

MEMORANDUM

FEBRUARY 8, 1999

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RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (C. KEATING) *WCK RVE*

RE: DOCKET NO. 981741-EG - PETITION BY GULF POWER COMPANY FOR  
WAIVER OF FILING DEADLINE IN RULE 25-17.006(3), F.A.C.,  
TO ALLOW DATA REQUIRED BY THE RULE TO BE FILED JANUARY  
19, 1999, RATHER THAN DECEMBER 1, 1998.

99-0187-FCF

Attached is a NOTICE OF PROPOSED AGENCY ACTION - ORDER  
GRANTING PETITION FOR RULE WAIVER to be issued in the above-  
referenced docket. (Number of pages in Order - 5)

WCK/js  
Attachment  
cc: Division of Electric and Gas (Colson)  
I:981741or.wck

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Gulf Power Company for waiver of filing deadline in Rule 25-17.006(3), F.A.C., to allow data required by the rule to be filed January 19, 1999 rather than December 1, 1998.

DOCKET NO. 981741-EG  
ORDER NO. PSC-99-0187-FOF-EG  
ISSUED: February 3, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING PETITION FOR 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.

Rule 25-17.006, Florida Administrative Code, provides that certain electric utilities must periodically collect and submit to this Commission specified conservation-related data from residential customers. Pursuant to subsection (5) of the rule, this data is collected through Commission-approved surveys. Subsection (7) of the rule requires that the results of each survey be reported to this Commission on or before December 1 of the calendar year in which the survey is conducted. Pursuant to the rule, each electric utility was required to conduct such a survey for calendar year 1998.

DOCUMENT NUMBER-DATE

01329 FEB-38

FPSC-RECORDS/REPORTING

On November 25, 1998, Gulf Power Company (Gulf) filed a petition for waiver of the reporting deadline set forth in Rule 25-17.006(7), Florida Administrative Code. Gulf seeks this waiver so that it may file the required survey results on January 19, 1999, rather than December 1, 1998. Pursuant to Section 120.542(6), Florida Statutes, notice of Gulf's petition was submitted to the Secretary of State for publication in the December 24, 1998, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code. In accordance with Section 120.542(8), Florida Statutes, the petition is deemed approved if we do not grant or deny it by February 23, 1999.

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.

In its petition, Gulf argues that the purpose of the statute underlying Rule 25-17.006, Florida Administrative Code, will be achieved if its petition is granted. Gulf points out that the purpose of the rule is to provide for the periodic submission of certain conservation information to this Commission. Gulf states that we utilize this information to estimate the potential kilowatt hour (kWh) and demand savings through conservation measures and technologies. Gulf asserts that approval of its waiver petition will result in only a minimal delay in reporting this information and, therefore, will have no adverse impact on this Commission or any party interested in utilizing the information.

We agree that the purpose of the statute underlying the rule will be achieved if Gulf's waiver petition is granted. The rule was promulgated to implement Section 366.82, Florida Statutes. The purpose of this statute is well stated in subsection (2), which provides, in pertinent part:

The Commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, and to reduce the growth rates of weather-sensitive peak demand. . . .

Section 366.82(2), Florida Statutes. Rule 25-17.006, Florida Administrative Code, provides a mechanism for this Commission to obtain conservation data necessary for us to perform our duties under the statute. The brief extension requested by Gulf to submit this information will not hinder the performance of our duties under, or ability to achieve the purposes of, Section 366.82, Florida Statutes.

Gulf also argues that application of the rule will create a substantial hardship for Gulf. Gulf asserts that it is unable to meet the requirements of the rule because customer participation in its survey has not been sufficient to obtain the number of completed surveys required by subsection (3) of the rule before December 1, 1998. Gulf states that the level of customer participation is not within its control. Gulf believes that a filing extension from December 1, 1998, to January 19, 1999, will allow for completion of the necessary number of surveys.

We agree that application of the rule creates a substantial hardship for Gulf. Due to insufficient customer participation, Gulf cannot meet the rule's reporting deadline without violating the rule's customer participation requirement. Conversely, Gulf cannot satisfy the customer participation requirement without missing the reporting deadline. We believe it is more reasonable to allow Gulf additional time to obtain and submit complete survey results than to require strict adherence to the rule's reporting deadline for incomplete results.

In conclusion, we find that Gulf has demonstrated that application of the rule creates a substantial hardship for Gulf and

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that the purpose of the statute underlying the rule will be achieved if the requested waiver is granted. Therefore, we hereby grant Gulf's petition for waiver of the reporting deadline set forth in Rule 25-17.006(1), Florida Administrative Code.

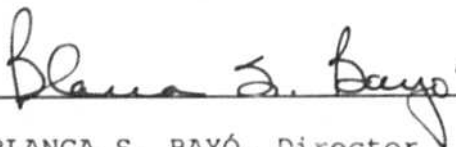
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Gulf Power Company's petition for waiver of the reporting deadline set forth in Rule 25-17.006(7), Florida Administrative Code, is hereby granted. It is further

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

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 3rd day of February, 1999.



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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

WCK

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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 Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 24, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.