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February 18, 1997

By Hand Delivery

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

**RE: Post Workshop Comments of Florida Power
& Light Company in Docket No. 961378-EG**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company (FPL) are the original and fifteen (15) copies of FPL's Post Workshop Comments in Docket No. 961378-EG.

If you or your Staff have any questions regarding this filing, please contact me.

Very truly yours,

Charles A. Guyton
Charles A. Guyton

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Proposed amendment of Rule 25-17.015,)
F.A.C., Conservation Cost Recovery)

Docket No. 961378-EG
Filed: February 18, 1997

Post Workshop Comments Of Florida Power & Light Company

Florida Power & Light Company ("FPL") appreciates Staff's responsiveness to its suggestions prior to and at the workshop. With a continued constructive exchange, hopefully, we can craft a rule which is acceptable to all.

FPL's comments address both the draft of the rule proposed by Staff after the workshop as well as the draft rule submitted by Gulf Power on January 17th.

General Comments

FPL supports Gulf's suggestion of moving to an annual estimated-actual true-up period and moving back the annual final true-up period six months. The real advantage FPL sees to this proposal is that it will spread out the ECCR workload. At present almost all ECCR regulatory activity falls in the period October through February - 5 months. During that five months, FPL must (1) answer Staff audit questions for the twelve month period ending September, (2) prepare a November final true-up filing, (3) answer E&G Staff discovery (often duplicative of audit staff requests), (4) prepare a January estimated/actual true-up and projection filing, and (5) prepare for a February hearing. This becomes very intense for FPL's small ECCR staff, which has all this work condensed into a few months.

Under Gulf's proposal, the work load is spread over the full year. The year is begun with finishing the estimated/actual true-up and projection filing. Preparation for a February hearing then follows. The final true-up filing is moved back from November to June or July. The DSM audit similarly moves back to late summer/early fall, giving E&G Staff an audit to rely upon in posing their discovery. Then, the latter part of the year is used to answer E&G discovery and beginning preparation of the projection filing. This approach is much more manageable for FPL.

FPL believes this approach holds some advantages for Staff. First, it gives more time to conduct the DSM audit. Second, it gives the E&G Staff audit results well before hearing. Third, it frees up utility personnel responsible for all DSM activities to better focus on all Staff inquiries.

Staff raised at the workshop several concerns about Gulf's proposal which FPL would like to address. Staff's first concern was that the proposal was outside the scope of the rulemaking - to codify the annual ECCR process. Actually, Gulf's proposal is within that scope. It codifies an annual ECCR process. The process it codifies is slightly different than the process Staff prefers, but it still falls within the scope of the rulemaking. However, even if it went beyond the scope of the rulemaking, that should not be a basis not to consider the idea, for the rule draft initially proposed by the Staff already went far beyond that scope with other changes being proposed - language on prior approval, language designed to address advertising, and language repealing the disallowances standard. The scope of the proceeding is not as limited as Staff suggested at the workshop, and that should not be a basis to forego considering changes that would serve everyone.

Staff's second concern was that moving the final true-up period back six months would make the data "stale." FPL agrees it expands the period subject to review in the ECCR proceeding, but that is not problematic. The audit can follow just as quickly on the heels of the new final true-up

period as the current final true-up period. The audit would be no more "stale" than present unless Staff opts not to change when the audit is conducted. More significantly, it makes the ECCR filing consistent with the Environmental and Capacity clauses, the other annual clauses. The Commission has not found the final true-up in those clauses to be "stale," and ECCR should be no different.

Staff's third concern was changing the true-up period for gas utilities. The two gas utilities asked voiced no opposition to the change, and one even concurred with it. Nonetheless, FPL understands that a transition for small gas companies may prove problematic for them and Staff. FPL is certainly willing to explore separate true-up periods for gas utilities as a means of preserving the advantage of spreading FPL's ECCR workload throughout the year. Different periods might raise additional drafting, but FPL would be willing to participate.

In regard to additional drafting, Gulf's current draft will need to be supplemented to address the transition from the current approach to Gulf's approach. The first such ECCR proceeding will only require six months of final true-up, or a repeat final true-up for a period already addressed.

FPL's other general concern arising from the workshop and Staff's current draft of the rule is that the rule attempts to be too prescriptive regarding the content of advertising. Both FPL's comments at the workshop, of its potentially using gas measures as electric DSM measures, and gas companies' comments about mentioning electricity in their electricity displacement programs, demonstrate that Staff's initial draft of Subsection (5) would not work. In an attempt to address these legitimate concerns, Staff's new draft sets forth a subjective standard which is not easily followed by utilities nor easily enforced by the Commission. Just what constitutes a "negative mention" of a competing energy source is unclear. For instance, is a straightforward cost comparison which shows electricity an economic loser versus another fuel source a "negative

mention?" Is an add suggesting that electricity is "matchless" a negative comment on combustible fuels? FPL commends Staff for its initial, even-handed approach to the issue, but the better approach is to drop the prohibition of mentioning a competing fuel, negatively or otherwise.

FPL respectfully submits that FEECA is totally indifferent to gas/electric competition. It certainly does not authorize the Commission to regulate such competition. In passing FEECA the Legislature was aware there was gas vs. electric competition. Its goal in passing FEECA was not to have the Commission enforce, regulate, enhance or diminish gas vs. electric competition. Its goal was to promote conservation and increase energy efficiency by both electric and gas companies. The touchstone for ECCR cost recovery should be whether it achieves the FEECA goal of cost effectively conserving electricity or gas. If advertising accomplishes that FEECA goal, is prudent, and is not misleading or image enhancing, it should be recovered without any further test as to content. Any attempt to develop a "fuel neutrality" policy for ECCR advertising should not be premised upon a misreading of FEECA that the Legislature had any intent regarding gas vs. electricity competition.

The reality today, just as when FEECA was adopted in 1981, is that gas and electric companies compete. Their competition is funded, in part, with revenues recovered from customers. The fact that some of these revenues are from cost recovery clauses is irrelevant. Given this environment of competition, DSM cannot help but have an impact on competition.

Keeping companies from explaining how their cost-effective DSM measures compare to other energy alternatives is a disservice to customers. Customers need to know and understand their energy options. Removing advertising from ECCR cost recovery that is truthful, accurate, and consistent with FEECA because it mentions a competing fuel, negatively or otherwise, (1) frustrates

FEECA, (2) is a disservice to customers, and (3) is a misdirected effort to regulate gas vs. electric competition. Keep FEECA's focus where the Legislature intended - on conservation.

Comments On Staff's Revised Draft

Subsection (1)

If there is no change in the estimated-actual true-up period and the final true-up period as suggested by Gulf, then FPL suggests that Subsections (1)(a) and (b) of Staff's rule be divided into three subsections - one for the final true-up, one for the estimated/actual true-up, and one for the projection filing. Staff's draft of subsection (1)(b) incorporates the estimated/actual true-up and the projection into one period, when they are actually two periods incorporated into one filing. FPL prefers Gulf's version of the rule which separates these two distinct periods. FPL agrees with Staff's approach of giving companies flexibility to use their own forms rather than prescribing a common form. If these changes are made, then subsections (c) and (d) would need to be relettered, and the reference to paragraphs (1)(a) and (1)(b) in paragraph (1)(c) would need to be amended to refer to paragraphs (1)(a),(b) and (c).

If there is no change in the true-up periods, FPL recommends the following changes to Subsection (1)(a). Substitute the following sentence for the first sentence: "An annual final true-up filing showing the actual common costs, individual program costs and revenues, and actual total ECCR revenues for the 12-month period from October 1 through March 31 that ends prior to the annual ECCR proceedings." Adding common costs to the rule merely codifies the practice the Commission has followed throughout its administration of ECCR. It has recognized that there are some common costs of ECCR administration that are not reasonably assigned to individual programs and has allowed them to be reported separately. This merely recognizes this historical practice. FPL

also suggests the inclusion of "ECCR" as a modifier of "revenues" to indicate that the reference is to total ECCR revenue rather than program revenues.

As previously indicated, FPL believes that subsection (b) would be better split into two sections, one describing the estimated/actual true-up and one describing the projection filing. However, if the subsection is kept as one subsection and no changes are made to the true-up period, then FPL suggests the following changes to Staff's draft of subsection (1)(b). The first sentence should be modified to read: "An annual filing showing two months actual and sixteen months projected common costs, individual program costs and revenues, and ECCR revenues." Common costs should be recognized in the rule as they are in practice. There are both program revenues and total ECCR revenues which are reported in the filing; including a reference to both reduces confusion as to whether one or the other is to be reported.

FPL also points out that the final sentence of subsection (1)(b) as currently written refers to an "estimated/actual true-up period" which is not otherwise identified in the rule because the subsection combines that period with the projection period. This is another reason to make two subsections out of subsection (1)(b).

If there is a change in the true-up periods, then FPL recommends its attached draft.

Subsection (2)

FPL suggests that the terms "account" and "subaccount" in the first sentence of this subsection be changed from the singular to the plural. FPL records individual program expenses in multiple accounts per program, not just one account or subaccount per program. FPL agrees with the change at the workshop made to the last sentence - delete "specific customer charges in" and

"and any costs recovered." FPL further suggests that the word "any" in the last sentence (Page 3, line 4) be changed to read "each."

Subsection (3)

FPL questions the need for the list of all account and subaccount numbers to accompany cost recovery filings. Nothing else in the filing refers to those account numbers. This is really more appropriately addressed in the audit as the first matter requested. If it is incorporated into the ECCR rule, it should be limited, as proposed in the current Staff draft, to the final true-up filing, as that is the only filing subject to audit.

Subsection (4)

FPL appreciates the Staff's responsiveness to FPL's suggested rewrite of subsection (4). The remainder of this comment provides back up rationale for the version currently incorporated in Staff's draft rule. FEECA requires approval prior to cost recovery. There are circumstances where it is prudent for a utility to incur costs in anticipation of program approval, subsequently receive program approval, and even later seek and be granted cost recovery. Such an approach is consistent with FEECA, as is evidenced by the Commission orders authorizing cost recovery of costs FPL incurred prior to Commission approval of its modified C/I Lighting Programs. See, Order Nos. PSC-93-1333-FOF-EG; PSC-94-0389-FOF-EG.

Subsection (5)

FPL submits that the following language added by Staff to the first sentence- "shall not negatively mention a competing energy source" - should be deleted. The Commission is not charged in FEECA or elsewhere in Chapter 366 to regulate competition among competing energy sources. ECCR advertising should be judged on whether it helps achieve FEECA goals, is accurate, is

prudent, and is not image enhancing. Any further attempt to regulate content cannot be justified under FEECA or elsewhere in Chapter 366.

The advertising filing requirement added to the rule is unduly onerous and should be deleted. FPL thought this amendment suggested by the Staff in the original rule draft had been dropped at the workshop. It would unnecessarily increase the size of FPL's final true-up filing. The cost of reproducing and mailing the advertisements to all parties cannot be justified. The effort would be largely wasted in that only Staff is interested in advertising, and the matter can be handled much more expeditiously and much less costly through discovery. Advertising costs comprise less than 2% of FPL's total ECCR costs. This additional, costly filing requirement is out of proportion to the significance of ECCR advertising.

Subsection (6)

FPL wholeheartedly agrees with deleting Subsection (6) in its entirety.

Comments on Gulf's Draft Rule

Subsection (1)

There needs to be a short form created which is consistent with (1)(e). Language needs to be added addressing the transition in the first filing under this new approach.

Subsection (2)

Delete the following language from the second sentence "specific customer charges in" and "and any costs recovered."

Subsection (3)

Please see FPL's comments on Subsection (3) of Staff's rule draft. If this requirement is kept, it should be limited, as Gulf's draft does, to the final true-up filing.

Subsection (4)

FPL prefers Staff's new Subsection (4).

Subsection (5)

The second and third sentences of Gulf's Subsection (5) should be deleted. This is an unduly onerous filing burden which is better handled through discovery.

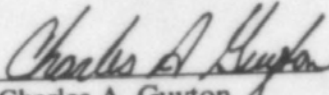
Additional Workshop

Given that we are not yet at consensus, FPL believes another rule development workshop would be helpful.

Respectfully submitted,

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& Light Company

By: 
Charles A. Guyton

TAL/18332-1

1 25-17.015 Energy Conservation Cost Recovery.

2 (1) The Commission shall conduct annual energy conservation
3 cost recovery (ECCR) proceedings during the first quarter of each
4 calendar year. Each utility over which the Commission has
5 ratemaking authority may seek to recover its costs for energy
6 conservation programs ~~as provided in s. 366.82(5), P.S..~~ Each To
7 do so, a utility seeking cost recovery shall file the following at
8 the times directed by the Commission: a petition setting forth
9 estimates of those reasonable and prudent unreimbursed costs
10 projected to be incurred, by specific program, less any estimated
11 revenues, in the same manner and for the same periods as provided
12 for the fuel cost recovery clause in Order No. 9273 issued by the
13 Commission on March 7, 1980. The time limitations applicable to
14 the fuel cost recovery clause shall also apply and the Commission
15 shall dispose of the petition in the same manner and within the
16 times applicable to the fuel cost recovery clause.

17 (a) An annual final true-up filing showing the actual common
18 costs, individual program costs and revenues, attributed to each
19 program and actual total ECCR revenues for the most recent 12-month
20 historical period from April 1 ~~October 1~~ through March 31 ~~September~~
21 ~~30~~ that ends prior to the annual ECCR proceedings. As part of this
22 filing, the utility shall include a comparison of the actual total
23 costs and revenues reported to the estimated total costs and
24 revenues previously reported for the same period covered by the
25 filing in paragraph (1)(b). The filing shall also include the

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struck-through type are deletions from existing law.

1 final over- or under-recovery of total conservation costs for the
2 final true-up period.

3 (b) An annual ~~estimated/annual true-up~~ filing showing ~~eight~~
4 ~~two~~ months actual and ~~four~~ ~~16~~ months projected common costs,
5 ~~individual program costs attributed to each program~~ and any
6 revenues, and total ECCR revenues collected. Actual costs and
7 revenues should begin ~~April~~ ~~October~~ 1 immediately following the
8 period described in paragraph (1)(a). The filing shall also
9 include the estimated/actual over- or under-recovery of total
10 conservation costs for the estimated/actual true-up period.

11 (c) An annual ~~projection~~ filing showing twelve months
12 ~~projected common costs and program costs for the period beginning~~
13 ~~April 1 following the annual hearing.~~

14 ~~(d)(c)~~ An annual petition setting forth proposed energy
15 conservation cost recovery factors to be effective for the 12-month
16 period beginning April 1 following the hearing. Such proposed cost
17 recovery factors shall take into account the data filed pursuant to
18 paragraphs (1)(a), (1)(b) and (1)~~(c)(b)~~.

19 ~~(e)(d)~~ Within the 90 days that immediately follows the
20 first six months of the reporting period in paragraph (1)(a), each
21 utility shall report the actual results for that period on Form
22 PSC/EAG/X (X/9X), entitled, Energy Conservation Cost Recovery
23 Annual Short Form, which is incorporated by reference in this rule,
24 and may be obtained from the Director, Division of Electric and
25 Gas, Florida Public Service Commission.

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1 (2) Each utility shall establish ~~a separate clearing account~~
2 ~~or subaccount~~ or such other account as appropriate for each
3 conservation program for purposes of recording the costs incurred
4 for that program, together with subaccounts under the appropriate
5 accounts contained in the Uniform System of Accounts prescribed by
6 the Commission which will ultimately be charged. Each utility
7 shall also establish separate subaccounts appropriate under the
8 account for Other Electric Revenues or Other Gas Revenues, for
9 revenues derived from specific customer charges in each any program
10 and any costs recovered.

11 (3) ~~A complete list of all account and subaccount numbers~~
12 ~~used for conservation cost recovery shall accompany each filing in~~
13 ~~paragraph (1)(a).~~ The petition shall indicate the amounts recorded
14 in the Clearing Account or such other account as appropriate for
15 each conservation program together with the subaccounts ultimately
16 charged. Similarly, the petition shall indicate the amount of
17 revenues derived from specific customer charges in any programs and
18 any costs recovered, which revenues and costs have been recorded in
19 the appropriate revenues subaccounts.

20 (4) New programs or program modifications must be approved
21 prior to cost recovery. New incentives or rebates may not be
22 recovered if paid before their approval as part of a new program or
23 program modification. Other program implementation costs
24 associated with new programs or program modifications may be
25 recovered if the program modification or new program is approved

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1 before cost recovery and the Commission determines that the
2 expenditure of such costs was prudent. Each utility shall report
3 the actual costs and specific revenues and recovered costs
4 attributed to each program to the Commission in the same manner and
5 within the time limits applicable to the fuel cost recovery clause.
6 The Commission shall dispose of the matter in the same manner as
7 fuel cost recovery clause proceedings to reflect the actual
8 conservation costs and conservation revenues of the preceding
9 period.

10 (4) (5) Advertising expense recovered through energy
11 conservation cost recovery shall be when a utility seeks to recover
12 advertising expenses through Energy Conservation Cost Recovery,
13 then the expense must be directly related to an approved
14 conservation program ~~shall not negatively mention a competing~~
15 ~~energy source~~ and shall not be company image enhancing. ~~Where the~~
16 ~~advertisement makes a specific claim of potential energy savings,~~
17 ~~the advertisement shall identify the energy source, compare Commission~~
18 ~~approved rates and charges, or state appliance efficiency ratings~~
19 ~~or savings, and cite sources and regulations used to substantiate~~
20 ~~these claims must be included in the filing required by paragraph~~

21 (1) (a) In determining whether an advertisement is "directly
22 related to an approved conservation program", the Commission shall
23 consider, but is not limited to, whether the advertisement or
24 advertising campaign:

- 25 (a) Identifies a specific problem;

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1 (b) States how to correct the problem; and

2 (c) Provides direction concerning how to obtain help to
3 alleviate the problem.

4 ~~(6) If a cost for any utility has been expressly disallowed~~
5 ~~for cost recovery by a Commission order, each utility is prohibited~~
6 ~~from thereafter seeking recovery of a cost of a substantially~~
7 ~~similar nature unless the utility specifically identifies the cost~~
8 ~~it is seeking to recover as being similar to previously disallowed~~
9 ~~costs. Each willful violation of the provisions of this subsection~~
10 ~~by a utility shall subject the utility to a penalty as described by~~
11 ~~s. 366.095, Florida Statutes. In order to implement this~~
12 ~~subsection, the Commission will issue an order describing the types~~
13 ~~of costs that it has previously disallowed.~~

14 Specific Authority: 350.127(2), 366.05(1), F.S.

15 Law Implemented: 366.06(1) ~~366.095~~, 366.82(3) & (5), F.S.

16 History: New 1/27/81, Amended 12/30/82, 3/27/86, formerly
17 25-17.15, Amended 8/21/90, _____.

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