**FLORIDA PUBLIC SERVICE COMMISSION**

 **Capital Circle Office Center 2540 Shumard Oak Boulevard**

 **Tallahassee, Florida 32399-0850**

 **M E M O R A N D U M**

 **July 2, 1997**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)**

**FROM: DIVISION OF APPEALS (HELTON)**

**DIVISION OF ELECTRIC & GAS (BALLINGER, BULECZA-BANKS, COLSON, DILLMORE, GING)**

**DIVISION OF AUDITING & FINANCIAL ANALYSIS (MERTA, D. VANDIVER)**

**DIVISION OF RESEARCH & REGULATORY REVIEW (HEWITT)**

**RE: DOCKET NO. 961378-EG - PROPOSED AMENDMENT OF RULE 25-17.015, F.A.C., ENERGY CONSERVATION COST RECOVERY**

**AGENDA: JULY 15, 1997 - REGULAR AGENDA - RULE PROPOSAL - INTERESTED PERSONS MAY PARTICIPATE**

**RULE STATUS: PROPOSAL MAY BE DEFERRED**

**SPECIAL INSTRUCTIONS: S:\PSC\APP\WP\961378.RCM**

 **CASE BACKGROUND**

On December 13, 1996, the Commission published in the Florida Administrative Weekly a notice of proposed rule development for Rule 25-17.015, Florida Administrative Code, captioned Conservation Cost Recovery. Pursuant to Florida Power and Light Companys (FPLs) and Gulf Power Companys (Gulfs) requests, a workshop was held on January 14, 1997. Representatives from FPL, Tampa Electric Company (TECO), Gulf, Peoples Gas System (Peoples), West Florida Natural Gas (WFNG), the Legal Environmental Assistance Foundation (LEAF), and Commission staff attended the workshop. In addition, FPL, TECO, and Gulf made post-workshop filings.

The purpose of the attached recommended changes to Rule 25-17.015 (Attachment A) is to codify the decision in Order No. PSC-93-0709-FOF-EG, in which the Commission voted to move from semi-annual to annual conservation cost recovery proceedings. In re: Conservation Cost Recovery Clause, 93 F.P.S.C. 5:189 (1993). In addition, the recommended amendments change the filing times for Energy Conservation Cost Recovery (ECCR) filings, require a new short form to be filed annually, limit conservation cost recovery to programs pre-approved by the Commission, require utilities to substantiate advertising claims with data sources and calculations, disallow recovery for advertisements that mention a competing energy source, and repeal the prohibition against seeking recovery for previously disallowed costs.

Pursuant to Sections 366.06(1) and 366.82(3) and (5), Florida Statutes, the Commission conducts annual proceedings to allow electric and natural gas utilities to seek recovery for eligible conservation expenses. Section 366.82(5) specifically authorizes the Commission to add to a utilitys authorized rates [r]easonable and prudent unreimbursed [conservation] costs projected to be incurred, or any portion of such costs . . .. Although Section 120.80(13)(a), Florida Statutes, exempts Commission statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to Chapter 366" from the Administrative Procedures Acts rulemaking requirements, staff recommends the attached amendments discussed below be proposed so the Commissions ECCR procedures will be readily available to all interested persons.

 **DISCUSSION OF ISSUES**

**ISSUE :** Should the Commission propose the attached amendments to Rule 25-17.015, Florida Administrative Code?

**RECOMMENDATION:** Yes, Florida Power and Light Companys request for another workshop should be denied and the Commission should propose the attached amendments to Rule 25-17.015, Florida Administrative Code.

**STAFF ANALYSIS:** In its post-workshop comments, FPL requested another workshop because it believed it would be helpful. Staff recommends this request be denied. The recommended rule amendments are the result of meaningful discussions between staff and the industry. The rule development process has produced a rule which is mutually agreeable in most respects. It is doubtful that any remaining disagreement over what amendments should be proposed can be resolved through the workshop process. Accordingly, staff recommends Rule 25-17.015 be amended as discussed below.

**Subsection (1):** Staff recommends this subsection be amended
to codify the Commissions decision that energy conservation cost recovery proceedings be conducted annually.

At the workshop, Gulf suggested that the time line for making ECCR filings be changed to give utilities more time to prepare the filings and staff more time to review them. Under Gulfs proposal, the Commission would consider three distinct periods at each annual proceeding: the final true-up period, the estimated/actual true-up period, and the projection period. Data from these three periods would be used to establish the cost recovery factors for the 12-month period following each ECCR proceeding. In addition, the change would make it easier to compare data between the three periods under consideration to data for the same periods in prior proceedings. The hearing date would not move from the end of the first quarter of each year and the effective dates of resulting cost recovery factors would not change. What would change is the relationship between the original projection period and both the estimated/actual true-up and final true-up periods. Staff has discussed this time change with all utilities that would be affected, and none object to the change.

The filings that would be made under the new time line are discussed below.

**Paragraph (1)(a):**  This paragraph requires utilities to file an annual true-up filing for the period specified.

**Paragraph (1)(b):** This paragraph requires utilities to file an annual estimated/actual true-up filing for the period specified.

**Paragraph (1)(c):** This paragraph requires utilities to file an annual projection filing for the period specified.

**Paragraph (1)(d):** This paragraph requires utilities to file an annual petition to specify the cost recovery factors requested for the 12-month period following the hearing.

**Paragraph (1)(e):** To comply with the semi-annual reporting requirement in Section 364.82(5), Florida Statutes, this paragraph requires utilities to file the Energy Conservation Cost Recovery Annual Short Form that is incorporated into the rule by reference. (Attachment B)

In order to have a smooth transition from the old to new ECCR time line, staff recommends the Commission follow the attached schedule. (Attachment C) The due dates for filings would be stated on the Case Assignment and Scheduling Record (CASR) and the Order Establishing Procedure issued prior to each proceeding.

**Subsection (2):** Staff recommends changes to clarify the accounting requirements mandated by this subsection.

**Subsection (3):** Staff recommends this subsection be changed to require utilities to include in its annual true-up filing a list of all conservation cost recovery account and sub-account numbers. This information, which should be only one or two pages, would make it easier for staff auditors to perform their function.

**Subsection (4):** Staff recommends this subsection be changed to make it clear that prior approval is required before a utility can seek cost recovery for new or modified conservation programs. Although utilities cannot recover rebates or incentives paid out prior to program approval, utilities may recover prudent program implementation costs incurred prior to program approval.

**Subsection (5):** Pursuant to Section 366.82(5), the Commission may allow utilities to recover reasonable and prudent unreimbursed conservation costs. In addition, the Legislature has specifically stated the commission shall not allow the recovery of the cost of any company image-enhancing advertising or of any advertising not directly related to an approved conservation program. Id. So that the Commissions implementation of this statutory mandate is clear, staff recommends an amendment to prohibit cost recovery for advertisements that mention a competing energy source. In addition, staff recommends utilities file data sources and calculations to substantiate any claims of energy savings stated in advertisements.

Examples of FPL advertisements are attached. (Attachment D) These advertisements were included in Research and Regulatory Reviews September 1996 Review of Commercial/Industrial Demand-Side Management Programs of Six Florida Utilities. The report concluded the advertisements

may have some educational value, [but] they also imply to customers that gas is not a viable alternative to electricity. Rather than specifically comparing costs and performance differences, the debate pits one fuel against another. Staff believes this use of conservation programs as a competitive tool was not intended by FEECA or the Commission.

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The prohibition against mentioning a competing energy source is also necessary because the Commission has found in the past that

[w]hen making fuel-savings comparisons in advertisements, the utilities rely on different input data to determine the amount of savings. Therm usage levels, kWh consumption, efficiency levels, and unit costs all vary from one utility to another.

In re: Conservation Cost Recovery Clause, Order No. PSC-95-0398-FOF-EG, 95 F.P.S.C. 3:557, 562 (1995). The differences in the published information have led to customer confusion when consumers compare ads. Since it would be almost impossible to develop advertising standards for competing energy sources because of the many variables involved, such as geographic location, Btu content, current rates, varying fuel charges, and appliance efficiencies, staff recommends the best approach is simply to deny cost recovery for advertisements that mention competing energy sources. Id.

The Commission should require utilities to file the data and calculations required by this subsection because this information will allow staff and other interested persons to verify advertising claims. These recommended amendments should ensure accountability and truth in utility advertising.

**Subsection (6):** Staff recommends this unnecessary subsection be repealed. The decision to disallow costs should be made on a case-by-case basis.

**Statement of Estimated Regulatory Costs:** The recommended amendments should not add significant additional costs, other than some additional labor costs associated with the initial restructuring of the filing periods. Transactional costs should be minimal. No impact is foreseen for small businesses, counties, or cities. There are no alternative methods available that would achieve the purpose of the proposed amendments. (See Attachment E)

**ISSUE :** If no requests for hearing or comments are filed, should the rule amendments as proposed be filed for adoption with the Secretary of State and the docket be closed.

**RECOMMENDATION:** Yes, the docket should be closed if no requests for hearing or comments are filed.

**STAFF ANALYSIS:** Unless comments or requests for hearing are filed, the rules as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments:

A - Recommended amendments to Rule 25-17.015

B - Energy Conservation Cost Recovery Annual Short Form

C - Proposed Time Line for the ECCR Transition

D - Example FPL advertisements

E - Statement of Estimated Regulatory Costs