursuant to this subsection, are deemed to be just and reasonable and approved by the commission, if both the natural gas transmission company and the customer file an affidavit with the commission affirming that:

(a) Neither the natural gas transmission company nor the customer had an unfair advantage during the negotiations;

(b) The rates are substantially the same as rates between the natural gas transmission company and two or more of those customers under the same or similar conditions of service; or

(c) Competition does or did exist either with another natural gas transmission company, another supplier of natural gas, or with a supplier of an alternative form of energy.

The rates charged or offered to be charged pursuant to this subsection may be suspended by the commission for good cause shown within 45 days after the date such rates are filed. Such suspension shall not exceed 5 months after the date such rates are filed, during which time the commission must find the filed rate, or a modified rate, just and reasonable. However, the provisions of this subsection shall not preclude the commission from determining the reasonable and prudent costs to be recovered through rates from an electric utility's ratepayers, pursuant to the provisions of chapter 366.

(4) The standard contained in paragraph (3)(a) shall not apply to rates charged or offered to an affiliated pipeline or to an entity in which the natural gas transmission company has an ownership interest. In addition, if a complaint is filed with the commission by a natural gas transmission company regarding the justness and reasonableness of rates under which such natural gas

transmission company purchases gas or receives transportation from another natural gas transmission company, the provisions of subsection (3) shall not apply.

(5) Notwithstanding any provision of ss. 368.101-368.112 to the contrary, the commission may approve administratively any decrease in rates proposed by the applicant and agreed upon by all parties directly affected, unless the commission finds the proposed decrease not to be in the public interest.

(6) A natural gas transmission company shall provide transmission access, subject to available capacity, on a basis that is not unreasonably preferential, prejudicial, or unduly discriminatory; however, a natural gas transmission company shall not be required to provide transmission access to a person at rates that are not just and reasonable. A natural gas transmission company shall construct any necessary pipeline lateral facilities and related facilities required for interconnection with a customer if that customer agrees to fully compensate the natural gas transmission company for reasonable costs incurred. The commission shall resolve any controversy between the natural gas transmission company and a person desiring transmission access, including access availability, type of service, applicable rates, or interconnection costs.

History.—s. 6, ch. 92-284.

368.106 Statement of intent to increase rates; major changes; hearing; suspension of rate schedules; determination of rate level.—

(1) Except when a rate is deemed just and reasonable pursuant to s. 368.105(3), no natural gas transmission company may charge an initial rate or increase its rates above the maximum rate on file for a service except by filing a statement of intent with the commission no later than 60 days prior to the proposed effective date of the proposed initial or new maximum rate, unless the commission for good cause waives such 60-day notice. The statement of intent shall be kept open for public inspection and shall include such information, and shall be served upon affected parties in such manner, as is required by the commission's rules and regulations.

(2) Except when a rate is deemed just and reasonable pursuant to s. 368.105(3), if there is filed with the commission an initial rate, or a change or modification in any rate in effect, the commission shall, on complaint by any person whose substantial interests are affected by the rate, or may, on its own motion, at any time before such rate would have taken effect, order a hearing pursuant to s. 120.57 to determine whether the rate is just and reasonable.

(3) Except when a rate is deemed just and reasonable pursuant to s. 368.105(3), pending the hearing and decision pursuant to subsection (2), the commission may suspend the operation of the rate for a period not to exceed 8 months from the date the rate was filed. In the case of proposed initial rates, if the commission does not make a final determination concerning the proposed initial rates prior to expiration of the period of suspension, the rates, notwithstanding any provision of ss. 368.101-368.112 or chapter 120, shall be deemed to be just and reasonable and to have been approved by the

commission; provided that such initial rates shall become effective 60 days after they are filed, subject to refund with interest, for all amounts collected in excess of the rate finally determined by the commission to be just and reasonable pursuant to subsection (4). In the case of a proposed change or modification to any rate in effect, if the commission suspends such proposed rate or modification and does not make its final determination of rates within 8 months after the date the proposed rate or modification is filed, the natural gas transmission company may put into effect a new rate, not to exceed the proposed rate, subject to refund with interest, for all amounts collected in excess of the rate finally determined by the commission to be just and reasonable pursuant to subsection (4).

(4) If, after hearing, the commission finds the proposed rate to be unjust and unreasonable or unduly discriminatory or preferential, the commission shall determine the rate to be charged or applied by the natural gas transmission company for the service in question and shall fix same by order, which shall be in effect from the date the change in rate was proposed to have taken effect, provided that any refund ordered by the commission shall not exceed the difference between the proposed new maximum rate and the just and reasonable maximum rate in effect at the time of the corresponding rate increase filing under this section for the period the proposed new maximum rate was charged and collected subject to refund.

History.—s. 7, ch. 92-284.

368.107 Unreasonable or violative existing rates and services.—If the commission, after reasonable notice and hearing, on its own motion or written complaint by any person who has a substantial interest, finds that any rate or service filed with the commission, including any rate filed pursuant to s. 368.105(3), whether or not being demanded, observed, charged, or collected by any natural gas transmission company for any service is unjust, unreasonable, or unduly discriminatory or preferential, or in any way in violation of any provision of law, the commission shall determine the just and reasonable rates, including maximum or minimum rates and services, to be thereafter observed and in force, and shall fix the same by order to be served on the natural gas transmission company. Those rates and services shall constitute the legal rates and services of the natural gas transmission company until changed as provided by ss. 368.101-368.112.

History.—s. 8, ch. 92-284.

368.108 Confidentiality; discovery.—

(1) The commission shall continue to have reasonable access to all natural gas transmission company records and records of the natural gas transmission company's affiliated companies, including its parent company, regarding transactions or cost allocations among the natural gas transmission company and such affiliated companies, and such records necessary to ensure that a natural gas transmission company's ratepayers do not subsidize unregulated activities. Upon request of the natural gas transmission company or other person, any records received by the commission which are shown and found by the commission to be proprietary confi-

dential business information shall be confidential and exempt from s. 119.07(1).

(2) Discovery in any docket or proceeding before the commission shall be in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Information which affects a natural gas transmission company's rates or cost of service shall be considered relevant for purposes of discovery in any docket or proceeding where the natural gas transmission company's rates or cost of service are at issue. The commission shall determine whether information requested in discovery affects a natural gas transmission company's rates or cost of service. Upon a showing by a natural gas transmission company or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue appropriate protective orders designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. Such proprietary confidential business information shall be exempt from s. 119.07(1). Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the office of the Public Counsel and any other party subject to the public records law as confidential and shall be exempt from s. 119.07(1) pending a formal ruling on such request by the commission or the return of the records to the person providing the records. Any record which has been determined to be proprietary confidential business information and is not entered into the official record of the proceeding must be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record must be returned within 30 days after the decision on appeal. The commission shall adopt the necessary rules to implement this provision.

(3) "Proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. "Proprietary confidential business information" includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the natural gas transmission company or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

(4) Any finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not to exceed 18 months unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period. The commission shall order the return of records containing proprietary confidential business information when such records are no longer necessary for the commission to conduct its business. At that time, the commission shall order any other person holding such records to return them to the person providing the records. Records containing proprietary confidential business information which have not been returned at the conclusion of the period set pursuant to this subsection shall no longer be exempt from s. 119.07(1), unless the natural gas transmission company or affected person shows, and the commission finds, that the records continue to contain proprietary confidential business information. Upon such finding, the commission may extend the period for confidential treatment for a period not to exceed 18 months unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period. During commission consideration of an extension, the records in question will remain confidential and exempt from s. 119.07(1). The commission shall adopt rules to implement this provision which shall include notice to the natural gas transmission company or affected person regarding the expiration of confidential treatment.

(5) The exemptions contained in this section are subject to the Open Government Sunset Review Act in accordance with s. 119.14.

History.—s. 9, ch. 92-284.

Note.—

A. Repealed by s. 1, ch. 95-217.

B. Section 4, ch. 95-217, provides that "[n]otwithstanding any provision of law to the contrary, exemptions from chapter 119, Florida Statutes, or chapter 286, Florida Statutes, which are prescribed by law and are specifically made subject to the Open Government Sunset Review Act in accordance with section 119.14, Florida Statutes, are not subject to review under that act, and are not abrogated by the operation of that act, after October 1, 1995."

368.1085 Travel costs.—The commission has the authority to assess a natural gas transmission company for reasonable travel costs associated with reviewing the records of the natural gas transmission company and its affiliates when such records are kept out of state. The natural gas transmission company may bring the records back into the state for review.

History.—s. 14, ch. 93-35.

368.109 Regulatory assessment fees.—Each natural gas transmission company operating under ss.

368.101-368.112, for all or any part of the preceding 6-month period, shall pay to the commission, within 30 days following the end of each 6-month period, a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business excluding sales for resales to natural gas transmission companies, public utilities that supply gas, municipal gas utilities, and gas districts. The fee shall, to the extent practicable, be related to the cost of regulating such natural gas transmission companies.

History.—s. 10, ch. 92-284.

368.111 Penalties.—The commission shall have the power to impose upon any entity subject to its jurisdiction under ss. 368.101-368.112 which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of ss. 368.101-368.112 a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission. Each day that such refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85.

History.—s. 11, ch. 92-284.

368.1115 Injunctive relief.—The Legislature finds that violations of commission orders or rules, in connection with the impairment of a natural gas transmission company's operations or service, constitute irreparable harm for which there is no adequate remedy at law. The commission is authorized to seek relief in circuit court including temporary and permanent injunctions, restraining orders, or any other appropriate order. Such remedies shall be in addition to and supplementary to any other remedies available for enforcement of agency action under s. 120.69 or the provisions of this chapter. The commission shall establish procedures implementing this section by rule.

History.—s. 15, ch. 93-35.

368.112 Judicial review.—As authorized by s. 3(b)(2), Art. V of the State Constitution, the Supreme Court shall review, upon petition, any action of the commission relating to rates or service of a natural gas transmission company. For purposes of judicial review, a natural gas transmission company is a utility providing gas service within the meaning of s. 3(b)(2), Art. V of the State Constitution.

History.—s. 12, ch. 92-284.