

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Amendment of Rule) DOCKET NO. 920271-EG
25-17.011, F.A.C., Energy) ORDER NO. PSC-92-0499-NOR-EG
Conservation Loan Guarantee.) ISSUED: 06/12/92
_____)

NOTICE OF RULEMAKING

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has initiated rulemaking to amend Rule 25-17.011, F.A.C., relating to energy conservation loan guarantees.

The attached Notice of Rulemaking will appear in the June 19, 1992, edition of the Florida Administrative Weekly. If requested, a hearing will be held at the following time and place:

9:30 a.m., Thursday, July 23, 1992
Room 122, Fletcher Building
101 East Gaines Street
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rule must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399, no later than July 10, 1992.

By Direction of the Florida Public Service Commission, this 12th day of June, 1992.

STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)

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by: Ray DeLeon
Chief, Bureau of Records

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-92-0499-NOR-EG
DOCKET NO. 920271-EG
PAGE 2

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 920271-EG

RULE TITLE:

RULE NO.:

Energy Conservation Loan Guarantee

25-17.011

PURPOSE AND EFFECT: The rule sets forth the requirements for eligibility and application for conservation loan guarantees. The loan guarantee program was eliminated as of June 30, 1991. The rule amendments reflect the fact that the Public Service Commission no longer guarantees these loans.

SUMMARY: Language allowing utilities to apply for loan guarantees is removed. Language is added which indicates that loans previously guaranteed will continue to receive the guarantee, and that remaining provisions of the rule remain applicable to loans which received the guarantee. The requirement of a lis pendens is deleted. Unsettled disputes will be resolved by Commissioners under procedures set forth in the rule. Lenders must provide a bankruptcy discharge, if applicable. An obsolete section dealing with suspension from the guarantee program is deleted.

RULEMAKING AUTHORITY: 366.05(1), 366.82

LAW IMPLEMENTED: 366.05(1), 366.82

SUMMARY OF THE ESTIMATE OF ECONOMIC IMPACT OF THIS RULE:

The amendments should produce few, if any, additional costs for the Commission, utilities or lending institutions.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE

ORDER NO. PSC-92-0499-NOR-EG
DOCKET NO. 920271-EG
PAGE 3

SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING. IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:
TIME AND DATE: 9:30 A.M., July 23, 1992

PLACE: Room 122, 101 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THIS RULE AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399.

THE FULL TEXT OF THE RULE IS:

25-17.011 Continuation of Energy Conservation Loan Guarantees.

(1) Eligibility and Application.

(a) Any utility which, as part of its approved conservation plan, submitted pursuant to s.366.82(2), F.S., loaned proposes to loan its funds to eligible customers as defined in Rule 25-17.051(2), F.A.C., for the purpose of purchasing conservation measures listed in Rule 25-17.051(10), F.A.C., and which received a guarantee by the Commission of all or any portion of loans underwritten by the utility through the June 30, 1991 ending date of the Energy Conservation Loan Guarantee program shall continue to receive the guarantee, subject to the terms of this rule. may apply to the Commission for the guarantee of all or any portion of the loans being made. Energy Conservation Loan Guarantees made to lending institutions through June 30, 1991 shall similarly be continued.

The Commission does not guarantee energy conservation loans made after June 30, 1991. The provisions of this rule which refer to application for the guarantee remain applicable to loans which received the guarantee. ~~The utility may also apply for the guarantee of such loans made by one or more lending institutions, as a part of the utility's approved conservation plan.~~

(b) Each utility applying for Commission guarantee of such loans shall submit to the Commission a description of the types of loans to be made and of loan servicing and collection practices, an estimate of the total amount of funds to be loaned within a stated period, and any forms to be used by the utility or its subcontracted lending institution in making such loans.

(c) Upon review of the utility's application and material, submitted according to sub-subsection (1)(b) above, the Commission shall approve the utility's application, in full or in part, or shall deny such approval. The Commission's approval of the proposed loan program shall be for a specific amount of funds to be loaned within a specific period of time. The reasons for the denial shall be stated.

(2) Loan Application, Limits and Terms.

(a) Each applicant for a loan shall complete a Commission approved loan application form supplied by the utility or its subcontracted lending institution. The form shall provide for the disclosure of information relating to the loan applicant's

acceptability as a credit risk, his interest in the property to be improved, and the type of improvement to be made.

(b) If loans are made by a utility or its subcontracted lending institution, only loans made to applicants within the utility's service area are eligible for the Commission's loan guarantee.

(c) If a loan is made to an applicant who does not have an ownership interest in the property to be improved by the conservation measure, the owner of such property shall be required to sign as guarantor on the note evidencing the loan.

(d) Loans eligible for the Commission's loan guarantee may be for any of the following conservation measures and the amount loaned shall not exceed the utility's or its subcontracted lending institution's estimate of the cost of implementing the particular measure.

1. Caulking of windows or doors or both.
2. Weatherstripping of windows or doors or both.
3. Duct or pipe insulation.
4. Water heater insulation.
5. Heat-reflective and heat absorbing window or door materials.
6. Clock thermostats.
7. Ceiling insulation.
8. Load management devices.
9. Window panel inserts.

10. Floor insulation.
 11. Replacement of furnaces or boilers.
 12. Replacement of central air conditioning.
 13. Wall insulation.
 14. Furnace replacement burner.
 15. Replacement of resistance heat with heat pump or natural gas.
 16. Storm windows.
 17. Solar domestic water heating.
 18. Solar swimming pool heating, if the pool is presently heated with a nonrenewable resource.
 19. Waste heat recovery water heating systems.
 20. Heat pump or natural gas water heaters.
- (e) The following terms shall be included in the loan agreement:
1. The first payment on the note evidencing the loan shall be due no later than sixty 60 days after the date of execution of the note;
 2. The maturity date for the note shall not be later than seven years after the date the first payment is due. However, at the time a utility requests approval of its loan program, it may request that the Commission approve a maturity date which is in excess of seven years for a specific type of conservation measure. The reasons for the later maturity date shall be specified.

3. Prepayment of all or part of the loan principal shall be credited on the date received. If full payment of the loan principal is made prior to the maturity date of the note, no unearned interest or prepayment penalty shall be collected.

(3) Loan Providing, Servicing and Collection.

(a) The utility is responsible to the Commission for proper servicing and collection of loans. However, a utility may contract with a lending institution to make loans to eligible customers and for the performance of loan servicing and collection functions. A description of servicing and collection practices shall be included in the utility's application, as specified in sub-subsection (1)(c), for the Commission's loan guarantee. The utility is responsible for providing a post-installation inspection of each conservation measure which is financed by a guaranteed loan.

(4) Claims.

(a) No claim for reimbursement for loss on guaranteed loans shall be paid unless the utility's or its subcontracted lending institution's claim against the borrower has been reduced to judgment. However, if the principal due on a loan which is in default is less than \$200 and reasonable collection efforts have been made, the utility or its subcontracted lending institution shall receive reimbursement for the unpaid principal without reducing the claim to judgment.

- (b) For reimbursement of claims greater than or equal to \$200:
1. The utility or its subcontracted lending institution must ~~file a Notice of Lis Pendens (a notice filed for the purpose of warning all persons that the property is in litigation)~~, reduce the claim to Judgment and obtain a Judgment Lien. The Judgment may include reasonable attorney's fees and court costs.
 2. The utility shall file a request for reimbursement with the Florida Public Service Commission's Division of Administration Department within twenty (20) days of the receipt of Judgment. The request for reimbursement shall contain at least the following:
 - a. Six copies of the applicant's loan file;
 - b. An original and five copies of a certification by an officer of the utility, which asserts that the utility acted within the scope of its approved conservation loan program.
 - ~~e. Six copies of the Notice of Lis Pendens;~~
 - cd. Six copies of the Judgment;
 - de. Six copies of the Judgment Lien;
 - ef. A statement indicating the utility's or its subcontracted lending institution's agreement to execute an Assignment of Judgment in exchange for reimbursement; and

- fg. The utility's name and mailing address, its Federal Employer Identification Number and the name and telephone number of the utility's liaison whom the Commission may contact for additional information regarding the defaulted loan.
3. The Florida Public Service Commission's Division of Administration Office of General Counsel shall notify the utility when the State Comptroller issues a warrant and shall request assignment of rights under the Judgment to the State of Florida. The warrant will be mailed to the utility upon receipt of original assigned Judgment.
- (c) For reimbursement of claims under \$200:
1. The request for reimbursement will be filed in a timely manner with the Florida Public Service Commission's Division of Administration Department and contain at least the following:
 - a. Six copies of the applicant's loan file;
 - b. An original and five copies of a certification by an officer of the utility, which asserts that the utility acted within the scope of its approved conservation loan program; and
 - c. The utility's name and mailing address, its Federal Employer Identification Number and the name and

telephone number of the utility's liaison whom the Commission may contact for additional information regarding the defaulted loan.

2. The warrant will be mailed to the utility upon issuance by the State Comptroller.

(d) If deficiencies or disputes are identified by the Commission's staff in a utility's request for reimbursement, the Commission's Executive Director shall notify the utility of the deficiencies or disputes and the basis for each. Unsettled disputes between Commission staff and the utility will be resolved by the Commissioners following written request from the utility, which shall specifically respond to the deficiencies or disputes identified by the Executive Director. The request shall be submitted to the Commission's Executive Director, and a copy shall be submitted to the Commission's Division of Electric and Gas.

(5) Recordkeeping and Reporting Requirements.

(a) Each utility or its subcontracted lending institution, which has had or has outstanding loans guaranteed by the Commission, shall make the following records available to the Commission upon request or, if requested indicated, shall submit to the Commission the following reports.

1. Records: A file shall be maintained for each loan made containing the following:
 - a. Credit application.

- b. Credit report or other investigation of the loan applicant's credit.
- c. Loan agreement.
- d. Loan servicing and collection information.
- e. Default information, including a bankruptcy court order discharging the debtor ~~a Notice of Lis Pendens~~ (if applicable) and Judgment information (if applicable).

2. Reports:

- a. Quarterly reports on guaranteed loans will be submitted to the Commission on prescribed forms within 30 days after the close of each quarter.
- b. The Commission may require the submission of supplemental reports relating to guaranteed loans which are deemed necessary by the Commission.

(b) The Commission may inspect the utility's or its subcontracted lending institution's books or accounts which pertain to the loans reported for guarantee.

(6) Limitation of Guarantee.

(a) Unless prohibited by law, guarantees made pursuant to this rule shall be for the amount of the Judgment obtained by the utility against the borrower or, if a judgment is not required, the amount of principal due on the loan.

(b) The Commission's liability to pay claims made against the Florida Public Service Regulatory Trust Fund is limited to

\$5,000,000.

(7) Reserve Requirement. ~~Suspension of Guarantee of Loans.~~

~~(a) The Commission may suspend its guarantee of loans made by a utility or its subcontracted lending institution under the loan guarantee program. The suspension shall be effective upon receipt of notice by the utility and shall not apply to any loans made prior to receipt of notice. In determining whether to suspend its guarantee of loans, the Commission will consider whether the utility or its subcontracted lending institution or agents thereof:~~

- ~~1. Failed to maintain adequate records.~~
- ~~2. Failed to adequately service loans.~~
- ~~3. Failed to file reports with the Commission as required by this rule.~~
- ~~4. Engaged in discriminatory loan practices.~~
- ~~5. Engaged in illegal collection practices.~~
- ~~6. Significantly varied its loan program from that approved by the Commission in applying for the guarantee.~~

~~(b) The Commission may also suspend the guarantee of loans made by a utility or its subcontracted lending institution if the dollar amount of claims paid by the Commission together with the dollar amount of claims being processed exceeds five percent (5%) of the total dollars lent by the utility or lending institution for loans made under the loan guarantee program.~~

~~(c) A utility or its subcontracted lending institution may apply~~

ORDER NO. PSC-92-0499-NOR-EG
DOCKET NO. 920271-EG
PAGE 13

~~for a discontinuance of a suspension if the conditions resulting in the suspension no longer exist.~~

~~(d) The Commission shall maintain for each loan made under the guarantee program a reserve which is equal to five percent (5%) of the outstanding principal balance due on the loan. The Commission's guarantee of additional loans shall be suspended when the amount required to be reserved under this paragraph exceeds a total of \$5,000,000.~~

Specific Authority: 366.05(1), 366.82, F.S.

Law Implemented: 366.05(1), 366.82, F.S.

History: New 10/13/81, Amended 1/5/82, 12/30/82, 2/9/86, _____,
formerly 25-17.11.