

FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

September 11, 1997

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FPSC - Records/Reporting

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

FROM: DIVISION OF APPEALS (HELTON) *Watt JS*
DIVISION OF ELECTRIC & GAS (BALLINGER, BULECZA-BANKS, *CRB*)
COLSON, DILLMORE, FLOYD, GING) *DM*
DIVISION OF AUDITING & FINANCIAL ANALYSIS (MERTA, *DM*)
VANDIVER) *1997*
DIVISION OF RESEARCH & REGULATORY REVIEW (HEWITT) *SM*

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

AGENDA: 9/23/97 - REGULAR AGENDA - RULE ADOPTION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

RULE STATUS: ADOPTION MAY BE DEFERRED

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

CASE BACKGROUND

Tampa Electric Company (TECO), Florida Public Utilities Company (FPUC), and Florida Power and Light Company (FPL) timely filed comments concerning the proposed amendments to Rule 25-17.015, Florida Administrative Code, which were published in the Florida Administrative Weekly on August 1, 1997. Staff is recommending that changes be made to Rule 25-17.015 based on the comments as discussed below.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission adopt amendments to Rule 25-17.015, F.A.C., Energy Conservation Cost Recovery, with changes?

RECOMMENDATION: Yes, the rule should be adopted with the attached redlined changes based on timely filed comments.

STAFF ANALYSIS: Staff recommends the Commission adopt the changes suggested by FPUC and TECO, as discussed below. Staff, however, does not recommend adopting the changes suggested by FPL.

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Subsection (2) - Accounting for Program Specific Revenues

Subsection (2) requires utilities to track revenues derived from each program in a separate subaccount. When the rule amendments were proposed, staff overzealously recommended striking the qualifier that only customer specific revenues must be tracked. Based on comments filed by FPUC, staff recommends this qualifier be added back to the rule by adopting the redlined changes to subsection (2).

Subsection (4) - Cost Recovery Prior to Program Approval

The intent of subsection (4) is to require utilities to obtain prior approval before seeking 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. TECO suggested changes to this subsection to make it clearer. Staff agrees that TECO's suggested language is, for the most part, easier to understand. However, staff disagrees that developmental costs should also be recovered through the clause as recommended by TECO. Staff recommends that the attached redlined changes, based on TECO's comments, be adopted.

Subsection (5) - Cost Recovery and Filing Requirements Associated with Advertising Expenses

The proposed rule amendments preclude cost recovery of advertising expenses for advertisements that "mention a competing energy source." FPL takes issue with this prohibition arguing it is "too prescriptive and will result in more rather than less customer confusion." (FPL comments at 1)

This prohibition implements Section 366.82(5), Florida Statutes, which states in pertinent part:

Reasonable and prudent unreimbursed costs projected to be incurred, or any portion of such costs, may be added to the rates which would otherwise be charged by a utility upon approval by the commission, provided that 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.

According to FPL, the proposed rule goes beyond Section 366.82(5) and, thus, revises or extends the statute instead of implementing it. FPL argues that only two types of advertisements are

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prohibited by the statute -- image-enhancing advertisements and advertisements not directly related to an approved conservation program.

Perhaps staff failed to state the obvious in its recommendation to propose amendments to the rule. Advertisements that tout one energy source over another are image enhancing. Electric utility advertisements that state electricity is better than natural gas, and vice versa, are clearly image enhancing.

Furthermore, contrary to FPL's assertions, under the express terms of the statute, the Commission may disallow cost recovery for advertisements other than those that are image-enhancing or that are not directly related to an approved conservation program. The Legislature clearly intended that the costs of the two types of advertisements mentioned above may not be recovered through the conservation clause. However, in doing so, the Legislature did not remove the Commission's discretion to find other types of advertisements to be unreasonable or imprudent and, therefore, to disallow costs associated with them. Florida Waterworks Ass'n v. Florida Pub. Serv. Comm'n, 473 So. 2d 237, 240 (Fla. 1st DCA 1985) (citation omitted) (The Commission has wide discretion to interpret the statutes which it administers "and will not be overturned on appeal unless clearly erroneous.").

As staff recommended when the rule amendments were proposed, the proposed version makes clear the Commission's implementation of the Legislative mandate in Section 366.82(5), Florida Statutes.

FPL also disputes staff's argument that the Florida Energy Efficiency and Conservation Act (FEECA) did not intend for conservation programs to be used as a competitive tool. According to FPL, staff "is reading into a neutral statute an intent which is not evidenced anywhere in the language or the history of the Act." (FPL Comments at 3) Staff maintains that utilities should not be allowed to use FEECA to gain a competitive edge over rivals, especially since competition does not ensure conservation. Again, FPL's arguments overlook the Commission's wide discretion in interpreting the statutes it administers. Florida Waterworks, 473 So. 2d at 240.

In addition, FPL argues that in Order No. PSC-97-0927-FOF-EI, closing Docket No. 970046-EI - In re: Investigation into the appropriate cost recovery of marginally cost-effective electric utility sponsored demand-side management programs, issued August 4, 1997, the Commission indicated "it may consider this very issue [of fuel neutrality] in upcoming conservation goals proceedings." (FPL

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Comments at 3) (Emphasis added) Therefore, FPL does not believe it is appropriate to prohibit cost recovery now, especially since it denies the "reality that electric and gas competition will continue through DSM even if cost recovery of advertising is improperly prohibited." (FPL Comments at 4) In Order No. PSC-97-0927-FOF-EI, the Commission did mention that there is disagreement over whether the competitive use of DSM programs should be funded through the energy conservation cost recovery (ECCR) clause. (Order No. PSC-97-0927-FOF-EI at 2) The Commission also remarked that "[m]any issues relating to the use of DSM for competitive purposes can be considered in the goal setting proceedings." *Id.* at 2-3. However, the Commission never stated that it would ultimately rule on the appropriateness of cost recovery of competitive DSM programs under FEECA through the ECCR clause in the next conservation goals setting docket. Moreover, the Commission stated that goals may be set as late as October 1999. *Id.* at 2. If the Commission later finds that cost recovery should be permitted for advertisements that mention a competing energy source, Rule 25-17.015 can be amended. The policy espoused by the proposed rule, however, is appropriate under the Commission's current reading of FEECA.

FPL also disputes staff's rationale that advertisements which mention a competing energy source may cause customer confusion. When electric utilities state that electricity is better than natural gas, and natural gas utilities state that natural gas is better than electricity, customers often become confused. FPL asserts that it is better to risk customer confusion than to leave customers in the dark about viable alternatives which the utilities are obligated to promote. Staff still recommends that the Commission should not advance a policy that may cause customer confusion.

In addition, FPL argues that if it develops gas measures in the future, the utility would not be able to promote them under the proposed version of the rule. Staff disagrees. If FPL offers a Commission-approved gas program, the rule would not prohibit the utility from recovering advertisement expenses associated with the measure since it would be FPL that is offering the gas program.

Finally, the proposed rule also requires utilities to file "all data sources and calculations used to substantiate [energy savings] claims." FPL also takes issue with this requirement. According to FPL, "this filing requirement is unnecessary and wasteful and commits to the rule a matter best left for discovery by interested parties." (FPL comments at 1) FPL also believes this filing requirement will have a chilling effect on advertising. Staff maintains that this information will allow staff and other interested persons to verify advertising claims. Furthermore, this

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requirement will ensure accountability and truth in utility advertising. In addition, the results of the filing requirement may very well demonstrate the need for additional discovery.

ISSUE 2: Should the Commission file the rule for adoption with changes and close the docket?

RECOMMENDATION: Yes. A notice of change should be published and the changed rule should then be filed for adoption with the Secretary of State and the docket be closed.

STAFF ANALYSIS: The docket may be closed after the notice of change is published and the rule is filed for adoption.

Attachments:

Proposed rule with redlined recommended changes

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), F.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, and actual total ECCR
19 revenues for the most recent 12-month historical period from April
20 1 through March 31 that ends prior to the annual ECCR proceedings.
21 As part of this filing, the utility shall include a summary
22 comparison of the actual total costs and revenues reported to the
23 estimated total costs and revenues previously reported for the same
24 period covered by the filing in paragraph (1)(b). The filing shall
25 also include the final over- or under-recovery of total

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1 | conservation costs for the final true-up period.

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

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

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

17 | (e) Within the 90 days that immediately follow the first six
18 | months of the reporting period in paragraph (1)(a), each utility
19 | shall report the actual results for that period on Form PSC/EAG/44
20 | (X/97), entitled, Energy Conservation Cost Recovery Annual Short
21 | Form, which is incorporated by reference in this rule, and may be
22 | obtained from the Director, Division of Electric and Gas, Florida
23 | Public Service Commission.

24 | (2) Each utility shall establish separate accounts or
25 | subaccounts for each conservation program for purposes of recording

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1 | the costs incurred for that program, ~~together with subaccounts~~
2 | ~~under the appropriate accounts contained in the Uniform System of~~
3 | ~~Accounts prescribed by the Commission which will ultimately be~~
4 | charged. Each utility shall also establish separate subaccounts
5 | ~~appropriate under the account for Other Electric Revenues or Other~~
6 | ~~Gas Revenues, for any revenues derived from specific customer~~
7 | ~~charges associated with specific programs each specific customer~~
8 | ~~charges in any program and any costs recovered.~~

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

18 | (4) New programs or program modifications must be approved
19 | prior to a utility seeking cost recovery. Specifically, any New
20 | incentives or rebates associated with new or modified programs may
21 | not be recovered if paid before ~~their~~ approval as part of a new
22 | ~~program or program modification.~~ However, if a utility incurs
23 | ~~prudent other program~~ implementation costs before a new program or
24 | ~~modification has been approved by the Commission, a utility may~~
25 | ~~seek recovery of these expenditures associated with new programs or~~

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

11 (5) Advertising expense recovered through energy conservation
12 cost recovery shall be ~~When a utility seeks to recover advertising~~
13 ~~expenses through Energy Conservation Cost Recovery,~~ then the
14 expense must be directly related to an approved conservation
15 program, shall not mention a competing energy source, and shall not
16 be company image enhancing. When the advertisement makes a
17 specific claim of potential energy savings or states appliance
18 efficiency ratings or savings, all data sources and calculations
19 used to substantiate these claims must be included in the filing
20 required by paragraph (1)(a). In determining whether an
21 advertisement is "directly related to an approved conservation
22 program", the Commission shall consider, but is not limited to,
23 whether the advertisement or advertising campaign:

24 (a) Identifies a specific problem; ~~and~~

25 (b) States how to correct the problem; ~~and~~

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

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

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

14 Law Implemented: 366.04(2)(f), 366.06(1) ~~366.095~~, 366.82(3) & (5),
15 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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