



Public Service Commission

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DATE: SEPTEMBER 10, 1998

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

FROM: DIVISION OF ELECTRIC AND GAS (COLSON)
DIVISION OF LEGAL SERVICES (C. KEATING) *WCK*

RE: DOCKET NO. 980973-EG - PETITION BY GULF POWER COMPANY FOR WAIVER OF THOSE PORTIONS OF RULE 25-17.015(1), F.A.C., THAT REQUIRE GULF TO FILE AN ENERGY CONSERVATION COST RECOVERY (ECCR) BASED ON A PERIOD OTHER THAN CALENDAR YEAR.

AGENDA: 09/22/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NOVEMBER 2, 1998 - PETITION DEEMED APPROVED IF NOT GRANTED OR DENIED WITHIN 90 DAYS OF RECEIPT

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\980973.RCM

CASE BACKGROUND

By Order No. PSC-98-0691-FOF-PU, issued May 19, 1998, the Commission ordered that factors for all components of all cost recovery clauses for investor-owned electric and natural gas utilities should be determined on an annual, calendar year basis at one annual hearing. The Commission ordered that a hearing be held in November 1998 to determine factors for the fuel clause, purchased gas adjustment true-up, and environmental cost recovery clause. The Commission further ordered the initiation of rulemaking to amend Rule 25-17.015, Florida Administrative Code, in order to allow factors for the energy conservation cost recovery clause (ECCR Clause) to be determined along with the other cost recovery clauses beginning at a November 1999 hearing. In the order, the Commission approved schedules detailing the manner in which the transition for each cost recovery clause was to be

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implemented. By Order No. PSC-98-1084-FOF-PU, issued August 10, 1998, the Commission modified its order to amend the transition schedule for the ECCR Clause.

On August 3, 1998, Gulf Power Company (Gulf) filed a petition for waiver of Rule 25-17.015(1), Florida Administrative Code. Gulf seeks this waiver so that it may file for approval of a calendar-year ECCR factor at the November 1998 hearing rather than the November 1999 hearing contemplated by the Commission's order. Pursuant to Section 120.542(6), Florida Statutes, notice of Gulf's petition was submitted to the Secretary of State for publication in the August 21, 1998, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code. In accordance with Section 120.542(8), Florida Statutes, the petition is deemed approved if the Commission does not grant or deny it by November 2, 1998.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Gulf Power Company's petition for waiver of Rule 25-17.015(1), Florida Administrative Code?

RECOMMENDATION: Yes. The Commission should grant Gulf Power Company's petition for waiver of Rule 25-17.015(1), Florida Administrative Code. Gulf has met the requirements for a rule waiver as set forth in Section 120.542, Florida Statutes. (COLSON, C. KEATING)

STAFF ANALYSIS: In its petition, Gulf seeks a waiver of the hearing and filing timetable set forth in Rule 25-17.015(1), Florida Administrative Code. Gulf has proposed an alternative hearing and filing timetable for itself. Specifically, Gulf's petition requests the following:

1. Waiver of the requirement in Rule 25-17.015(1), Florida Administrative Code, that ECCR proceedings be conducted "during the first quarter of each calendar year." Gulf seeks permission to have an ECCR hearing in November 1998 rather than February 1999.

2. Waiver of the requirement in Rule 25-17.015(1)(a), Florida Administrative Code, that the annual final true-up filing be "for the most recent 12-month historical period from April 1 through March 31 that ends prior to the annual ECCR proceedings." Gulf seeks permission to use a final true-up period of October 1997 through March 1998. (Staff notes that this request was made moot by our decision in Order No. PSC-98-1084-FOF-PU, issued August 10, 1998, to modify Order No. PSC-98-0691-FOF-PU to amend the ECCR transition schedule. The amended schedule provides that the parties shall use, at the February 1999 ECCR hearing, a final true-up period of October 1997 through March 1998.)

3. Waiver of the requirement in Rule 25-17.015(1)(b), Florida Administrative Code, that there be "an annual estimated/actual true-up filing showing eight months actual and four months projected" data for the period beginning April 1 immediately following the period in paragraph (1)(a) of the rule. For the February 1999 ECCR hearing, Gulf is required to file its estimated/actual true-up data for the period April 1998 through March 1999. Gulf seeks permission to use an actual/estimated true-up period of April 1998 through December 1998 instead.

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4. Waiver of the requirement in Rule 25-17.015(1)(c), Florida Administrative Code, that the annual projection filing show data for a 12-month period beginning April 1 following the annual hearing. For the February 1999 ECCR hearing, Gulf is required to file projected data for the period April 1999 through March 2000. Gulf seeks permission to file projected data for the period January 1999 through December 1999 instead.

5. Waiver of the requirement in Rule 25-17.015(1)(d), Florida Administrative Code, that the annual ECCR petition set forth proposed ECCR factors for the 12-month period beginning April 1 following the annual hearing. For the February 1999 ECCR hearing, Gulf is required to file a petition with proposed ECCR factors for the period April 1999 through March 2000. Gulf seeks permission to file a petition with proposed ECCR factors for the period January 1999 through December 1999 instead.

6. Waiver of the requirement in Rule 25-17.015(1)(e), Florida Administrative Code, that Gulf file a form PSC/EAG/44 for the first six months of the reporting period in paragraph (1)(a) of the rule. Gulf seeks permission to file this form for the six months ending June 1998.

Section 120.542, Florida Statutes, mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

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Section 120.542(2), Florida Statutes. Gulf argues that application of the rule creates a substantial hardship on Gulf. Gulf further argues that the purpose of the underlying statute will be achieved if Gulf's petition is granted.

Before Gulf filed this rule waiver petition, Florida Power & Light Company (FPL) filed a petition for waiver of Rule 25-17.015(1), Florida Administrative Code, in Docket No. 980740-EI. Gulf is simply requesting the same relief that FPL requested. In support of its petition, Gulf expressly adopted the statements contained in FPL's petition. As summarized in staff's recommendation on FPL's petition, the following arguments are adopted by Gulf in support of its petition:

Purpose of the Underlying Statute

In its petition, [Gulf] points out that Rule 25-17.015(1), Florida Administrative Code, implements Section 366.82(5), Florida Statutes. [Gulf] asserts that the purpose of this underlying statute is to provide an adjustment clause for the recovery of conservation costs. [Gulf] contends that this purpose will continue to be achieved with the rule waiver sought by [Gulf].

* * *

Substantial Hardship

* * *

[Gulf] asserts that, absent the waiver it requests, it will lose the advantages found by the Commission to be associated with annual cost recovery proceedings. First, [Gulf] states that the number of hearing days per year for its adjustment clauses will not be reduced because it will be required to undertake two hearings in 1999. Thus, [Gulf] argues, the Commission, the parties, and [Gulf] will not be able to gain efficiencies contemplated by the Order by saving the time and expense associated with an additional hearing. Second, [Gulf] states that it and its customers would face confusing adjustment clause rates associated with differing periods. Thus, [Gulf] argues, the more certain and stable prices envisioned by the Order, as well as the customer's

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ability to more easily project electricity costs, will not be realized.

[Gulf] further asserts that, absent the waiver it requests, it will lose the advantages found by the Commission to be associated with a calendar-year period for adjustment clauses. Those advantages included: an ECCR factor that coincided with most commercial and industrial customers' budget periods; easier analysis of cost information; simplification of Commission audits; and greater administrative efficiencies for the Commission and the parties.

At its regularly-scheduled agenda conference on August 18, 1998, the Commission voted to grant FPL's petition for waiver of Rule 25-17.015(1), Florida Administrative Code. The Commission found that the purpose of the underlying statute would continue to be achieved under the terms of the requested rule waiver. Further, citing the purpose of Section 120.542, Florida Statutes, and the benefits that would be foregone by FPL customers absent the waiver, the Commission found that FPL had demonstrated that application of the rule created a substantial hardship. As of the date this recommendation was filed, the Commission's order on FPL's petition had not been issued.

Based on the rationale expressed by the Commission in its decision to grant FPL's rule waiver petition in Docket No. 980740-EI, staff recommends that the Commission grant Gulf's petition for waiver of Rule 25-17.015(1), Florida Administrative Code. In terms of the requested rule waiver, Gulf is in a position identical to that of FPL. Therefore, in light of the Commission's decision in Docket No. 980740-EI, staff believes Gulf has demonstrated that application of the rule creates a substantial hardship and that the purpose of the statute underlying the rule will be achieved by the means suggested in Gulf's petition.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: This docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period. (C. KEATING)

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed.