

FLORIDA PUBLIC SERVICE COMMISSION
Fletcher Building, 101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 20, 1995

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

FROM: DIVISION OF APPEALS (HELTON)
DIVISION OF ELECTRIC & GAS (BERG, BULECZA-BANKS, GING, KUMMER,
TRAPP)
DIVISION OF AUDITING & FINANCIAL ANALYSIS (REVELL)
DIVISION OF RESEARCH & REGULATORY REVIEW (HEWITT)

RE: DOCKET NO. 930165-PU - PROPOSED RULES 25-6.0426 AND 25-7.042,
F.A.C., RECOVERY OF ECONOMIC DEVELOPMENT EXPENSES
AGENDA: 5/2/95 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS
MAY PARTICIPATE

RULE STATUS: PROPOSAL MAY BE DEFERRED

SPECIAL INSTRUCTIONS: I:\PSC\APP\WP\930165PU.RCM

CASE BACKGROUND

During the 1994 session, the Legislature enacted legislation authorizing the Commission to allow "public utilities to recover reasonable economic development expenses." Section 288.035(1), Florida Statutes. The legislation required the Department of Commerce to develop criteria for the Commission to use as a prerequisite when it determines whether an economic development expense is recoverable. Section 288.035(1), Florida Statutes. In addition, the Commission was required to "adopt rules for the recovery of economic development expenses by public utilities . . ." Section 288.035(3), Florida Statutes.

Commerce's criteria, which became effective February 16, 1995, are set forth in the attached Rules 8E-15.001, 8E-15.002, and 8E-15.003, Florida Administrative Code. (Attachment C) The purpose of the attached recommended rules is for the Commission to promulgate rules to implement Section 288.035, Florida Statutes.

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HISTORY

Prior to 1990, the Commission had allowed some economic development expenses to be recovered. However, in In re: Petition of Gulf Power Company for an increase in its rates and charges, Order No. 23573, 90 F.P.S.C. 10:195, 231 (1990), the Commission disallowed Gulf's request to recover \$687,000 in economic development expenses. The Commission found that Gulf had "assumed some of the responsibilities of local chambers of commerce or development boards." Id. The Commission reasoned that "[t]his type of marketing expense might be expected of a company operating in a non-regulated environment. A desire to increase sales or market share against the competition is normal and healthy when there is competition." Id. Because Gulf had no competitors, the Commission disallowed the entire amount Gulf requested for economic development. The Commission has not allowed any utility to recover economic development expenses since this decision.

In July of 1992, the Secretary of the Department of Commerce, Greg Farmer, testified during the Florida Power Corporation rate case. In re: Petition for a rate increase by Florida Power Corporation, Docket No. 910890-EI (TR 34-48). The purpose of his testimony was not to seek recovery of economic development expenses for FPC, but to discuss economic development in general. Farmer discussed the emerging public/private partnership philosophy: "[W]e can no longer view economic development as a responsibility of just the Department of Commerce or the local Chamber or the local economic development efforts. It must involve all aspects of government, including the Florida Public Service Commission and [its] utilities." (TR 36-37) Farmer stated that although ratepayers benefit from the economic growth gained by utility involvement, utilities receive no incentives for their involvement. (TR 38) He argued that the Commission should allow utilities to recover economic development expenditures in base rates. (TR 39)

On March 23, 1993, staff conducted a workshop to investigate feasible utility economic development programs and the level of interest Florida utilities had in economic development activities. After the workshop, staff remained divided over whether the Commission should allow economic development costs to be recovered. As a result, staff presented a primary and alternate recommendation to the Commission at the July 6, 1993, Agenda Conference. The issue under discussion was whether the Commission should encourage utilities to increase their participation in economic development activities by allowing recovery of expenses in base rates. The Commission denied the primary recommendation, which was that the Commission should collect information and evaluate each utility's request on a case-by-case basis. Instead the Commission approved the alternate

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recommendation, which was that the Commission did not have specific statutory authority to allow recovery of economic development expenses in regulated rates. The alternate recommendation also noted that it would be difficult to measure the ratepayers' benefits of economic development programs.

On May 9, 1994, Governor Chiles signed the law that the recommended rules implement, which provides that the "Commission may authorize public utilities to recover reasonable economic development expenses." Section 288.035(1), Florida Statutes. Since the legislation was passed, Commerce and Commission staff have been working together to coordinate the rulemaking process. In order to gather information to draft the recommended rules, staff issued a data request to all public utilities on October 13, 1994.¹ Staff also conducted a workshop on November 16, 1995.² Now that Commerce has adopted the prerequisite criteria, it is appropriate for the Commission to adopt rules by which utilities can recover economic development expenses.

¹The following utilities responded: Florida Power and Light Company, Florida Power Corporation, Tampa Electric Company, Gulf Power Company, Florida Public Utilities Company, West Florida Natural Gas Co., and City Gas Company of Florida.

²The following groups participated in the workshop: Department of Commerce, Department of Community Affairs, Enterprise Florida, Florida States Rural Development Council, Washington County Chamber of Commerce, Quincy Chamber of Commerce, Taylor County Chamber of Commerce, Florida Power and Light Company, Tampa Electric Company, Gulf Power Company, City Gas Company of Florida, West Florida Natural Gas Co., Project for an Energy Efficient Florida, Legal Environmental Assistance Foundation, Florida Solar Energy Industries Association, Inc., and Florida Industrial Power Users Group.

The following groups filed post-workshop comments: Department of Commerce, Tampa Electric Company, Gulf Power Company, Associated Gas Distributors of Florida, Florida Chapter of American Planning Association, Project for an Energy Efficient Florida, and Legal Environmental Assistance Foundation.

DISCUSSION OF ISSUES

ISSUE 1 : Should the Commission propose the adoption of Rules 25-6.0426 and 25-7.042, Florida Administrative Code, Recovery of Economic Development Expenses?

PRIMARY RECOMMENDATION: The Commission should propose the recommended rules in Attachment A (primary rules) that provide for a 50/50 sharing of prudent economic development expenses between ratepayers and shareholders. (Berg, Bulecza-Banks, Ging, Helton, Hewitt, Kummer, Revell)

ALTERNATE RECOMMENDATION: The Commission should propose the recommended rules in Attachment B (alternate rules) that provide for a cap on the total amount of economic development expenses that are shared between the ratepayer and shareholder and a declining ratepayer responsibility as expenditures increase. (Jenkins, Trapp)

PRIMARY STAFF ANALYSIS: Section 288.035(3) states that the rules adopted by the Commission shall include "the sharing of expenses by shareholders." The primary rules provide that public utilities shall be allowed to recover 50 percent of "prudent economic development expenses" that are consistent with Commerce's criteria. Rules 25-6.0426(1) and 25-7.042(1), Florida Administrative Code. A 50/50 split between shareholders and ratepayers is fair and reasonable. It represents a fair compromise between the shareholders' and ratepayers' interests and ensures economic development expenses are prudently incurred. It is appropriate for shareholders to pay half because it is in the shareholders' best interest for the utility to increase sales and maintain a stable revenue source. Last year Florida's public utilities spent \$718,000 on economic development. If the 50/50 split is adopted, utilities could double their efforts at no additional expense to the shareholder.

The primary rules state "[n]o utility rate shall be modified because of economic development expenses except as a result of a base rate adjustment proceeding" Rules 25-6.0426(2) and 25-7.042(2), Florida Administrative Code. In base rate proceedings, the Commission has the opportunity to conduct a complete review to determine whether an expense is prudent. The rules require public utilities to include economic development expenses in their earnings surveillance report filed with the Commission on a monthly basis. Rules 25-6.0426(3) and 25-7.042(3), Florida Administrative Code. In response to staff's economic impact statement (EIS) data request, some utilities stated this reporting requirement was inconsistent with the current trend to eliminate non-value added administrative activities and regulatory reporting requirements. The reporting

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requirement is needed because it will enable staff to monitor the impact of economic development expenses on utility earnings.

Reasonable alternative methods: In the EIS, several alternatives were identified. The first alternative is for shareholders to continue paying for all economic development expenses to ensure funds are spent only on projects that benefit the utility. The second alternative is to fund statewide economic development expenditures from general revenue taxes so that elected officials would make trade-offs between limited tax resources and unlimited needs. The final alternative, which is discussed in the alternate recommendation, is to change the amount that is recoverable from ratepayers. It has been suggested that it would be an incentive if utilities could recover between 90 to 100 percent of economic development expenses. Only the last alternative is feasible here because the intent of the legislation is for the Commission to adopt rules providing for the recovery of economic development expenses.

Economic impact: If the primary rules are adopted, only one utility said it would increase its economic development efforts. On the other hand, if 90 to 100 percent of economic development expenses were recoverable, four utilities stated they would increase the amount spent for economic development. The primary rules enable economic development costs to be evenly shared between ratepayers and shareholders. However, benefits may not flow to these groups in the same proportion or with the same certainty as the costs. While expenditures for economic development activities are up-front and concrete, benefits from economic development expenditures are long term and uncertain. Any recovery of economic development expenses may place upward pressure on utility rates. This may be counterproductive to encouraging economic development through low electric rates. On the other hand, if there is excess capacity, economic growth could help lower rates. In addition, new start-up businesses may be created or existing businesses expanded with economic development expenditures.

The surveillance reports would require some additional staff time to monitor the information, but the cost should not be significant. For utilities the requirement to report additional information on their surveillance reports could add \$100 to \$500 per year in administrative costs.

A direct impact on small business would occur if business rates are raised to fund economic development activities. The level of rate increase would determine the significance of the impact. Competition could be adversely affected with economic development funding through increased utility rates. Consumers could benefit if additional competition lowered retail rates. The recommended

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rules may increase employment in Florida to the extent additional economic development expenditures succeed in attracting new economic activity.

ALTERNATE STAFF ANALYSIS: The alternate rules have several advantages over the primary rules. These rules establish a cap on the total amount of economic development expenses a utility may incur annually which limits the responsibility of the ratepayer. The main difference between the primary rules and the alternate rules is the sharing mechanism used to split economic development expenses between the ratepayer and shareholder. Alternate staff does not believe that the 50/50 sharing percentage proposed by primary staff will encourage utilities to incur any additional economic development expenses. Many participants of the November 16, 1994, staff workshop stated that they would not increase their economic development efforts if the sharing percentage was set at 50/50. However, many participants did say that their economic development efforts would increase if the sharing percentage between the ratepayer and shareholder was set at 90/10.

The cap is established at 0.15 percent of a utility's total annual gross revenues. In addition, the ratepayers' responsibility for economic development expenses will decrease as a utility increases the amount of its expenditures. For example, the first 50 percent of a utility's annual cap is shared between the ratepayer and shareholder at a rate of 90/10. If the utility wishes to spend more than 50 percent of its cap, the sharing percentage becomes 70/30 and finally 50/50. (See Attachment E) All expenses above the cap are absorbed 100 percent by the shareholder. Alternate staff believes that these rules will induce utilities to incur a modest amount of annual economic development expenses. If a utility wishes to become relatively more involved in economic development activities, then it becomes increasingly expensive to the utility's shareholders.

The alternate rules have additional language to ensure that economic development expenses promote the use of energy sources that minimize the cost of energy used by the customer.

The Electric and Gas Director, Joe Jenkins, concurs with Florida Power and Light (FPL) that the best economic development is lower rates. If economic development by utilities is needed, the 0.15 percent of revenue seems correct for Gulf Power Company, but too high for FPL, FPC, and Tampa Electric Company. I support the alternate recommendation in all other respects.

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ISSUE 2: If no requests for hearing or comments are filed, should the rules as proposed be filed for adoption?

RECOMMENDATION: Yes. The Commission should adopt the proposed rules if no requests for hearing or comments are timely filed. The docket may then be closed.

STAFF ANALYSIS: Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action.

Attachments:

- Attachment A - primary recommendation recommended rules
- Attachment B - alternate recommendation recommended rules
- Attachment C - Department of Commerce's rules
- Attachment D - economic impact statement
- Attachment E - estimates of economic development expenses under alternate rule

ATTORNEY GENERAL

25-6.0426 Recovery of Economic Development Expenses

(1) In calculating earned rate of return or future revenue requirements, each utility shall be allowed to include 50 percent of prudent economic development expenses that are consistent with the criteria established by the Department of Commerce in Rules 5E-15.001, 5E-15.002, and 5E-15.003, Florida Administrative Code.

(2) No utility rate shall be modified because of economic development expenses except as a result of a base rate adjustment proceeding, such as a full revenue requirement or a limited scope proceeding.

(3) Each utility shall report its total economic development expenses as a separate line item on its income statement schedules filed with the earnings surveillance report required by Rule 25-6.1359, Florida Administrative Code. Each utility shall make a line item adjustment on its income statement schedule to remove 50 percent of the economic development expenses incurred for the reported period.

Specific Authority: 255.035(3), 350.127(9), F.S.

Law Implemented: 255.035, F.S.

History: New

CO.D.L.N.G.: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 25.7.042 Recovery of Economic Development Expenses

2 (1) In calculating earned rate of return or future revenue requirements, each utility shall be allowed to include 50 percent of prudent economic development
3 expenses that are consistent with the criteria established by the Department of Commerce in Rules SE-15.001, SE-15.002, and SE-15.003, Florida Administrative Code.

4 (2) No utility rate shall be modified because of economic development expenses except as a result of a base rate adjustment proceeding, such as a full revenue
5 requirement or a limited scope proceeding.

6 (3) Each utility shall report its total economic development expenses as a separate line item on its income statement schedules filed with the earnings surveillance
7 report required by Rule 25.7.1352, Florida Administrative Code. Each utility shall make a line item adjustment on its income statement schedule to remove 50 percent of the
8 economic development expenses incurred for the reported period.

9 Specific Authority: 255.035(3), 350.197(9), F.S.

10 Law Implemented: 255.035, F.S.

11 History: New

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ATTORNEY GENERAL

25-6.0426 Recovery of Economic Development Expenses

(1) In calculating earned rate of return or future revenue requirements, each utility shall be allowed to include prudent economic development expenses that are consistent with the criteria established by the Department of Commerce in Rules SE-15.001, SE-15.002, and SE-15.003, Florida Administrative Code, subject to the limitations set forth below.

(a) Each utility's annual economic development expenditures, for which recovery pursuant to paragraph (1)(b) will be available, shall not exceed an amount equal to 0.15 percent of the utility's annual gross revenues for the same period.

(b) Recovery of prudent economic development expenses shall be available as follows:

(i) The first level of expenses up to 50 percent of the amount established by paragraph (1)(a) shall be recoverable at a 90 percent level.

(ii) The second level of expenses up to 25 percent of the amount established by paragraph (1)(a) shall be recoverable at a 70 percent level.

(iii) The remaining expenses up to the amount established in paragraph (1)(a) shall be recoverable at a 50 percent level.

(iv) Any additional economic development expenses above the amount established in paragraph (1)(a) shall be placed below the line for all rate making purposes.

(5) No utility rate shall be modified because of economic development expenses except as a result of a base rate adjustment proceeding, such as a full revenue requirement or a limited scope proceeding.

(3) Each utility shall report its total economic development expenses as a separate line item on its income statement schedules filed with the earnings surveillance report required by Rule 25-6.1352, Florida Administrative Code. Each utility shall make a line item adjustment on its income statement schedule to remove the appropriate percentage of economic development expenses incurred for the reported period consistent with subsection (1).

(3) Prudent economic development shall promote the energy source that minimizes the cost of energy used by the customer.

Specific Authority: 255.035(3), 350.197(3), F.S.

Law Implemented: 255.035, F.S.; History: New

CO.D.L.N.G. Words underlined are additions; words in ~~struck through type~~ are deletions from existing law.

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(4) Prudent economic development shall promote the energy source that minimizes the cost of energy used by the customer.

Specific Authority: 255.035(3), 350.127(3), F.S.

Law Implemented: 255.035, F.S.; History: New.

CO.D.L.N.C.: Words underlined are additions; words in ~~struck through type~~ are deletions from existing law.