

ORIGINAL

DOCKET NO. 961378-EG

CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

FILED
OCT 27 1966
DEPT. OF STATE
TALLAHASSEE, FLORIDA

I do hereby certify:

(1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

(2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

(a) Are filed not more than 90 days after the notice;

or

(b) Are filed not more than 90 days after the notice

ACK _____ not including days an administrative determination was pending;

AFA _____

APP _____ or

CAF _____

(c) Are filed more than 90 days after the notice, but

CMU _____

CTR _____ not less than 21 days from the date of publication of the notice

EAG _____ of change; or

LEG _____

LIN _____

OPC _____

RCH _____

SEC 1 _____

WAS _____

OTH _____

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FPSC-RECORDS/REPORTING

✓ (d) Are filed more than 90 days after the notice, but within 21 days after the adjournment of the final public hearing on the rule; or

✓ (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

✓ (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

✓ (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

25-17.015

Under the provision of subparagraph 120.54(3)(e)6., F.S.,
the rules take effect 20 days from the date filed with the
Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)

Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records & Reporting

Number of Pages Certified

(S E A L)

MAH

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. Each utility seeking cost recovery shall
7 file the following at the times directed by the Commission:

8 (a) An annual final true-up filing showing the actual common
9 costs, individual program costs and revenues, and actual total ECCR
10 revenues for the most recent 12-month historical period from April
11 1 through March 31 that ends prior to the annual ECCR proceedings.
12 As part of this filing, the utility shall include a summary
13 comparison of the actual total costs and revenues reported to the
14 estimated total costs and revenues previously reported for the same
15 period covered by the filing in paragraph (1)(b). The filing shall
16 also include the final over- or under-recovery of total
17 conservation costs for the final true-up period.

18 (b) An annual estimated/actual true-up filing showing eight
19 months actual and four months projected common costs, individual
20 program costs, and any revenues collected. Actual costs and
21 revenues should begin April 1 immediately following the period
22 described in paragraph (1)(a). The filing shall also include the
23 estimated/actual over- or under-recovery of total conservation
24 costs for the estimated/actual true-up period.

25 (c) An annual projection filing showing 12 months projected

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1 | common costs and program costs for the period beginning April 1
2 | following the annual hearing.

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

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

15 | (2) Each utility shall establish separate accounts or
16 | subaccounts for each conservation program for purposes of recording
17 | the costs incurred for that program. Each utility shall also
18 | establish separate subaccounts for any revenues derived from
19 | specific customer charges associated with specific programs.

20 | (3) A complete list of all account and subaccount numbers
21 | used for conservation cost recovery shall accompany each filing in
22 | paragraph (1)(a).

23 | (4) New programs or program modifications must be approved
24 | prior to a utility seeking cost recovery. Specifically, any
25 | incentives or rebates associated with new or modified programs may

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1 | not be recovered if paid before approval. However, if a utility
2 | incurs prudent implementation costs before a new program or
3 | modification has been approved by the Commission, a utility may
4 | seek recovery of these expenditures.

5 | (5) Advertising expense recovered through energy conservation
6 | cost recovery shall be directly related to an approved conservation
7 | program, shall not mention a competing energy source, and shall not
8 | be company image enhancing. When the advertisement makes a
9 | specific claim of potential energy savings or states appliance
10 | efficiency ratings or savings, all data sources and calculations
11 | used to substantiate these claims must be included in the filing
12 | required by paragraph (1)(a). In determining whether an
13 | advertisement is "directly related to an approved conservation
14 | program", the Commission shall consider, but is not limited to,
15 | whether the advertisement or advertising campaign:

16 | (a) Identifies a specific problem;

17 | (b) States how to correct the problem; and

18 | (c) Provides direction concerning how to obtain help to
19 | alleviate the problem.

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

21 | Law Implemented: 366.04(2)(f), 366.06(1), 366.82(3) & (5), F.S.

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

24 |

25 |

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SUMMARY OF RULE

Subsection (1): This subsection codifies the decision to conduct energy conservation cost recovery (ECCR) proceedings annually. In addition, the proposed amendments change the time line for filing ECCR pleadings.

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): This paragraph requires utilities to file the "Energy Conservation Cost Recovery Annual Short Form" that is incorporated into the rule by reference.

Subsection (2): This subsection clarifies ECCR accounting requirements.

Subsection (3): This subsection requires utilities to include in their annual true-up filings a list of all conservation cost recovery account and sub-account numbers.

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Subsection (4): This subsection makes it clear that prior approval is required before a utility can seek cost recovery for new or modified conservation programs. Although utilities cannot recover rates or incentives paid out prior to program approval, utilities may recover prudent program implementation costs incurred prior to program approval.

Subsection (5): This subsection prohibits cost recovery for advertisements that mention a competing energy source and requires utilities to file data sources and calculations to substantiate any claim of energy savings stated in advertisements.

Subsection (6): This subsection has been repealed.

SUMMARY OF HEARINGS ON THE RULE

At its regularly scheduled September 23, 1997, agenda conference, the Commission voted to make changes to the rule based on comments timely filed by Florida Public Utilities Corp. and Tampa Electric Co.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

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 utility's authorized rates "[r]easonable and prudent unreimbursed [conservation] costs projected to be incurred, or any portion of such costs"

The primary purpose behind the proposed amendments to Rule 25-17.015 is to codify the decision in Order No. PSC-93-0709-FOF-EG 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 proposed amendments change the filing times for Energy Conservation Cost Recovery (ECCR) filings. The proposed time line will give utilities more time to prepare the filings and staff more time to review them. Under this change, the Commission will 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 will be used to establish the cost recovery factors for the 12-month period following each ECCR proceeding. In addition, the change will make it easier to compare data between the three periods under consideration to data for the same periods in prior proceedings. The hearing date will not move from the end of the first quarter of each year and the effective dates of resulting cost recovery factors will not change. What will change is the relationship between the original projection period and both the estimated/actual true-up and final true-up periods.

To comply with the semi-annual reporting requirement in Section 364.82(5), Florida Statutes, paragraph (1)(e) was proposed to require utilities to file the "Energy Conservation

Cost Recovery Annual Short Form" that is incorporated into the rule by reference.

Amendments were also proposed to clarify the accounting requirements mandated by subsection (2).

In addition, amendments were proposed to subsection (3) 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, will make it easier for staff auditors to perform their function.

Amendments were also proposed to subsection (4) 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.

Pursuant to Section 366.82(5), the Commission may allow utilities to recover reasonable and prudent unreimbursed conservation costs. 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 Commission's implementation of this statutory mandate is clear, an amendment was proposed to subsection (5) to prohibit

cost recovery for advertisements that mention a competing energy source.

This amendment is supported by the Commission's Division of Research and Regulatory Review's "Review of Commercial/Industrial Demand-Side Management Programs of Six Florida Utilities" published in September of 1996. The report concluded that certain Florida Power and Light advertisements that compared the use of electricity to natural gas

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.

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 applicant efficiencies, the best approach is simply to deny cost recovery for advertisements that mention competing energy sources. Id.

In addition, an amendment has been proposed to subsection (5) to require utilities to file data sources and calculations to substantiate any claims of energy savings stated in advertisements. The data and calculations will allow staff and other interested persons to verify advertising claims.

These proposed amendments concerning utility conservation advertising should ensure accountability and truth in utility advertising.

Finally, the Commission proposed repealing subsection (6). The decision to disallow costs should be made on a case-by-case basis.

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 Act's rulemaking requirements, the above amendments were proposed so that the Commission's ECCR procedures will be readily available to all interested persons.