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State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: April 6, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (DuVal) *MD CM*
Division of Economics (Coston) *JH S*

RE: Docket No. 20180002-EG – Energy conservation cost recovery clause.

AGENDA: 04/20/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: 06/07/18 (Petition Deemed Approved if Not Granted or Denied within 90 Days of Receipt pursuant to Section 120.542(8), Florida Statutes)

SPECIAL INSTRUCTIONS: None

Case Background

Pursuant to Rule 25-17.015(1), Florida Administrative Code (F.A.C.), the Florida Public Service Commission (Commission) sets an annual evidentiary hearing in its continuing Energy Conservation Cost Recovery (ECCR) docket pursuant to Sections 366.80-366.83, Florida Statutes (F.S.), to allow public utilities to seek recovery of costs for energy conservation programs. The 2018 evidentiary hearing is set for November 6-8, 2018.

On March 9, 2018, Florida Power & Light Company (FPL), Duke Energy Florida, LLC, (DEF), Tampa Electric Company (TECO), and Gulf Power Company (Gulf) filed a Joint Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., (Joint Petition). On March 12, 2018, Florida Public Utilities Company (FPUC) filed a Notice of Joinder of the Joint Petition.

Docket No. 20180002-EG
Date: April 6, 2018

Pursuant to Section 120.542(6), F.S., notice of the Joint Petition was published in the Florida Administrative Register on March 14, 2018. No comments were received, and the time for filing comments expired on March 28, 2018. The Commission granted FPL, DEF, TECO, Gulf, and FPUC's prior request for a two-year waiver of Rule 25-17.015(1)(b), F.A.C., in the 2016 ECCR docket.¹

This recommendation addresses the Joint Petition. The Commission has jurisdiction in this matter pursuant to Sections 120.542, 366.04, 366.05, and 366.06, F.S.

¹ Order No. PSC-16-0493-PAA-EG, issued October 27, 2016, in Docket No. 20160002-EG, *In re: Energy conservation cost recovery clause*.

Discussion of Issues

Issue 1: Should the Commission grant Florida Power & Light Company, Duke Energy Florida, LLC, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company's Joint Petition for waiver of Rule 25-17.015(1)(b), Florida Administrative Code?

Recommendation: Yes. Staff recommends that the Commission grant the Joint Petition for waiver of Rule 25-17.015(1)(b), F.A.C., requested by Florida Power & Light Company, Duke Energy Florida, LLC, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company to allow the IOUs to provide annual estimated/actual true-up filings showing six months of actual data and six months of projected data for a period of two years to cover the August 2018 filings and the August 2019 filings. (DuVal, Coston)

Staff Analysis:

Petition

As stated, FPL, DEF, TECO, Gulf, and FPUC, all of the investor-owned electric utilities (IOUs) in Florida, requested a rule waiver of the requirements of Rule 25-17.015(1)(b), F.A.C. The rule requires the IOUs to make actual and estimated filings based upon eight months of actual and four months of projected common costs, individual program costs, and any collected revenues, beginning on January 1, 2018 and ending on December 31, 2018. The IOUs stated that the due date for the estimated/actual true-up filing of August 10, 2018, does not allow the companies to prepare their estimated/actual filings based on eight months of actual and four months of projected data because the filings are due before the expiration of the required eight month period. The IOUs indicated that they can prepare their filings on the basis of six months of actual and six months of projected data. The IOUs requested a waiver of Rule 25-17.015(1)(b), F.A.C., and permission to submit their filings based on six months of actual data and six months of projected data.

The IOUs asserted that filings based on six months of actual and six months of projected data are a reasonable means of achieving the purpose of the statutes implemented by Rule 25-17.015(1)(b), F.A.C. The IOUs contended that the impossibility of submitting their filings based on eight months of actual data and four months of projected data by the due date established in the Order Establishing Procedure, Order No. PSC-2018-0094-PCO-EG, issued February 20, 2018, creates a substantial hardship for each of them. The IOUs further requested that the waiver be granted for a period of two years to cover the August 2018 filings and the August 2019 filings.

Facts

Rule 25-17.015, F.A.C., requires the Commission to conduct annual ECCR proceedings in November of each year. Rule 25-17.015(1)(b), F.A.C., requires that the utilities submit actual and estimated filings, based upon eight months of actual data and four months of projected data, to be used in the annual ECCR proceedings.

The Rule requires that actual costs and revenues should be calculated beginning January 1st of the year of the annual ECCR proceeding in which the IOU is seeking cost recovery. As such, the

typical actual true-up filing should cover the period of January 1st – August 31st, and the estimated true-up filing should cover the period of September 1st – December 31st.

Requirements of Section 120.542, F.S.

Section 120.542(2), F.S., authorizes the Commission to grant variances or waivers from agency rules when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and application of the rule would cause the person substantial hardship. As defined by Section 120.542(2), F.S., “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship.

Purpose of the Underlying Statutes

Sections 366.80-366.83 and 403.519, F.S., are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). The purpose of FEECA is to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems. Furthermore, FEECA requires the Commission to determine whether utilities’ energy conservation programs shall be approved for cost recovery.

In the Joint Petition, the IOUs asked for a waiver of the rule’s requirement for submission of eight months of actual and four months of projected data. Instead, the IOUs offered to provide actual and estimated true-up filings that consist of six months of actual data, covering the period of January 1, 2018 – June 30, 2018, and six months of projected data, covering the period of July 1, 2018 – December 31, 2018, as well as the corresponding periods for the following year’s ECCR docket. Therefore, the IOUs’ ECCR filings will continue to provide actual and estimated true-up information. The IOUs assert that filings based on six months of actual data and six months of projected data are a reasonable means of achieving the purpose of Sections 366.80-366.83, F.S.

Staff believes that six months of actual data and six months of projected data will allow the Commission to determine the IOUs’ appropriate recovery of costs for energy conservation programs during the annual ECCR proceeding in compliance with the purpose of FEECA. Furthermore, pursuant to Rule 25-17.015(1)(a), F.A.C., the actual common costs, individual program costs, and revenues for the period of January 1st – December 31st, will be submitted in the IOUs’ annual true-up filing in the next year’s ECCR proceeding; this information provides the Commission with the ability to true-up the six months of actual and six months of projected data. Therefore, staff recommends that the IOUs have demonstrated that the purpose of the underlying statutes will be achieved by other means by the individual IOUs.

Substantial Hardship

As stated, pursuant to Section 120.542(2), F.S., the petition must demonstrate that application of the rule would create a substantial hardship. Further, Section 120.542(2), F.S., defines substantial hardship as demonstrated economic, technological, legal, or other type of hardship to the person requesting the waiver.

In the Joint Petition, the IOUs assert that application of the rule would create a substantial hardship to them due to the impossibility of submitting their filings on the basis of eight months of actual data and four months of projected data as required by the rule and by the due date set by the Order Establishing Procedure.

Staff believes that the application of Rule 25-17.015(1)(b), F.A.C., in the instant docket would create a substantial hardship for the IOUs based on the unavailability of the financial information for the typical coverage periods for actual data to be gathered between January 1st – August 31st and estimated data for September 1st – December 31st, by August 10, 2018. Therefore, staff recommends that the IOUs have demonstrated that application of the rule would create a substantial hardship under the current timeline as set forth in the current hearing schedule.

Conclusion

Section 120.542, F.S., requires companies to demonstrate that the purpose of the underlying statute will be or has been achieved by other means by the companies and that application of the rule would create a substantial hardship. Staff recommends that the Commission find that the IOUs have demonstrated that the purpose of the underlying statutes will be achieved by filing six months of actual data and six months of projected data. Staff further recommends that the IOUs have demonstrated that application of Rule 25-17.015(1)(b), F.A.C., will create a substantial hardship to the IOUs. Therefore, staff recommends that the Commission grant the IOUs' Joint Petition for waiver of Rule 25-17.015(1)(b), F.A.C., to allow the IOUs to provide annual estimated/actual true-up filings showing six months of actual data and six months of projected data for a period of two years to cover the August 2018 filings and the August 2019 filings.

Staff has initiated rulemaking to amend Rule 25-17.015(1)(b), F.A.C. On March 20, 2018, a Notice of Development of Rulemaking to amend Rule 25-17.015, F.A.C., was published in the Florida Administrative Register. The stated purpose and effect of the rule development is to streamline the utilities' filing requirements in the rule.

Issue 2: Should this docket be closed?

Recommendation: No. 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 not be closed upon the issuance of a consummating order. The Energy Conservation Cost Recovery docket is ongoing and this docket should remain open for further Commission action. (DuVal)

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 not be closed upon the issuance of a consummating order. The Energy Conservation Cost Recovery docket is ongoing and this docket should remain open for further Commission action.