

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** July 26, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Dziechciarz) *PD*  
Division of Economics (Coston) *WSB* *TS* *JNH*

**RE:** Docket No. 20180004-GU – Natural gas conservation cost recovery.

**AGENDA:** 08/07/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** 09/26/18 (Petition Deemed Approved if Not Granted or Denied within 90 Days of Receipt pursuant to Section 120.542(8), Florida Statutes)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Rule 25-17.015(1), Florida Administrative Code (F.A.C.), directs the Florida Public Service Commission (Commission) to set 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. An evidentiary hearing is set for November 5-7, 2018.

On June 28, 2018, Peoples Gas System (Peoples) filed a Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., (Petition). Rule 25-17.015(1)(b), F.A.C., requires utilities to submit actual and estimated filings based upon eight months of actual costs and four months of projected costs. A Notice of Joinder to the Petition was filed July 2, 2018, by Florida Public Utilities Company

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(FPUC),<sup>1</sup> Florida Division of Chesapeake Utilities Corporation (Chesapeake), Florida Public Utilities Company-Fort Meade (Ft. Meade), and Florida Public Utilities Company-Indiantown Division (Indiantown). A Notice of Joinder to the Petition was also filed on July 3, 2018, by Florida City Gas (FCG); on July 5, 2018, by St. Joe Natural Gas Company (St. Joe); and on July 11, 2018, by Sebring Gas System, Inc. (Sebring).

Pursuant to Section 120.542(6), F.S., notice of the Petition was published in the Florida Administrative Register on July 13, 2018. To date, no comments were received. The time for filing comments expires on July 27, 2018. By Order No. PSC-2018-0244-PAA-EG, issued on May 10, 2018, in Docket No. 20180002-EG, the Commission granted a similar Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., to Florida Power & Light Company, Duke Energy Florida, LLC, Tampa Electric Company, Gulf Power Company, and FPUC.<sup>2</sup>

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

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<sup>1</sup> FPUC-Gas, Company Code GU603.

<sup>2</sup> FPUC-Electric, Company Code EI803.

## Discussion of Issues

**Issue 1:** Should the Commission grant Peoples Gas System, Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company-Fort Meade, Florida Public Utilities Company-Indiantown Division, Florida City Gas, St. Joe Natural Gas Company, and Sebring Gas System's Petition for waiver of Rule 25-17.015(1)(b), Florida Administrative Code?

**Recommendation:** Yes. Staff recommends that the Commission grant the Petition for waiver of Rule 25-17.015(1)(b), F.A.C., requested by Peoples Gas System, Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company-Fort Meade, Florida Public Utilities Company-Indiantown Division, Florida City Gas, St. Joe Natural Gas Company, and Sebring Gas System, Inc. The waiver will allow the utilities to provide annual estimated/actual true-up filings showing six months actual data and six months of projected data for a period of two years to cover the August 2018 and August 2019 filings. (Dziechciarz, Coston)

### **Staff Analysis:**

#### **Petition**

As stated, Peoples, FPUC, Chesapeake, Ft. Meade, Indiantown, FGC, St. Joe, and Sebring requested a rule waiver of the requirements of Rule 25-17.015(1)(b), F.A.C. The rule requires the utilities 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 utilities 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 utilities indicated that they can prepare their filings on the basis of six months of actual and six months of projected data. The utilities 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 utilities 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 utilities contended that the impossibility of submitting their filings based on eight months of actual data and four months of projected data by the August 10, 2018 due date established in the Order Establishing Procedure, Order No. PSC-2018-0115-PCO-GU, issued March 1, 2018, creates a substantial hardship for each of them. The utilities 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 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 utility 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 Petition, the utilities asked for a waiver of the rule’s requirement for submission of eight months of actual and four months of projected data. Instead, the utilities 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 utilities’ ECCR filings will continue to provide actual and estimated true-up information. The utilities 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 utilities’ 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 utilities’ 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 utilities have demonstrated that the purpose of the underlying statutes will be achieved through other means by the individual utilities.

### **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 Petition, the utilities 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

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data and four months of projected data as required by the rule and by the August 10, 2018 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 utilities 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 utilities 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 utilities 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 utilities have demonstrated that application of Rule 25-17.015(1)(b), F.A.C., will create a substantial hardship to the utilities. Therefore, staff recommends that the Commission grant the utilities' Petition for Waiver of Rule 25-17.015(1)(b), F.A.C., to allow the utilities 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. The proposed rule revision seeks to make the ECCR filing dates less prescriptive, thereby improving the scheduling of the ECCR filings and subsequent hearing.

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 ECCR docket is ongoing and this docket should remain open for further Commission action. (Dziechciarz)

**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 ECCR docket is ongoing and this docket should remain open for further Commission action.