

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Natural gas conservation cost recovery.

DOCKET NO. 20180004-GU
ORDER NO. PSC-2018-0423-PAA-GU
ISSUED: August 24, 2018

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
DONALD J. POLMANN
GARY F. CLARK
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

Rule 25-17.015(1), F.A.C., directs the Florida Public Service Commission (Commission) to set an annual evidentiary hearing in its continuing Energy Conservation Cost Recovery (ECCR) docket pursuant to Sections 366.80-366.83, Florida Statutes (F.S.), to allow public utilities to seek recovery of costs for energy conservation programs. An evidentiary hearing is set for November 5-7, 2018.

On June 28, 2018, Peoples Gas System (Peoples) filed a Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., (Petition). Rule 25-17.015(1)(b), F.A.C., requires utilities to submit actual and estimated filings based upon eight months of actual costs and four months of projected costs. A Notice of Joinder to the Petition was filed July 2, 2018, by Florida Public Utilities Company (FPUC),¹ Florida Division of Chesapeake Utilities Corporation (Chesapeake), Florida Public Utilities Company-Fort Meade (Ft. Meade), and Florida Public Utilities Company-Indiantown Division (Indiantown). A Notice of Joinder to the Petition was also filed on July 3, 2018, by Florida City Gas (FCG); on July 5, 2018, by St. Joe Natural Gas Company (St. Joe); and on July 11, 2018, by Sebring Gas System, Inc. (Sebring).

¹ FPUC-Gas, Company Code GU603.

Pursuant to Section 120.542(6), F.S., notice of the Petition was published in the Florida Administrative Register on July 13, 2018. No comments were received, and the time for filing comments expired on July 27, 2018. By Order No. PSC-2018-0244-PAA-EG, issued on May 10, 2018, in Docket No. 20180002-EG, the Commission granted a similar Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., to Florida Power & Light Company, Duke Energy Florida, LLC, Tampa Electric Company, Gulf Power Company, and FPUC.²

Our order addresses the Petition and corresponding requests for joinder. The Commission has jurisdiction in this matter pursuant to Sections 120.542, 366.04, 366.05, and 366.06, F.S.

Analysis and Decision

As stated, Peoples, FPUC, Chesapeake, Ft. Meade, Indiantown, FCG, St. Joe, and Sebring requested a rule waiver of the requirements of Rule 25-17.015(1)(b), F.A.C. The rule requires the utilities to make actual and estimated filings based upon eight months of actual and four months of projected common costs, individual program costs, and any collected revenues, beginning on January 1, 2018 and ending on December 31, 2018. The utilities stated that the due date for the estimated/actual true-up filing of August 10, 2018, does not allow the companies to prepare their estimated/actual filings based on eight months of actual and four months of projected data because the filings are due before the expiration of the required eight month period. The utilities indicated that they can prepare their filings on the basis of six months of actual and six months of projected data. The utilities requested a waiver of Rule 25-17.015(1)(b), F.A.C., and permission to submit their filings based on six months of actual data and six months of projected data.

The utilities asserted that filings based on six months of actual and six months of projected data are a reasonable means of achieving the purpose of the statutes implemented by Rule 25-17.015(1)(b), F.A.C. The utilities contended that the impossibility of submitting their filings based on eight months of actual data and four months of projected data by the August 10, 2018 due date established in the Order Establishing Procedure, Order No. PSC-2018-0115-PCO-GU, issued March 1, 2018, creates a substantial hardship for each of them. The utilities further requested that the waiver be granted for a period of two years to cover the August 2018 filings and the August 2019 filings.

Facts

Rule 25-17.015, F.A.C., requires us to conduct annual ECCR proceedings in November of each year. Rule 25-17.015(1)(b), F.A.C., requires that the utilities submit actual and estimated filings, based upon eight months of actual data and four months of projected data, to be used in the annual proceedings.

² FPUC-Electric, Company Code EI803.

The Rule requires that actual costs and revenues should be calculated beginning January 1st of the year of the annual ECCR proceeding in which the utility is seeking cost recovery. As such, the typical actual true-up filing should cover the period of January 1st – August 31st, and the estimated true-up filing should cover the period of September 1st – December 31st.

Requirements of Section 120.542, F.S.

Section 120.542(2), F.S., authorizes us to grant variances or waivers from agency rules when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means, and when application of the rule would cause the person substantial hardship. As defined by Section 120.542(2), F.S., “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship.

Purpose of the Underlying Statutes

Sections 366.80-366.83 and 403.519, F.S., are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). The purpose of FEECA is to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems. Furthermore, FEECA requires this Commission to determine whether utilities’ energy conservation programs shall be approved for cost recovery.

In the Petition, the utilities asked for a waiver of the rule’s requirement for submission of eight months of actual and four months of projected data. Instead, the utilities offered to provide actual and estimated true-up filings that consist of six months of actual data, covering the period of January 1, 2018 – June 30, 2018, and six months of projected data, covering the period of July 1, 2018 – December 31, 2018, as well as the corresponding periods for the following year’s ECCR docket. Therefore, the utilities’ ECCR filings will continue to provide actual and estimated true-up information. The utilities assert that filings based on six months of actual data and six months of projected data are a reasonable means of achieving the purpose of Sections 366.80-366.83, F.S.

We find that six months of actual data and six months of projected data will allow us to determine the utilities’ appropriate recovery of costs for energy conservation programs during the annual ECCR proceeding in compliance with the purpose of FEECA. Furthermore, pursuant to Rule 25-17.015(1)(a), F.A.C., the actual common costs, individual program costs, and revenues for the period of January 1st – December 31st, will be submitted in the utilities’ annual true-up filing in the next year’s ECCR proceeding; this information provides us with the ability to true-up the six months of actual and six months of projected data. Therefore, we find that the utilities have demonstrated that the purpose of the underlying statutes will be achieved through other means by the individual utilities.

Substantial Hardship

As stated, pursuant to Section 120.542(2), F.S., the Petition must demonstrate that application of the rule would create a substantial hardship. Further, Section 120.542(2), F.S.,

defines substantial hardship as demonstrated economic, technological, legal, or other type of hardship to the person requesting the waiver.

In the Petition, the utilities assert that application of the rule would create a substantial hardship to them due to the impossibility of submitting their filings on the basis of eight months of actual data and four months of projected data as required by the rule and by the August 10, 2018 due date set by the Order Establishing Procedure.

We find that the application of Rule 25-17.015(1)(b), F.A.C., in the instant docket would create a substantial hardship for the utilities based on the unavailability of the financial information for the typical coverage periods for actual data to be gathered between January 1st – August 31st and estimated data for September 1st – December 31st, by August 10, 2018. Therefore, we find that the utilities have demonstrated that application of the rule would create a substantial hardship under the current timeline as set forth in the current hearing schedule.

Conclusion

Section 120.542, F.S., requires companies to demonstrate that the purpose of the underlying statute will be or has been achieved by other means by the companies and that application of the rule would create a substantial hardship. We find that the utilities have demonstrated that the purpose of the underlying statutes will be achieved by filing six months of actual data and six months of projected data. We further find that the utilities have demonstrated that application of Rule 25-17.015(1)(b), F.A.C., will create a substantial hardship to the utilities. Therefore, the utilities' Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., to allow the utilities to provide annual estimated/actual true-up filings showing six months of actual data and six months of projected data for a period of two years to cover the August 2018 and August 2019 filings, is hereby granted.

We note that our staff has initiated rulemaking to amend Rule 25-17.015(1)(b), F.A.C. On March 20, 2018, a Notice of Development of Rulemaking to amend Rule 25-17.015, F.A.C., was published in the Florida Administrative Register. The stated purpose and effect of the rule development is to streamline the utilities' filing requirements in the rule. The proposed rule revision seeks to make the ECCR filing dates less prescriptive, thereby improving the scheduling of the ECCR filings and subsequent hearing.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Peoples Gas System's Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., joined by Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company-Fort Meade, Florida Public Utilities Company-Indiantown Division, Florida City Gas, St. Joe Natural Gas Company, and Sebring Gas System, Inc., is hereby granted. It is further

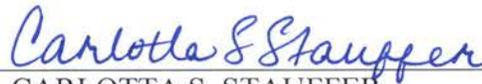
ORDERED that Peoples Gas System, Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company-Fort Meade,

Florida Public Utilities Company-Indiantown Division, Florida City Gas, St. Joe Natural Gas Company, and Sebring Gas System, Inc. are hereby permitted to provide annual estimated/actual true-up filings showing six months of actual data and six months of projected data for a period of two years to cover the August 2018 filings and the August 2019 filings. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 24th day of August, 2018.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

RAD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 14, 2018.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.