



Public Service Commission

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RECORDS AND REPORTING

DATE: December 9, 1999

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

FROM: DIVISION OF ELECTRIC AND GAS (FUTRELL) *M7 JB*
DIVISION OF LEGAL SERVICES (ELIAS) *RUE* *JOS*

RE: DOCKET NO. 991493-EG - PETITION FOR WAIVER OF RULE 25-17.003(3)(A) AND (4)(A), F.A.C., WHICH REQUIRES BUILDING ENERGY-EFFICIENCY RATING SYSTEM AUDITS, BY FLORIDA PUBLIC UTILITIES COMPANY.

AGENDA: 12/21/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 90 DAY PERIOD EXPIRES 01/03/00

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\991493.RCM

CASE BACKGROUND

Florida Public Utilities Company (FPUC) filed a petition on October 4, 1999, for a waiver, pursuant to Section 120.542, Florida Statutes, of Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, requiring electric utilities to offer a Building Energy-Efficiency Rating System (BERS) Audit to residential customers. Notice of FPUC's Petition was published in the Florida Administrative Weekly on November 5, 1999. As of this date, no comments have been received.

Rule 25-17.003(3)(a), Florida Administrative Code provides that:

All utilities are required to offer eligible residential customers BERS Audits which comply with subsections (12), (13), and (14) below.

Rule 25-17.003(4)(a), Florida Administrative Code provides that:

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Every public utility shall charge an eligible customer for a BERS Audit. The amount of this charge, which shall reflect actual cost, shall first be filed with the Commission as part of the utility's tariff.

In Rule 25-17.003(1), Florida Administrative Code, utility is defined for the purposes of Rule 25-17.003, Florida Administrative Code, as:

. . . every utility that falls under the definition of "utility" in Section 366.82(1), Florida Statutes.

This statute, the Florida Energy Efficiency and Conservation Act, is applicable to Florida Power and Light Company, Florida Power Corporation, Gulf Power Company, Tampa Electric Company, the Jacksonville Electric Authority, and the Orlando Utilities Commission as well as Florida Public Utilities Company.

DISCUSSION OF ISSUES

ISSUE 1: Should Florida Public Utilities Company's Petition for Waiver of Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, be granted?

RECOMMENDATION: Yes. FPUC offers free walk through energy audits, therefore, the purpose of the underlying statute is being met by FPUC. Application of Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, would create a substantial hardship on FPUC.

STAFF ANALYSIS: Section 120.542(2), Florida Statutes, provides a two pronged test for determining when waivers and variances from agency rules shall be granted:

. . . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. (Emphasis added).

I. THE PURPOSES OF THE UNDERLYING STATUTE

Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, implement Section 366.82(5), Florida Statutes, which reads in pertinent part:

(5) The commission shall require each utility to offer, or to contract to offer, energy audits to its residential customers. This requirement need not be uniform, but may be based on such factors as level of usage, geographic location, or any other reasonable criterion, so long as all eligible customers are notified. The commission may extend this requirement to some or all commercial customers. The commission shall set the charge for audits by rule, not to exceed the actual cost, and may describe by rule the general form and content of an audit.

The statute requires energy audits to be offered to residential customers, but does not specify the type or complexity of the audit. FPUC offers its customers free walk through energy audits, commercial audits, and low-income residential audits.

In accordance with Section 120.542(2), Florida Statutes, FPUC has adequately demonstrated that the purpose of the underlying statute, Section 366.82(5), Florida Statutes, will be achieved by

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granting this waiver. The underlying purpose of the statute is to require utilities to offer energy audits to residential customers.

II. SUBSTANTIAL HARDSHIP

The BERS audits called for in these Rules complement Section 553.990-5, Florida Statutes, which established a statewide uniform system for rating the energy efficiency of a building. FPUC contends that to comply with the rules at issue, personnel would have to be trained to conduct the BERS audit. Special equipment and software would also have to be purchased. Total costs for training, equipment, and software is estimated at \$16,000. To date FPUC has not received a customer request for a BERS audit. FPUC believes the rules require the dedication of personnel and financial resources which exceed the benefits derived from the rules, and impose a substantial hardship on FPUC.

FPUC, a non-generating utility, is much smaller than the other utilities subject to the FEECA statutes in terms of customers, and employees. Its Marianna and Fernandina service territories, also smaller than the other FEECA utilities, are separated by approximately 250 miles. The start-up costs to comply with this rule (\$16,000) would be approximately five percent of total estimated 1999 conservation expenditures (\$288,876).

Staff also believes that FPUC has adequately demonstrated that complying with the BERS audit requirements of Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, would be a substantial hardship upon it within the meaning of Section 120.542, Florida Statutes. The \$16,000 required for special training, and to purchase equipment and software constitutes an "economic hardship" within the meaning of Section 120.542, Florida Statutes.

Accordingly, because FPUC has met the statutory requirements for the granting of a waiver, Staff recommends that the Company's request should be granted.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if no protest is filed within 21 days of the issuance of the order.

STAFF ANALYSIS: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.