

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 160002-EG
ORDER NO. PSC-16-0493-PAA-EG
ISSUED: October 27, 2016

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
LISA POLAK EDGAR
ART GRAHAM
RONALD A. BRISÉ
JIMMY PATRONIS

NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the decision granting a rule waiver 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

Pursuant to Rule 25-17.015(1), F.A.C., we set an annual evidentiary hearing in our continuing Energy Conservation Cost Recovery (ECCR) docket pursuant to Sections 366.80-366.83, Florida Statutes (F.S.), to approve conservation cost recovery. The evidentiary hearing is set for November 2 – 4, 2016.

On August 19, 2016, Florida Power & Light Company (FPL), Duke Energy Florida, LLC, (DEF), Tampa Electric Company (TECO), and Gulf Power Company (Gulf) filed a Joint Petition for a Waiver of Rule 25-17.015(1)(b), F.A.C., (Joint Petition). On the same day, Florida Public Utilities Company (FPUC) filed a Notice of Joinder of the Joint Petition.

Notice of Joint Petition was published in the Florida Administrative Register on August 24, 2016. No comments were received, and the time for filing comments expired on September 7, 2016. We have jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, F.S., as well as Section 120.542, F.S.

Rule Waiver

Petition

As stated, FPL, DEF, TECO, Gulf, and FPUC, all of the investor-owned utilities (IOUs) in Florida, request a rule waiver of the requirements of Rule 25-17.015(1)(b), F.A.C. The rule requires the electric utilities to make actual and estimated filings, based upon eight months of actual data and four months of projected common costs, individual program costs, and any collected revenues. The IOUs state that the due date for the actual/estimated true-up filing of August 19, 2016, does not allow the companies to prepare the actual/estimated filing based on eight months of actual and four months of projected data. The IOUs indicate that they can prepare their filings on the basis of six months actual and six months projected data. The IOUs request a waiver of Rule 25-17.015(1)(b), F.A.C., to allow their filing to be based on six months of actual and six months of projected data.

The IOUs assert 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 IOUs contend that the impossibility of submitting their filings on eight months of actual data and four months of projected data basis by the due date established in the Order Establishing Procedure, Order No. PSC-16-0102-PCO-EG, issued March 11, 2016, creates a substantial hardship for each of them. The IOUs further request that the waiver be granted for a period of two years to cover the August 2016 filing and the 2017 filing.

The Facts

Rule 25-17.015, F.A.C., requires that we conduct annual ECCR proceedings in November of each year. The IOUs who participate in annual energy conservation programs over which we have ratemaking authority may seek to recover their costs for energy conservation programs, and they must demonstrate that their expenditures to implement energy conservation programs are reasonable and prudent. Rule 25-17.015(1)(b), F.A.C., requires that the electric utilities make actual and estimated filings, based upon eight months of actual data and four months of projected data to be used in the annual ECCR proceedings.

Requirements of Section 120.542, F.S.

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

Purpose of the Underlying Statutes

Sections 366.80-366.83, F.S., are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). The purpose of these statutes is to direct us to adopt goals and approve plans related to the promotion of demand-side renewable energy systems and the

conservation of electric energy. The IOUs are asking to waive the eight months actual and four months projected aspect of the rule and provide actual and estimated true-up filings that are six months actual and six months projections of common costs, individual program costs and any revenues collected. In their ECCR filings, the IOUs continue to provide actual and estimated true-up projections. The IOUs assert that a waiver of Rule 25-17.015(1)(b), F.A.C., as proposed in the instant docket, will not prevent meeting the statutory requirements under Sections 366.80-366.83, F.S., because the six months actual and six months projections of information will satisfy the purpose of Section 366.05(1), F.S., for this year.

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 entity requesting the waiver. Here the IOUs assert that application of the rule would create a substantial hardship to the IOUs due to the impossibility of submitting their filing on the basis of eight months of actual data and four months of projected data as required by the rule and by the due date set by the Order Establishing Procedure. We find it appropriate that the strict application of Rule 25-17.015, F.A.C., in the instant docket would create a substantial hardship for the IOUs based on the unavailability of the financial information. The information the IOUs provide will allow us to determine the IOUs' recovery of costs for energy conservation programs pursuant to the annual ECCR program and that the information complies with the underlying statutes. Therefore, we find it appropriate that the IOUs have demonstrated that application of the rule would create a substantial hardship under the current timeline as set forth in the current hearing schedule.

Decision

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 it appropriate that the IOUs have demonstrated that a substantial hardship would be created with an application of Rule 25-17.015, F.A.C. We further find it appropriate that the IOUs have demonstrated that the purpose of the underlying statute will be achieved with a waiver of the application of Rule 25-17.015, F.A.C. Therefore, we grant the IOUs' Joint Petition for waiver of Rule 25-17.015(1)(b), F.A.C., and allow annual estimated/actual true-up filings of six months actual and six months of projected data.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company, Duke Energy Florida LLC, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company's petition for waiver of Rule 25-17.015(1)(b), Florida Administrative Code, is hereby granted. It is further

ORDERED that Florida Power & Light Company, Duke Energy Florida LLC, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company file annual estimated/actual true-up filings of six months actual and six months of projected data. 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 Office of 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 if no timely protest is received to the proposed agency action, a Consummating Order shall be issued upon the expiration of the protest period, and this docket shall remain open.

By ORDER of the Florida Public Service Commission this 27th day of October, 2016.



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.

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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 November 17, 2016.

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.