



Public Service Commission

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

DATE: OCTOBER 22, 1998

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

FROM: DIVISION OF ELECTRIC AND GAS (COLSON) ⁷²³
DIVISION OF LEGAL SERVICES (C. KEATING) ^{KEATING} ^{RUE}

RE: DOCKET NO. 981167-EG - PETITION BY FLORIDA POWER CORPORATION FOR WAIVER OF RULE 25-17.015(1), F.A.C., TO ALLOW CALENDAR YEAR ENERGY CONSERVATION COST RECOVERY FILING FOR PERIOD 1/1/99 - 12/31/99.

AGENDA: 11/03/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: DECEMBER 16, 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\981167.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 implemented. By Order No. PSC-98-1084-FOF-PU, issued August 10,

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1998, the Commission modified its order to amend the transition schedule for the ECCR Clause.

On September 17, 1998, Florida Power Corporation (FPC) filed a petition for waiver of Rule 25-17.015(1), Florida Administrative Code. FPC 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 FPC's petition was submitted to the Secretary of State for publication in the October 9, 1998, Florida Administrative Weekly. As of the date of this recommendation, no comments concerning the petition have been filed. The 14-day comment period provided by Rule 28-104.003, Florida Administrative Code, expires on October 23, 1998. If comments are received, staff will address them at the Agenda Conference. In accordance with Section 120.542(8), Florida Statutes, the petition is deemed approved if the Commission does not grant or deny it by December 16, 1998.

DISCUSSION OF ISSUES

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

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

STAFF ANALYSIS: FPC seeks a waiver of the hearing and filing timetable set forth in Rule 25-17.015(1), Florida Administrative Code. Before FPC 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. In its petition, FPC states that its petition is identical in all material respects to FPL's waiver petition. Thus, FPC requests the same relief that FPL requested, specifically:

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." FPC 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." FPC 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, FPC is required to file its estimated/actual true-up data for the period April 1998 through

March 1999. FPC seeks permission to use an actual/estimated true-up period of April 1998 through December 1998 instead.

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, FPC is required to file projected data for the period April 1999 through March 2000. FPC 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, FPC is required to file a petition with proposed ECCR factors for the period April 1999 through March 2000. FPC 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 FPC file a form PSC/EAG/44 for the first six months of the reporting period in paragraph (1)(a) of the rule. FPC 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.

Section 120.542(2), Florida Statutes. FPC argues that application of the rule creates a substantial hardship on FPC. FPC further

argues that the purpose of the underlying statute will be achieved if FPC's petition is granted.

In support of its petition, FPC offers essentially the same arguments made by FPL in support of its waiver petition. As summarized in staff's recommendation on FPL's petition, those arguments consist of the following:

Purpose of the Underlying Statute

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

* * *

Substantial Hardship

* * *

[FPC] 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, [FPC] 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, [FPC] argues, the Commission, the parties, and [FPC] will not be able to gain efficiencies contemplated by the Order by saving the time and expense associated with an additional hearing. Second, [FPC] states that it and its customers would face confusing adjustment clause rates associated with differing periods. Thus, [FPC] argues, the more certain and stable prices envisioned by the Order, as well as the customer's ability to more easily project electricity costs, will not be realized.

[FPC] 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;

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and greater administrative efficiencies for the Commission and the parties.

By Order No. PSC-98-1211-FOF-EI, issued September 14, 1998, the Commission granted 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. Applying the same rationale, the Commission granted an identical rule waiver for Gulf Power Company (Gulf) in Order No. PSC-98-1360-FOF-EG, issued October 12, 1998.

Based on the rationale expressed in Orders Nos. PSC-98-1211-FOF-EI and PSC-98-1360-FOF-EG, staff recommends that the Commission grant FPC's petition for waiver of Rule 25-17.015(1), Florida Administrative Code. In terms of the requested rule waiver, FPC is in a position identical to that of FPL and Gulf. Therefore, in light of the Commission's findings in Order No. PSC-98-1211-FOF-EI, staff believes FPC 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 FPC'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.

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