

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery  
clause.

DOCKET NO. 20180002-EG  
ORDER NO. PSC-2018-0244-PAA-EG  
ISSUED: May 10, 2018

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
JULIE I. BROWN  
DONALD J. POLMANN  
GARY F. CLARK  
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING 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 (F.A.C.).

**Background**

Pursuant to Rule 25-17.015(1), F.A.C., this Commission sets an annual evidentiary hearing in its continuing Energy Conservation Cost Recovery (ECCR) docket pursuant to Sections 366.80-366.83, Florida Statutes (F.S.), to allow public utilities to seek recovery of costs for energy conservation programs. The 2018 evidentiary hearing is set for November 2018.

On March 9, 2018, Florida Power & Light Company (FPL), Duke Energy Florida, LLC, (DEF), Tampa Electric Company (TECO), and Gulf Power Company (Gulf) filed a Joint Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., (Joint Petition). On March 12, 2018, Florida Public Utilities Company (FPUC) filed a Notice of Joinder of the Joint Petition.

Pursuant to Section 120.542(6), F.S., notice of the Joint Petition was published in the Florida Administrative Register on March 14, 2018. No comments were received, and the time for filing comments expired on March 28, 2018. This Commission granted FPL, DEF, TECO,

Gulf, and FPUC's prior request for a two-year waiver of Rule 25-17.015(1)(b), F.A.C., in the 2016 ECCR docket.<sup>1</sup>

This Order addresses the Joint Petition. We have jurisdiction in this matter pursuant to Sections 120.542, 366.04, 366.05, and 366.06, F.S.

## **Decision**

### *Joint Petition*

As stated, FPL, DEF, TECO, Gulf, and FPUC, all of the investor-owned electric utilities (IOUs) in Florida, requested a rule waiver of the requirements of Rule 25-17.015(1)(b), F.A.C. The Rule requires the IOUs to make actual and estimated filings based upon eight months of actual and four months of projected common costs, individual program costs, and any collected revenues, beginning on January 1, 2018 and ending on December 31, 2018. The IOUs stated that the due date for the estimated/actual true-up filing of August 10, 2018, does not allow the companies to prepare their estimated/actual filings based on eight months of actual and four months of projected data because the filings are due before the expiration of the required eight month period. The IOUs indicated that they can prepare their filings on the basis of six months of actual and six months of projected data. The IOUs requested a waiver of Rule 25-17.015(1)(b), F.A.C., and permission to submit their filings based on six months of actual data and six months of projected data.

The IOUs asserted 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 contended that the impossibility of submitting their filings based on eight months of actual data and four months of projected data by the due date established in the Order Establishing Procedure, Order No. PSC-2018-0094-PCO-EG, issued February 20, 2018, creates a substantial hardship for each of them. The IOUs further requested that the waiver be granted for a period of two years to cover the August 2018 filings and the August 2019 filings.

### *Facts*

Rule 25-17.015, F.A.C., requires us to conduct annual ECCR proceedings in November of each year. Rule 25-17.015(1)(b), F.A.C., requires that the utilities submit 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.

The Rule requires that actual costs and revenues should be calculated beginning January 1st of the year of the annual ECCR proceeding in which the IOU is seeking cost recovery. As such, the typical actual true-up filing should cover the period of January 1st – August 31st, and the estimated true-up filing should cover the period of September 1st – December 31st.

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<sup>1</sup> Order No. PSC-16-0493-PAA-EG, issued October 27, 2016, in Docket No. 20160002-EG, In re: Energy conservation cost recovery clause.

*Requirements of Section 120.542, F.S.*

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

*Purpose of the Underlying Statutes*

Sections 366.80-366.83 and 403.519, F.S., are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). The purpose of FEECA is to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems. Furthermore, FEECA requires this Commission to determine whether utilities’ energy conservation programs shall be approved for cost recovery.

In the Joint Petition, the IOUs asked for a waiver of the Rule’s requirement for submission of eight months of actual and four months of projected data. Instead, the IOUs offered to provide actual and estimated true-up filings that consist of six months of actual data, covering the period of January 1, 2018 – June 30, 2018, and six months of projected data, covering the period of July 1, 2018 – December 31, 2018, as well as the corresponding periods for the following year’s ECCR docket. Therefore, the IOUs’ ECCR filings will continue to provide actual and estimated true-up information. The IOUs assert that filings based on six months of actual data and six months of projected data are a reasonable means of achieving the purpose of Sections 366.80-366.83, F.S.

We find that six months of actual data and six months of projected data will allow us to determine the IOUs’ appropriate recovery of costs for energy conservation programs during the annual ECCR proceeding in compliance with the purpose of FEECA. Furthermore, pursuant to Rule 25-17.015(1)(a), F.A.C., the actual common costs, individual program costs, and revenues for the period of January 1st – December 31st, will be submitted in the IOUs’ annual true-up filing in the next year’s ECCR proceeding; this information provides us with the ability to true-up the six months of actual and six months of projected data. Therefore, we find that the IOUs have demonstrated that the purpose of the underlying statutes will be achieved by other means by the individual IOUs.

*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 a demonstrated economic, technological, legal, or other type of hardship to the person requesting the waiver.

In the Joint Petition, the IOUs assert that application of the Rule would create a substantial hardship to them due to the impossibility of submitting their filings 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 that the application of Rule 25-17.015(1)(b), F.A.C., in the instant docket would create a substantial hardship for the IOUs based on the unavailability of the financial information for the typical coverage periods for actual data to be gathered between January 1st – August 31st and estimated data for September 1st – December 31st, by August 10, 2018. Therefore, we find 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.

### *Conclusion*

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 hereby find that the IOUs have demonstrated that the purpose of the underlying statutes will be achieved by filing six months of actual data and six months of projected data. We further find that the IOUs have demonstrated that application of Rule 25-17.015(1)(b), F.A.C., will create a substantial hardship to the IOUs. Therefore, the IOUs' Joint Petition for waiver of Rule 25-17.015(1)(b), F.A.C., to allow the IOUs to provide annual estimated/actual true-up filings showing six months of actual data and six months of projected data for a period of two years to cover the August 2018 filings and the August 2019 filings, is hereby granted.

We note that Commission staff has initiated rulemaking to amend Rule 25-17.015(1)(b), F.A.C. On March 20, 2018, a Notice of Development of Rulemaking to amend Rule 25-17.015, F.A.C., was published in the Florida Administrative Register. The stated purpose and effect of the rule development is to streamline the utilities' filing requirements in the rule.

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 Joint 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 are hereby permitted to provide annual estimated/actual true-up filings showing six months of actual data and six months of projected data for a period of two years to cover the August 2018 filings and the August 2019 filings. It is further

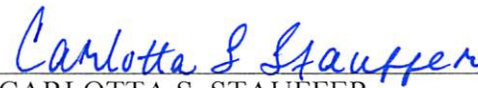
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the

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close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 10th day of May, 2018.



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CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://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 May 31, 2018.

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.