



Public Service Commission

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DATE: AUGUST 6, 1998

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

FROM: DIVISION OF ELECTRIC AND GAS (DUDLEY) *YD RLI JB*
DIVISION OF LEGAL SERVICES (KEATING) *WAC RVE*

RE: DOCKET NO. 980740-EI - PETITION BY FLORIDA POWER & LIGHT COMPANY FOR WAIVER OF RULE 25-17.015(1), F.A.C., WHICH WOULD REQUIRE FILING OF ENERGY CONSERVATION COST RECOVERY (ECCR) FOR PERIOD JANUARY 1, 1999 THROUGH DECEMBER 31, 1999, CONSISTENT WITH FILINGS OF OTHER ADJUSTMENT CLAUSES.

AGENDA: 08/18/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: SEPTEMBER 9, 1998 - RULE WAIVER - COMMISSION MUST GRANT OR DENY WITHIN 90 DAYS OF RECEIPT OF PETITION

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\980740.RCM

CASE BACKGROUND

By Order No. PSC-98-0691-FOF-PU, issued May 19, 1998, the Commission ordered that factors for all components of all cost recovery clauses for investor-owned electric and natural gas utilities should be determined on a calendar year basis at one annual hearing. The Commission ordered that a hearing be held in November 1998 to determine factors for the fuel clause, purchased gas adjustment true-up, and environmental cost recovery clause. The Commission further ordered the initiation of rulemaking to amend Rule 25-17.015, Florida Administrative Code, in order to allow factors for the energy conservation cost recovery clause (ECCR Clause) to be determined along with the other cost recovery clauses beginning at a November 1999 hearing. In the order, the

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Commission approved schedules detailing the manner in which the transition for each cost recovery clause was to be implemented.

On June 11, 1998, Florida Power & Light Company (FPL) filed a petition for waiver of Rule 25-17.015(1), Florida Administrative Code. FPL seeks this waiver so that it may file for approval of a calendar-year ECCR factor at the November 1998 hearing rather than the November 1999 hearing contemplated by the Commission's order.

On July 21, 1998, the Commission voted to modify its order to amend the transition schedule for the ECCR Clause. That modification has only a minimal effect on FPL's petition, as discussed below.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Florida Power & Light Company's petition for waiver of Rule 25-17.015(1), Florida Administrative Code?

RECOMMENDATION: No. The Commission should not grant Florida Power & Light Company's petition for waiver of Rule 25-17.015(1), Florida Administrative Code. Florida Power & Light has not demonstrated that application of the rule will result in a substantial hardship to the utility.

STAFF ANALYSIS: In its petition, FPL seeks a waiver of the hearing and filing timetable set forth in Rule 25-17.015(1), Florida Administrative Code. FPL seeks this waiver so that it may file for approval of a calendar-year ECCR factor at the November 1998 hearing rather than the November 1999 hearing contemplated by the Commission's order. FPL has proposed an alternative hearing and filing timetable for itself. Specifically, FPL's petition requests the following:

1. Waiver of the requirement in Rule 25-17.015(1), Florida Administrative Code, that ECCR proceedings be conducted "during the first quarter of each calendar year." FPL seeks permission to have an ECCR hearing in November 1998 rather than February 1999.

2. Waiver of the requirement in Rule 25-17.015(1)(a), Florida Administrative Code, that the annual final true-up filing be "for the most recent 12-month historical period from April 1 through March 31 that ends prior to the annual ECCR proceedings." For the February 1999 ECCR hearing, FPL is required to file its

final true-up data for the period April 1997 through March 1998. FPL seeks permission to use a final true-up period of October 1997 through March 1998 instead. (This request was made moot by the Commission's decision on July 21, 1998, to modify Order No. PSC-98-0691-FOF-PU to amend the ECCR transition schedule. The amended schedule provides that the parties shall use, at the February 1999 ECCR hearing, a final true-up period of October 1997 through March 1998.)

3. Waiver of the requirement in Rule 25-17.015(1)(b), Florida Administrative Code, that there be "an annual estimated/actual true-up filing showing eight months actual and four months projected" data for the period beginning April 1 immediately following the period in paragraph (1)(a) of the rule. For the February 1999 ECCR hearing, FPL is required to file its estimated/actual true-up data for the period April 1998 through March 1999. FPL seeks permission to use an actual/estimated true-up period of April 1998 through December 1998 instead.

4. Waiver of the requirement in Rule 25-17.015(1)(c), Florida Administrative Code, that the annual projection filing show data for a 12-month period beginning April 1 following the annual hearing. For the February 1999 ECCR hearing, FPL is required to file projected data for the period April 1999 through March 2000. FPL seeks permission to file projected data for the period January 1999 through December 1999 instead.

5. Waiver of the requirement in Rule 25-17.015(1)(d), Florida Administrative Code, that the annual ECCR petition set forth proposed ECCR factors for the 12-month period beginning April 1 following the annual hearing. For the February 1999 ECCR hearing, FPL is required to file a petition with proposed ECCR factors for the period April 1999 through March 2000. FPL seeks permission to file a petition with proposed ECCR factors for the period January 1999 through December 1999 instead.

6. Waiver of the requirement in Rule 25-17.015(1)(e), Florida Administrative Code, that FPL file a form PSC/EAG/44 for the first six months of the reporting period in paragraph (1)(a) of the rule.

Section 120.542, Florida Statutes, mandates threshold proofs and notice provisions for variances and waivers from agency rules. Subsection (2) of the statute states:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the

underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Section 120.542(2), Florida Statutes. FPL argues that application of the rule creates a substantial hardship on FPL. FPL further argues that the purpose of the underlying statute will be achieved if FPL's petition is granted.

Purpose of the Underlying Statute

In its petition, FPL points out that Rule 25-17.015(1), Florida Administrative Code, implements Section 366.82(5), Florida Statutes. FPL asserts that the purpose of this underlying statute is to provide an adjustment clause for the recovery of conservation costs. FPL contends that this purpose will continue to be achieved with the rule waiver sought by FPL.

Staff agrees that the purpose of the underlying statute would continue to be achieved with the requested rule waiver. FPL's rule waiver petition simply seeks a timetable for recovery different than the timetable provided in the rule, and staff is not opposed to the proposed timetable. However, for the reasons stated below, staff does not believe that application of the rule will create a substantial hardship for FPL.

Substantial Hardship

In its petition, FPL asserts that it faces substantial hardships due to the ECCR factor for 1999 not coinciding with the recovery period for its other adjustment clauses. FPL contends that the granting of a waiver pursuant to its petition is "necessary to avoid the substantial hardships the Commission has previously found associated with recovery periods differing for adjustment clauses." (Petition, p.7) FPL's argument appears to be based on the Commission's recent decision, memorialized in Order No. PSC-98-0691-FOF-PU, that factors for all components of all cost recovery clauses for investor-owned electric and natural gas

utilities should be determined on a calendar year basis at one annual hearing.

FPL asserts that, absent the waiver it requests, it will lose the advantages found by the Commission to be associated with annual cost recovery proceedings. First, FPL states that the number of hearing days per year for its adjustment clauses will not be reduced because it will be required to undertake two hearings in 1999. Thus, FPL argues, the Commission, the parties, and FPL will not be able to gain efficiencies contemplated by the Order by saving the time and expense associated with an additional hearing. Second, FPL states that it and its customers would face confusing adjustment clause rates associated with differing periods. Thus, FPL argues, the more certain and stable prices envisioned by the Order, as well as the customer's ability to more easily project electricity costs, will not be realized.

FPL further asserts that, absent the waiver it requests, it will lose the advantages found by the Commission to be associated with a calendar-year period for adjustment clauses. Those advantages included: an ECCR factor that coincides with most commercial and industrial customers' budget periods; easier analysis of cost information; simplification of Commission audits; and greater administrative efficiencies for the Commission and the parties.

Staff does not believe FPL has demonstrated that application of the rule to FPL creates a substantial hardship. Staff is compelled to note that, contrary to the suggestion in FPL's petition, the Commission did not make any finding in Order No. PSC-98-0691-FOF-PU that the parties to that docket, including FPL, faced substantial hardships due to differing recovery periods for the individual cost recovery clauses. The Commission did not find that the manner in which it previously conducted cost recovery proceedings created a substantial hardship on any party, nor did any party suggest the notion. The Commission simply found that there were benefits associated with making a transition to one annual hearing to set calendar year factors for all cost recovery clauses.

Staff does not believe that FPL is faced with a substantial hardship merely because it will not immediately obtain all of the benefits contemplated in Order No. PSC-98-0691-FOF-PU. In that order, the Commission acknowledged the benefits of conducting one annual hearing to set calendar-year factors for each cost recovery clause. Accordingly, the Commission ordered the initiation of rulemaking to amend Rule 25-17.015, Florida Administrative Code, to

make the ECCR Clause coincide with the other cost recovery clauses. As FPL acknowledges in its petition, such a rule change cannot be accomplished in time to allow the determination of an ECCR factor for calendar year 1999. Staff believes that having to wait for the benefits associated with the anticipated rule amendment does not create a substantial hardship.

FPL points out that Order No. PSC-98-0691-FOF-PU cites benefits of conducting one annual hearing for all of the cost recovery dockets, including a reduction in the number of cost recovery hearings per year and the resulting efficiencies for the parties and the Commission. FPL argues that, under Rule 25-17.015(1), Florida Administrative Code, it will not obtain these benefits because it will still be required to undertake two hearings for its 1999 adjustment clauses.

Staff notes, however, that application of the rule, along with the order, does not create an additional hearing for FPL or any party, but requires only that the status quo be maintained until November 1999. FPL will be required to expend the time and money necessary to prepare separate filings for an ECCR proceeding whether the hearing is held in November 1998 or February 1999. Staff does not believe that maintaining the status quo for ECCR proceedings for one more year amounts to a substantial hardship for FPL. In addition, unless every other party to the February 1999 ECCR proceeding requests and is granted a similar waiver, granting FPL's petition would create an additional ECCR hearing for the Commission in 1998.

Second, FPL points out that Order No. PSC-98-0691-FOF-PU cites other benefits of conducting one annual hearing for all of the cost recovery dockets, including: 1) more certain and stable prices; 2) easier projections and budgeting for electricity costs by customers; 3) easier analysis of cost information by parties; and 4) simplification of Commission audits. FPL argues that, under Rule 25-17.015(1), Florida Administrative Code, it and its customers will still face confusing adjustment clause rates associated with differing periods, and the Commission and parties will still be faced with the difficulty of analyzing data from differing periods.

Staff notes that, as a whole, the order will reduce the number of changes in FPL's 1999 adjustment factors from four to one. The ECCR factor will change only once, in February, and the remaining factors will remain fixed throughout 1999, absent any mid-course corrections. As a result, there should be much less confusion about rates and less difficulties in data analysis in 1999.

Because FPL has previously handled four changes per year to its cost recovery factors, staff believes that handling only one change in 1999 will not create a substantial hardship. Whether the Commission or the other parties would be adversely affected is also unlikely and, in any event, not relevant to the question of whether the rule should be waived for FPL.

Conclusion

Staff believes that the ECCR timetable proposed by FPL would achieve the purpose of the statute underlying Rule 25-17.015(1), Florida Administrative Code. However, staff recommends that the Commission deny FPL's petition for waiver of the rule, because FPL has not demonstrated that application of the rule would create a substantial hardship for FPL.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: This docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period.

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed.