

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of Rule 25-17.003(3)(a) and (4)(a), F.A.C., which requires Building Energy-Efficiency Rating System Audits, by Florida Public Utilities Company.

DOCKET NO. 991493-EG  
ORDER NO. PSC-00-0085-PAA-EG  
ISSUED: January 10, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING PETITION FOR RULE WAIVERS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Florida Public Utilities Company (FPUC) filed a petition on October 4, 1999, for a waiver, pursuant to Section 120.542, Florida Statutes, of Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, requiring electric utilities to offer a Building Energy-Efficiency Rating System (BERS) Audit to residential customers. Notice of FPUC's Petition was published in the Florida Administrative Weekly on November 5, 1999. No comments were received.

Rule 25-17.003(3)(a), Florida Administrative Code provides that:

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All utilities are required to offer eligible residential customers BERS Audits which comply with subsections (12), (13), and (14) below.

Rule 25-17.003(4)(a), Florida Administrative Code provides that:

Every public utility shall charge an eligible customer for a BERS Audit. The amount of this charge, which shall reflect actual cost, shall first be filed with the Commission as part of the utility's tariff.

Rule 25-17.003(1), Florida Administrative Code, a utility is defined as:

. . . every utility that falls under the definition of "utility" in Section 366.82(1), Florida Statutes.

Section 366.82, Florida Statutes, (the Florida Energy Efficiency and Conservation Act or "FEECA"), is applicable to Florida Power and Light Company, Florida Power Corporation, Gulf Power Company, Tampa Electric Company, the Jacksonville Electric Authority, and the Orlando Utilities Commission as well as Florida Public Utilities Company.

Section 120.542(2), Florida Statutes, provides a two pronged test for determining when waivers and variances from agency rules shall be granted:

. . . . when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship . . . . For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. (Emphasis added).

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I. THE PURPOSES OF THE UNDERLYING STATUTE

Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, implement Section 366.82(5), Florida Statutes, which reads in pertinent part:

(5) The commission shall require each utility to offer, or to contract to offer, energy audits to its residential customers. This requirement need not be uniform, but may be based on such factors as level of usage, geographic location, or any other reasonable criterion, so long as all eligible customers are notified. The commission may extend this requirement to some or all commercial customers. The commission shall set the charge for audits by rule, not to exceed the actual cost, and may describe by rule the general form and content of an audit.

The statute requires energy audits to be offered to residential customers, but does not specify the type or complexity of the audit. FPUC offers its customers free walk through energy audits, commercial audits, and low-income residential audits.

In accordance with Section 120.542(2), Florida Statutes, FPUC has adequately demonstrated that the purpose of the underlying statute, Section 366.82(5), Florida Statutes, will be achieved by granting this waiver. The underlying purpose of the statute is to require utilities to offer energy audits to residential customers.

II. SUBSTANTIAL HARDSHIP

The BERS audits called for in these Rules complement Sections 553.990-9955, Florida Statutes, which establish a statewide uniform system for rating the energy efficiency of a building. FPUC contends that to comply with the rules at issue, personnel would have to be trained to conduct the BERS audit. Special equipment and software would also have to be purchased. Total costs for training, equipment, and software is estimated at \$16,000. To date FPUC has not received a customer request for a BERS audit. FPUC believes the rules require the dedication of personnel and

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financial resources which exceed the benefits derived from the rules, and impose a substantial hardship on FPUC.

FPUC, a non-generating utility, is much smaller than the other utilities subject to the FEECA statutes in terms of customers, and employees. Its Marianna and Fernandina service territories, also smaller than the other FEECA utilities, are separated by approximately 250 miles. The start-up costs to comply with this rule (\$16,000) would be approximately five percent of total estimated 1999 conservation expenditures (\$288,876).

We believe that FPUC has adequately demonstrated that complying with the BERS audit requirements of Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, would be a substantial hardship upon it within the meaning of Section 120.542, Florida Statutes. The \$16,000 required for special training, and to purchase equipment and software constitutes an "economic hardship" within the meaning of Section 120.542, Florida Statutes.

Accordingly, because FPUC has met the statutory requirements for the granting of a waiver, we find that the Company's request should be granted.

Based on the foregoing, it is

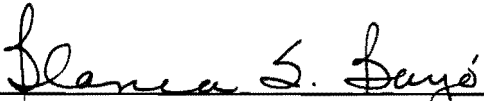
ORDERED by the Florida Public Service Commission that Florida Public Utilities Company's Petition for Waiver of Rules 25-17.003(3)(a) and (4)(a), Florida Administrative Code, is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

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ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of January, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 31, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.