

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:** September 29, 2016

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

**FROM:** Office of the General Counsel (Tan, Cuello)  
Division of Economics (Lingo, Coston, Harlow)

**RE:** Docket No. 160002-EG – Energy conservation cost recovery clause.

**AGENDA:** 10/11/16 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** Nov. 17, 2016 (Petition Deemed Approved if Not Granted or Denied within 90 Days of Receipt pursuant to Section 120.542(8), Florida Statutes)

**SPECIAL INSTRUCTIONS:** None

*SAC [Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*

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### 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 approve conservation cost recovery. The evidentiary hearing is set for November 2 – 4, 2016.

On August 19, 2016, Florida Power & Light Company (FPL), Duke Energy Florida, LLC, (DEF), Tampa Electric Company (TECO), and Gulf Power Company (Gulf) filed a Joint Petition for a Waiver of Rule 25-17.015(1)(b), F.A.C., (Joint Petition). On the same day, Florida Public Utilities Company (FPUC) filed a Notice of Joinder of the Joint Petition.

Docket No. 160002-EG  
Date: September 29, 2016

Notice of Joint Petition was published in the Florida Administrative Register on August 24, 2016. No comments were received, and the time for filing comments expired on September 7, 2016. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, F.S., as well as Section 120.542, F.S.

## 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 petition for waiver of Rule 25-17.015(1)(b), Florida Administrative Code?

**Recommendation:** Yes. Staff recommends that the Commission find it appropriate to 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, and allow annual estimated/actual true-up filing of six month actual and six months of projected data. (Tan, Cuello, Lingo)

### Staff Analysis:

#### Petition

As stated, FPL, DEF, TECO, Gulf, and FPUC, all of the investor owned utilities (IOUs) in Florida, request a rule waiver of the requirements of Rule 25-17.015(1)(b), F.A.C. The rule requires the electric utilities to make actual and estimated filings, based upon eight months of actual data and four months of projected common costs, individual program costs, and any collected revenues. The IOUs state that the due date for the actual/estimated true-up filing of August 19, 2016, does not allow the companies to prepare the actual/estimated filing based on eight months of actual and four months of projected data. The IOUs indicated that they can prepare their filings on the basis of six months actual and six months projected data. The IOUs request a waiver of Rule 25-17.015(1)(b), F.A.C., to allow their filing to be based on six months of actual and six months of projected data.

The IOUs assert 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 contend that the impossibility of submitting their filings on eight months of actual data and four months of projected data basis by the due date established in the Order Establishing Procedure, Order No. PSC-16-0102-PCO-EG, issued March 11, 2016, creates a substantial hardship for each of them. The IOUs further request that the waiver be granted for a period of two years to cover the August 2016 filing and the 2017 filing.

#### The Facts

Rule 25-17.015, F.A.C., requires the Commission to conduct annual ECCR proceedings in November of each year. The IOUs who participate in annual energy conservation programs over which the Commission has ratemaking authority may seek to recover their costs for energy conservation programs, and they must demonstrate that their expenditures to implement energy conservation programs are reasonable and prudent. Rule 25-17.015(1)(b), F.A.C., requires that the electric utilities make 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.

## **Requirements of Section 120.542, F.S.**

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

## **Purpose of the Underlying Statutes**

Sections 366.80-366.83, F.S., are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). The purpose of these statutes is to direct the Commission to adopt goals and approve plans related to the promotion of demand-side renewable energy systems and the conservation of electric energy. The IOUs are asking to waive the eight months actual and four month projected aspect of the rule and provide actual and estimated true-up filings that are six months actual and six months projections of common costs, individual program costs and any revenues collected. In their ECCR filings, the IOUs continue to provide actual and estimated true-up projections. The IOUs assert that a waiver of Rule 25-17.015(1)(b), F.A.C., as proposed in the instant docket, will not prevent meeting the statutory requirements under Sections 366.80-366.83, F.S., because the six month actual and six month projections of information will satisfy the purpose of Section 366.05(1), F.S., for this year.

## **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 entity requesting the waiver. Here the IOUs assert that application of the rule would create a substantial hardship to the IOUs due to the impossibility of submitting their filing 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 recommends that the Commission finds that the strict application of Rule 25-17.015, F.A.C., in the instant docket would create a substantial hardship for the IOUs based on the unavailability of the financial information. Staff believes that the information that the IOUs provided will allow the Commission to determine the IOUs’ recovery of costs for energy conservation programs pursuant to the annual ECCR program and that the information complies with the underlying statutes. 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 IOUs have demonstrated that a substantial hardship would be created with a application of Rule 25-17.015, F.A.C. Staff further recommends, that the Commission find that the IOUs have demonstrated that the purpose

of the underlying statute will be achieved with a waiver of the application of Rule 25-17.015, F.A.C. Therefore, staff recommends that the Commission find it appropriate to grant the IOUs' Joint Petition for waiver of Rule 25-17.015(1)(b), F.A.C., and allow annual estimated/actual true-up filings of six month actual and six months of projected data.

**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 Clause docket is ongoing and this docket should remain open for further Commission action. (Tan, Cuello)

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