



Public Service Commission

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RECORDS AND REPORTING
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DATE: JANUARY 7, 1998

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

FROM: DIVISION OF ELECTRIC AND GAS (COLSON) *WCK* *TS* *RVE* *JDS*
DIVISION OF LEGAL SERVICES (C. KEATING)

RE: DOCKET NO. 981741-EG - PETITION BY GULF POWER COMPANY FOR WAIVER OF FILING DEADLINE IN RULE 25-17.006(3), F.A.C., TO ALLOW DATA REQUIRED BY THE RULE TO BE FILED JANUARY 19, 1999 RATHER THAN DECEMBER 1, 1998.

AGENDA: 01/19/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: FEBRUARY 23, 1999 - PETITION DEEMED APPROVED IF NOT GRANTED OR DENIED WITHIN 90 DAYS OF RECEIPT

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\981741.RCM

CASE BACKGROUND

Rule 25-17.006, Florida Administrative Code, provides that certain electric utilities must periodically collect and submit to the Commission specified conservation-related data from residential customers. Pursuant to subsection (5) of the rule, this data is collected through Commission-approved surveys. Subsection (7) of the rule requires that the results of each survey be reported to the Commission on or before December 1 of the calendar year in which the survey is conducted. Pursuant to the rule, each electric utility was required to conduct such a survey for calendar year 1998.

On November 25, 1998, Gulf Power Company (Gulf) filed a petition for waiver of the reporting deadline set forth in Rule 25-17.006(7), Florida Administrative Code. Gulf seeks this waiver so that it may file the required survey results on January 19, 1999,

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rather than December 1, 1998. Pursuant to Section 120.542(6), Florida Statutes, notice of Gulf's petition was submitted to the Secretary of State for publication in the December 24, 1998, Florida Administrative Weekly. As of the date of this recommendation, no comments concerning the petition have been filed. The 14-day comment period provided by Rule 28-104.003, Florida Administrative Code, expires on January 7, 1999, the date of this recommendation. If comments are received, staff will address them at the Agenda Conference. In accordance with Section 120.542(8), Florida Statutes, the petition is deemed approved if the Commission does not grant or deny it by February 23, 1999.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Gulf Power Company's petition for waiver of Rule 25-17.006(7), Florida Administrative Code?

RECOMMENDATION: Yes. The Commission should grant Gulf Power Company's petition for waiver of Rule 25-17.006(7), Florida Administrative Code. Gulf has met the requirements for a rule waiver as set forth in Section 120.542, Florida Statutes.

STAFF ANALYSIS: 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.

In its petition, Gulf argues that the purpose of the statute underlying Rule 25-17.006, Florida Administrative Code, will be achieved if its petition is granted. Gulf points out that the purpose of the rule is to provide for the periodic submission of certain conservation information to the Commission. Gulf states that this information is utilized by the Commission to estimate the potential kilowatt hour (kWh) and demand savings through conservation measures and technologies. Gulf asserts that approval of its waiver petition will result in only a minimal delay in reporting this information and, therefore, will have no adverse impact on the Commission or any party interested in utilizing the information.

Staff agrees that the purpose of the statute underlying the rule will be achieved if Gulf's waiver petition is granted. The rule was promulgated to implement Section 366.82, Florida Statutes. The purpose of this statute is well stated in subsection (2), which provides, in pertinent part:

The Commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, and to reduce the growth rates of weather-sensitive peak demand. . . .

Section 366.82(2), Florida Statutes. Rule 25-17.006, Florida Administrative Code, provides a mechanism for the Commission to obtain conservation data necessary for the Commission to perform its duties under the statute. Staff believes that the brief extension requested by Gulf to submit this information will not hinder the Commission's performance of its duties under, or ability to achieve the purposes of, Section 366.82, Florida Statutes.

Gulf also argues that application of the rule will create a substantial hardship for Gulf. Gulf asserts that it is unable to meet the requirements of the rule because customer participation in its survey has not been sufficient to obtain the number of completed surveys required by subsection (3) of the rule before December 1, 1998. Gulf states that the level of customer participation is not within its control. Gulf believes that a filing extension from December 1, 1998, to January 19, 1999, will allow for completion of the necessary number of surveys.

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Staff agrees that application of the rule creates a substantial hardship for Gulf. Due to insufficient customer participation, Gulf cannot meet the rule's reporting deadline without violating the rule's customer participation requirement. Conversely, Gulf cannot satisfy the customer participation requirement without missing the reporting deadline. Staff believes it is more reasonable to allow Gulf additional time to obtain and submit complete survey results than to require strict adherence to the rule's reporting deadline for incomplete results.

In summary, staff believes Gulf has demonstrated that application of the rule creates a substantial hardship for Gulf and that the purpose of the statute underlying the rule will be achieved if the requested waiver is granted. Therefore, Staff recommends that the Commission grant Gulf's petition for waiver of the reporting deadline set forth in Rule 25-17.006(7), Florida Administrative Code.

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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.