

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:** September 28, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Harper) *Act S.M.C.*  
Division of Economics (Coston, Guffey) *W&C QK9 EST W&M JSH*

**RE:** Docket No. 20180121-EG – Amendment of Rule 25-17.015, F.A.C., Energy Conservation Cost Recovery

**AGENDA:** 10/11/18 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**RULE STATUS:** Proposal May Be Deferred

**SPECIAL INSTRUCTIONS:** None

### Case Background

The Energy Conservation Cost Recovery (ECCR) clause is a mechanism through which utilities recover reasonable and prudent costs related to energy conservation programs. Rule 25-17.015, Florida Administrative Code (F.A.C.), Energy Conservation Cost Recovery, requires all electric and gas utilities that seek to recover conservation program-related costs to file with the Commission ECCR program costs and collected revenue for the prior year (actual and true-up amounts), the current year (actual and estimated amounts), and the future year (projected amounts).

By Order No. PSC-2018-0423-PAA-GU, issued on August 24, 2018, in Docket No. 20180004-GU, the Commission granted a Petition for Waiver of Rule 25-17.015(1)(b), F.A.C, by 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

(collectively utilities). The utilities asserted that it was a substantial hardship to file 8 months of current year actual and estimated data reflecting ECCR program costs as required by Rule 25-17.015(1)(b), F.A.C. The utilities asserted that they could provide the Commission with filings based on six months of actual data and six months of projected data, which would allow the utilities to meet the deadline set forth by the Commission's Order Establishing Procedure (OEP)<sup>1</sup> and which would be a more reasonable means of achieving the purpose of Rule 25-17.015(1)(b), F.A.C.<sup>2</sup>

Accordingly, staff initiated this rulemaking to amend Rule 25-17.015 (1)(b), F.A.C., to remove the provisions that require investor-owned electric and gas utilities to file the current year's ECCR program costs and collected revenue for 8 months actual and 4 months estimated. Additionally, the rulemaking will remove the requirement that the ECCR proceeding occur in November of each year. The removal of the 8 and 4 month filing and proceeding requirements will allow the Commission flexibility to establish the filing dates for the ECCR proceedings by an OEP.

Staff also recommends that the rule be amended to remove an unnecessary form requirements and to add clarifying language concerning the evaluation of advertising costs associated with ECCR conservation efforts.

The Commission's Notice of Development of Rulemaking was published in the Florida Administrative Register on March 20, 2018, in Volume 44, No. 55. There were no requests for a rule development workshop, and no workshops were held. No comments from interested parties were received.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-17.015, F.A.C. The Commission has jurisdiction pursuant to Section 120.54, F.S., Section 366.04, F.S., and Section 366.05, F.S.

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<sup>1</sup>See Order No. PSC-2018-0094-POC-EG, in Docket No. 20180002-EG, where the Commission granted an Order Establishing Procedure for the electric utilities in the ECCR docket, and Order PSC-2018-0115-GU, in Docket No. 20180004-GU, where the Commission granted an Order Establishing Procedure for the gas utilities in the ECCR docket.

<sup>2</sup>See Order No. PSC-2018-0244-PAA-EG, in Docket 20180002-EG, where the Commission granted a joint petition for waiver of Rule 25-17.015(1)(b), F.A.C, by Tampa Electric Company, Florida Power & Light Company, Duke Energy Florida, LLC, and Gulf Power Company, and held that six months of ECCR actual data and six months of ECCR projected data would allow the Commission to determine the utilities' appropriate recovery of energy conservation costs.

## Discussion of Issues

**Issue 1:** Should the Commission propose the amendment of Rule 25-17.015, F.A.C., Energy Conservation Cost Recovery?

**Recommendation:** Yes. The Commission should propose the amendment of Rule 25-17.015, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify amended Rule 25-17.015, F.A.C., as a minor violation rule. (Harper, Coston)

**Staff Analysis:** Sections 366.80, 366.81, 366.82, 366.83 and 403.519, F.S., collectively, provide conservation goals requirements for the utilities. Section 366.82, F.S., requires that the Commission develop rules that establish conservation goals, approve conservation plans, and monitor programs related to the promotion of demand-side renewable energy systems and the conservation of electric energy and natural gas usage. Rule 25-17.015, F.A.C. (ECCR rule), requires utilities to report certain costs and revenues associated with each utility's conservation programs.

Rule 25-17.015, F.A.C., is the Commission's only cost recovery clause rule that includes a fixed timeline for the actual and estimated filings and a requirement that ECCR proceedings occur during November of each calendar year. Paragraph (1)(b) requires that the utilities file the current year's actual and estimated filings with 8 months actual and 4 months estimated actual true-up amounts. The filing deadlines and hearing schedule associated with the other annual cost recovery clauses are dictated by each respective clause's OEP. Staff is recommending that paragraph (1)(b) be amended to remove the November proceeding requirement and the 8 months actual and 4 months estimated filing provisions to allow the Commission greater flexibility in scheduling the annual ECCR hearing.

Paragraph (1)(e) states that within the 90 days immediately following a utility's true-up filing, each utility must file a report on the first six-month actual results for the current docket year. The utilities must use Form PSC/ECO/44 (11/97), Energy Conservation Cost Recovery Annual Short Form (Short Form), to provide this information. Staff recommends that Paragraph (1)(e) be removed because the Short Form becomes unnecessary with the change to Paragraph (1)(b). The original purpose of this form was to provide an update on the actual costs or true-up, prior to the actual/estimated filing. If Paragraph (1)(b) of the rule is amended as set forth in Attachment A, the Short Form will become redundant to the actual/estimated filings that will be filed with the Commission prior to the annual clause hearings in the fall.

Staff is also recommending that Subsection (5) be amended to clarify language concerning the evaluation of advertising costs associated with conservation efforts. The current rule language is vague and could potentially limit the Commission's ability to assess and evaluate the appropriateness of these costs. Staff recommends that Subsection (5) of the rule be amended to refer the Commission to the program parameters established in each utility's Commission-approved Demand-Side Management (DSM) Plan when evaluating whether advertising costs are directly related to an approved conservation program.

### **Minor Violation Rules Certification**

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the Commission is required to certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. A list of the Commission rules designated as minor violation rules is published on the Commission's website, as required by Section 120.695(2), F.S. Currently, Rule 25-17.015, F.A.C., is on the Commission's list of rules designated as minor violations. If the Commission proposes the amendment of Rule 25-17.015, F.A.C., the rule would continue to be considered a minor violation rule. Therefore, for purposes of filing the amended rules for adoption with the Department of State, staff recommends that the Commission certify proposed amended Rule 25-17.015, F.A.C., as a minor violation rule.

### **Statement of Estimated Regulatory Costs**

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment B to this recommendation. The SERC analysis also includes whether the rule amendment is likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years of implementation.<sup>3</sup>

The SERC concludes that the rule amendment will not likely directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the rule amendment will not likely have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. Thus, the rule amendment does not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule amendment will not have an adverse impact on small business and will have no impact on small cities or counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revision.

### **Conclusion**

Based on the foregoing, staff recommends the Commission propose the amendment of Rule 25-17.015, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify amended Rule 25-17.015, F.A.C., as a minor violation rule.

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<sup>3</sup> Section 120.541(2), F.S.

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

**Recommendation:** Yes. If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and this docket should be closed. (Harper)

**Staff Analysis:** If no requests for hearing or comments are filed, the rule may be filed with the Department of State, and this docket should be closed.

1       **25-17.015 Energy Conservation Cost Recovery.**

2       (1) The Commission shall conduct annual energy conservation cost recovery (ECCR)  
3 proceedings ~~during November~~ of each calendar year. Each utility over which the Commission  
4 has ratemaking authority may seek to recover its costs for energy conservation programs. Each  
5 utility seeking cost recovery shall file the following at the times directed by the Commission,  
6 pursuant to the order establishing procedures in the annual cost recovery proceeding:

7       (a) An annual final true-up filing showing the actual common costs, individual program  
8 costs and revenues, and actual total ECCR revenues for the most recent 12-month historical  
9 period from January 1 through December 31 that ends prior to the annual ECCR proceedings.  
10 As part of this filing, the utility shall include a summary comparison of the actual total costs  
11 and revenues reported to the estimated total costs and revenues previously reported for the  
12 same period covered by the filing in paragraph (1)(b). The filing shall also include the final  
13 over- or under-recovery of total conservation costs for the final true-up period.

14       (b) An annual estimated/actual true-up filing showing ~~eight months~~ actual and ~~four months~~  
15 projected common costs, individual program costs, and any revenues collected. Actual costs  
16 and revenues should begin January 1 immediately following the period described in paragraph  
17 (1)(a). The filing shall also include the estimated/actual over- or under-recovery of total  
18 conservation costs for the estimated/actual true-up period.

19       (c) An annual projection filing showing 12 months projected common costs and program  
20 costs for the period beginning January 1 following the annual hearing.

21       (d) An annual petition setting forth proposed energy conservation cost recovery factors to  
22 be effective for the 12-month period beginning January 1 following the annual hearing. The  
23 ~~Such~~ proposed ~~cost recovery~~ factors shall take into account the data filed pursuant to  
24 paragraphs (1)(a), (b) and (c).

25       ~~(e) Within the 90 days that immediately follow the first six months of the reporting period~~  
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existing law.

1 ~~in paragraph (1)(a), each utility shall report the actual results for that period on Form~~  
2 ~~PSC/ECO/44 (11/97), entitled, Energy Conservation Cost Recovery Annual Short Form,~~  
3 ~~which is incorporated by reference in this rule, and may be obtained from the Director,~~  
4 ~~Division of Economics, Florida Public Service Commission.~~

5 (2) Each utility shall establish separate accounts or subaccounts for each conservation  
6 program for purposes of recording the costs incurred for that program. Each utility shall also  
7 establish separate subaccounts for any revenues derived from specific customer charges  
8 associated with specific programs.

9 (3) A complete list of all account and subaccount numbers used for conservation cost  
10 recovery shall accompany each filing in paragraph (1)(a).

11 (4) New programs or program modifications must be approved prior to a utility seeking  
12 cost recovery. A utility may seek cost recovery for implementation costs associated with new  
13 or modified programs incurred prior to Commission approval. ~~Specifically, any incentives or~~  
14 ~~rebates associated with new or modified programs may not be recovered if paid before~~  
15 ~~approval.~~ However, if a utility may not seek cost recovery for any incentives or rebates  
16 associated with new or modified programs paid prior to Commission approval incurs prudent  
17 implementation costs before a new program or modification has been approved by the  
18 Commission, a utility may seek recovery of these expenditures.

19 (5) Advertising expense recovered through energy conservation cost recovery shall be  
20 directly related to an approved conservation program, shall not mention a competing energy  
21 source, and shall not be company image enhancing. When the advertisement makes a specific  
22 claim of potential energy savings or states appliance efficiency ratings or savings, all data  
23 sources and calculations used to substantiate these claims must be included in the filings  
24 required by subsection paragraph (1)(a). In determining whether an advertisement is “directly  
25 related to an approved conservation program,”; the Commission shall refer to the program

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1 parameters established in the utility's Commission-approved Demand-Side Management Plan.  
2 In addition, the Commission shall consider,~~but is not limited to,~~ whether the advertisement or  
3 advertising campaign:  
4 (a) Identifies a specific problem;  
5 (b) States how to correct the problem; and  
6 (c) Provides direction concerning how to obtain help to alleviate the problem.  
7 *Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(f), 366.06(1),*  
8 *366.82(3), (5) FS. History—New 1-27-81, Amended 12-30-82, 3-27-86, Formerly 25-17.15,*  
9 *Amended 8-22-90, 11-16-97, 5-4-99, \_\_\_\_\_.*  
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**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** May 7, 2018

**TO:** Adria E. Harper, Senior Attorney, Office of the General Counsel

**FROM:** Sevini K. Guffey, Public Utility Analyst I, Division of Economics *S.K.G.*

**RE:** Statement of Estimated Regulatory Costs (SERC) for Proposed Amendments of Rule 25-17.015, Florida Administrative Code (F.A.C.), Energy Conservation Cost Recovery

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The recommended rule revisions implement changes to Rule 25-17.015, F.A.C., which addresses the Energy Conservation Cost Recovery (ECCR) clause. The proposed changes are to: (1) delete the requirement that the Commission conduct the ECCR hearing in November and, instead, the proceedings will follow the schedule outlined in the Order Establishing Procedure (OEP) of the ECCR clause docket; (2) modify the requirement that utilities file eight months actual and four months projected costs for the annual true-up filings and, instead, allow utilities to file their actual and projected data within the timeline established in the OEP; (3) delete the requirement that utilities file form PSC/ECO/44, titled Energy Conservation Cost Recovery Annual Short Form, as the form contains redundant information; and (4) clarify the evaluation of advertising costs associated with conservation efforts.

The proposed rule revisions are not imposing any new regulatory requirements and seek to improve the scheduling of the ECCR filings and subsequent hearing. The utilities affected by the recommended rule revisions potentially may achieve cost savings as a result of not having to file form PSC/ECO/44. No workshop was requested in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to Section 120.541(1)(a), F.S. None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION  
STATEMENT OF ESTIMATED REGULATORY COSTS  
Rule 25-17.015, F.A.C.

1. Will the proposed rule have an adverse impact on small business?  
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes

No

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes

No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)1, F.S.]

Economic growth Yes  No

Private-sector job creation or employment Yes  No

Private-sector investment Yes  No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?  
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes  No

Productivity Yes  No

Innovation Yes  No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis: As a result of the proposed rule amendments, the Commission and the 13 affected utilities (5 electric IOUs and 8 gas IOUs) should achieve cost savings by not having to collect, file, and evaluate duplicative information and forms. If the proposed revisions are approved, the Short Form will become redundant to the actual/estimated filings. The revisions will also improve the scheduling of the ECCR filings and subsequent hearing. Finally, the modification will add clarifying language related to the evaluation of advertising costs associated with conservation efforts.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Five electric IOUs and eight natural gas IOUs.

(2) A general description of the types of individuals likely to be affected by the rule.

The proposed rule amendments should reduce the cost to the affected utilities by removing redundant filing requirements. The rule currently affects five electric IOUs (Duke Energy Florida, Florida Power & Light Company, Florida Public Utilities Company, Gulf Power Company, and Tampa Electric Company) and eight natural gas IOUs (Florida City Gas, Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company – Indiantown and Ft. Meade Divisions, Peoples Gas System, Sebring Gas System, and St. Joe Natural Gas Company).

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

None. To be done with the current workload and existing staff.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

- None.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

- None. The rule will only affect the Commission.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned

and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

- No adverse impact on small business.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

- None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- No regulatory alternatives were submitted.

A regulatory alternative was received from

Adopted in its entirety.

Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.