

Florida Public Service Commission
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M E M O R A N D U M

MAY 21, 1992

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF APPEALS (RULE) *WR DES RES RB RLT*
DIVISION OF ELECTRIC AND GAS (SHINE)
DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *RBH*

SUBJECT: DOCKET NO. 920271-EG - PROPOSED AMENDMENT TO RULE 25-17.011, F.A.C., ENERGY CONSERVATION LOAN GUARANTEE.

AGENDA: JUNE 2, 1992 - CONTROVERSIAL AGENDA - PARTIES MAY PARTICIPATE

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

BACKGROUND

Rule 25-17.011, Florida Administrative Code, sets forth the requirements for eligibility and application for conservation loan guarantees. The loan guarantee program was eliminated as of June 30, 1991, after which the Commission could not guarantee conservation loans. Staff recommends that the rule be amended to reflect the fact that the Commission no longer guarantees these loans.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose the attached amendments to Rule 25-17.011, Florida Administrative Code?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Rule 25-17.011, Florida Administrative Code, should be amended to make it clear that although the Commission no longer offers energy conservation loan guarantees, loans which were made through June 30, 1991 shall continue to receive the guarantee, subject to the terms of the rule. Additionally, staff recommends

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clarifying changes to several paragraphs regarding procedures for claiming against the guarantee. Specific changes are discussed below.

Title: The title should be changed to indicate that the rule refers to continuation of guarantees.

25-17.011(1)(a): This section is changed to remove language allowing utilities to apply for loan guarantees. Language is added which indicates that loans previously guaranteed will continue to receive the guarantee, and that remaining provisions of the rule remain applicable to loans which received the guarantee.

25-17.011(4)(b): A requirement that a utility or lending institution file a notice of lis pendens is deleted because it is unnecessary. In order to collect reimbursement of a claim over \$200, the lender must reduce the claim to judgment. Once the lender has obtained judgment, a notice of lis pendens is irrelevant. Additionally, in most cases a lender would not be able to file a notice of lis pendens because collection of the debt would not involve title to real property.

25-17.011(4)(b)2.c: The requirement that the lender submit six copies of a notice of lis pendens is deleted.

25-17.011(4)(d): The rule provides that unsettled disputes over claims will be resolved by the Commissioners. In order to aid Commission staff in recommending a resolution to disputes, new language requires utilities to specifically respond to identified deficiencies or disputes when requesting resolution by Commissioners.

25-17.011(5)(a): New language requires lenders to provide the Commission with a bankruptcy court order discharging the debtor, if applicable. Language requiring a notice of lis pendens is deleted.

25-17.011(7): This section formerly set forth conditions under which the Commission could suspend a utility or lending institution's participation in the guarantee program, on a going-forward basis. This language is not needed because the Commission no longer offers the guarantees. Remaining provisions relating to the Commission's reserve requirement are unchanged.

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As shown in the attached economic impact statement, the proposed amendments should produce little, if any, additional costs for the Commission, utilities or lending institutions.

ISSUE 2: Should the revised rule be filed with the Secretary of State and the docket closed if there are no comments or requests for hearing?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If no comments or requests for hearing are timely filed, the revised rule should be filed for adoption with the Secretary of State and this docket should be closed.

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Attachments

1 25-17.011 Continuation of Energy Conservation Loan
2 Guarantees.

3 (1) Eligibility and Application.

4 (a) Any utility which, as part of its approved conservation
5 plan, submitted pursuant to s.366.82(2), F.S., loaned proposes to
6 loan its funds to eligible customers as defined in Rule
7 25-17.051(2), F.A.C., for the purpose of purchasing conservation
8 measures listed in Rule 25-17.051(10), F.A.C., and which received
9 a guarantee by the Commission of all or any portion of loans
10 underwritten by the utility through the June 30, 1991 ending date
11 of the Energy Conservation Loan Guarantee program shall continue to
12 receive the guarantee, subject to the terms of this rule. may apply
13 to the Commission for the guarantee of all or any portion of the
14 loans being made. Energy Conservation Loan Guarantees made to
15 lending institutions through June 30, 1991 shall similarly be
16 continued. The Commission does not guarantee energy conservation
17 loans made after June 30, 1991. The provisions of this rule which
18 refer to application for the guarantee remain applicable to loans
19 which received the guarantee. The utility may also apply for the
20 guarantee of such loans made by one or more lending institutions,
21 as a part of the utility's approved conservation plan.

22 (b) Each utility applying for Commission guarantee of such
23 loans shall submit to the Commission a description of the types of
24 loans to be made and of loan servicing and collection practices, an
25 estimate of the total amount of funds to be loaned within a stated

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1 period, and any forms to be used by the utility or its
2 subcontracted lending institution in making such loans.

3 (c) Upon review of the utility's application and material,
4 submitted according to sub-subsection (1)(b) above, the Commission
5 shall approve the utility's application, in full or in part, or
6 shall deny such approval. The Commission's approval of the
7 proposed loan program shall be for a specific amount of funds to be
8 loaned within a specific period of time. The reasons for the
9 denial shall be stated.

10 (2) Loan Application, Limits and Terms.

11 (a) Each applicant for a loan shall complete a Commission
12 approved loan application form supplied by the utility or its
13 subcontracted lending institution. The form shall provide for the
14 disclosure of information relating to the loan applicant's
15 acceptability as a credit risk, his interest in the property to be
16 improved, and the type of improvement to be made.

17 (b) If loans are made by a utility or its subcontracted
18 lending institution, only loans made to applicants within the
19 utility's service area are eligible for the Commission's loan
20 guarantee.

21 (c) If a loan is made to an applicant who does not have an
22 ownership interest in the property to be improved by the
23 conservation measure, the owner of such property shall be required
24 to sign as guarantor on the note evidencing the loan.

25 (d) Loans eligible for the Commission's loan guarantee may be

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1 for any of the following conservation measures and the amount
2 loaned shall not exceed the utility's or its subcontracted lending
3 institution's estimate of the cost of implementing the particular
4 measure.

- 5 1. Caulking of windows or doors or both.
- 6 2. Weatherstripping of windows or doors or both.
- 7 3. Duct or pipe insulation.
- 8 4. Water heater insulation.
- 9 5. Heat-reflective and heat absorbing window or door
10 materials.
- 11 6. Clock thermostats.
- 12 7. Ceiling insulation.
- 13 8. Load management devices.
- 14 9. Window panel inserts.
- 15 10. Floor insulation.
- 16 11. Replacement of furnaces or boilers.
- 17 12. Replacement of central air conditioning.
- 18 13. Wall insulation.
- 19 14. Furnace replacement burner.
- 20 15. Replacement of resistance heat with heat pump or natural
21 gas.
- 22 16. Storm windows.
- 23 17. Solar domestic water heating.
- 24 18. Solar swimming pool heating, if the pool is presently
25 heated with a nonrenewable resource.

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1 19. Waste heat recovery water heating systems.

2 20. Heat pump or natural gas water heaters.

3 (e) The following terms shall be included in the loan agreement:

4 1. The first payment on the note evidencing the loan shall
5 be due no later than sixty 60 days after the date of
6 execution of the note;

7 2. The maturity date for the note shall not be later than
8 seven years after the date the first payment is due.
9 However, at the time a utility requests approval of its
10 loan program, it may request that the Commission approve
11 a maturity date which is in excess of seven years for a
12 specific type of conservation measure. The reasons for
13 the later maturity date shall be specified.

14 3. Prepayment of all or part of the loan principal shall be
15 credited on the date received. If full payment of the
16 loan principal is made prior to the maturity date of the
17 note, no unearned interest or prepayment penalty shall
18 be collected.

19 (3) Loan Providing, Servicing and Collection.

20 (a) The utility is responsible to the Commission for proper
21 servicing and collection of loans. However, a utility may contract
22 with a lending institution to make loans to eligible customers and
23 for the performance of loan servicing and collection functions. A
24 description of servicing and collection practices shall be included
25 in the utility's application, as specified in sub-subsection

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1 (1)(c), for the Commission's loan guarantee. The utility is
2 responsible for providing a post-installation inspection of each
3 conservation measure which is financed by a guaranteed loan.

4 (4) Claims.

5 (a) No claim for reimbursement for loss on guaranteed loans
6 shall be paid unless the utility's or its subcontracted lending
7 institution's claim against the borrower has been reduced to
8 judgment. However, if the principal due on a loan which is in
9 default is less than \$200 and reasonable collection efforts have
10 been made, the utility or its subcontracted lending institution
11 shall receive reimbursement for the unpaid principal without
12 reducing the claim to judgment.

13 (b) For reimbursement of claims greater than or equal to \$200:

14 1. The utility or its subcontracted lending institution
15 must ~~file a Notice of Lis Pendens (a notice filed for~~
16 ~~the purpose of warning all persons that the property is~~
17 ~~in litigation)~~, reduce the claim to Judgment and obtain
18 a Judgment Lien. The Judgment may include reasonable
19 attorney's fees and court costs.

20 2. The utility shall file a request for reimbursement with
21 the Florida Public Service Commission's Division of
22 Administration ~~Department~~ within twenty (20) days of the
23 receipt of Judgment. The request for reimbursement shall
24 contain at least the following:

25 a. Six copies of the ~~the~~ applicant's loan file;

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1 b. An original and five copies of a certification by an
2 officer of the utility, which asserts that the utility
3 acted within the scope of its approved conservation loan
4 program.

5 ~~e. Six copies of the Notice of Lis Pendens;~~

6 cd. Six copies of the Judgment;

7 de. Six copies of the Judgment Lien;

8 ef. A statement indicating the utility's or its
9 subcontracted lending institution's agreement to execute
10 an Assignment of Judgment in exchange for reimbursement;
11 and

12 fg. The utility's name and mailing address, its Federal
13 Employer Identification Number and the name and
14 telephone number of the utility's liaison whom the
15 Commission may contact for additional information
16 regarding the defaulted loan.

17 3. The Florida Public Service Commission's Division of
18 Administration ~~Office of General Counsel~~ shall notify
19 the utility when the State Comptroller issues a warrant
20 and shall request assignment of rights under the
21 Judgment to the State of Florida. The warrant will be
22 mailed to the utility upon receipt of original assigned
23 Judgment.

24 (c) For reimbursement of claims under \$200:

25 1. The request for reimbursement will be filed in a timely

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1 manner with the Florida Public Service Commission's
2 Division of Administration Department and contain at
3 least the following:

- 4 a. Six copies of the applicant's loan file;
 - 5 b. An original and five copies of a certification by an
6 officer of the utility, which asserts that the utility
7 acted within the scope of its approved conservation loan
8 program; and
 - 9 c. The utility's name and mailing address, its Federal
10 Employer Identification Number and the name and
11 telephone number of the utility's liaison whom the
12 Commission may contact for additional information
13 regarding the defaulted loan.
- 14 2. The warrant will be mailed to the utility upon issuance
15 by the State Comptroller.

16 (d) If deficiencies or disputes are identified by the
17 Commission's staff in a utility's request for reimbursement, the
18 Commission's Executive Director shall notify the utility of the
19 deficiencies or disputes and the basis for each. Unsettled
20 disputes between Commission staff and the utility will be resolved
21 by the Commissioners following written request from the utility,
22 which shall specifically respond to the deficiencies or disputes
23 identified by the Executive Director. The request shall be
24 submitted to the Commission's Executive Director, and a copy shall
25 be submitted to the Commission's Division of Electric and Gas.

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1 (5) Recordkeeping and Reporting Requirements.

2 (a) Each utility or its subcontracted lending institution, which
3 has had or has outstanding loans guaranteed by the Commission,
4 shall make the following records available to the Commission upon
5 request or, if requested indicated, shall submit to the Commission
6 the following reports.

7 1. Records: A file shall be maintained for each loan made
8 containing the following:

9 a. Credit application.

10 b. Credit report or other investigation of the loan
11 applicant's credit.

12 c. Loan agreement.

13 d. Loan servicing and collection information.

14 e. Default information, including a bankruptcy court order
15 discharging the debtor ~~a Notice of Lis Pendens~~ (if
16 applicable) and Judgment information (if applicable).

17 2. Reports:

18 a. Quarterly reports on guaranteed loans will be submitted
19 to the Commission on prescribed forms within 30 days
20 after the close of each quarter.

21 b. The Commission may require the submission of
22 supplemental reports relating to guaranteed loans which
23 are deemed necessary by the Commission.

24

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1 (b) The Commission may inspect the utility's or its
2 subcontracted lending institution's books or accounts which pertain
3 to the loans reported for guarantee.

4 (6) Limitation of Guarantee.

5 (a) Unless prohibited by law, guarantees made pursuant to this
6 rule shall be for the amount of the Judgment obtained by the
7 utility against the borrower or, if a judgment is not required, the
8 amount of principal due on the loan.

9 (b) The Commission's liability to pay claims made against the
10 Florida Public Service Regulatory Trust Fund is limited to
11 \$5,000,000.

12 (7) Reserve Requirement. ~~Suspension of Guarantee of Loans.~~

13 ~~(a) The Commission may suspend its guarantee of loans made by~~
14 ~~a utility or its subcontracted lending institution under the loan~~
15 ~~guarantee program. The suspension shall be effective upon receipt~~
16 ~~of notice by the utility and shall not apply to any loans made~~
17 ~~prior to receipt of notice. In determining whether to suspend its~~
18 ~~guarantee of loans, the Commission will consider whether the~~
19 ~~utility or its subcontracted lending institution or agents thereof:~~

20 1. ~~Failed to maintain adequate records.~~

21 2. ~~Failed to adequately service loans.~~

22 3. ~~Failed to file reports with the Commission as required~~
23 ~~by this rule.~~

24 4. ~~Engaged in discriminatory loan practices.~~

25 5. ~~Engaged in illegal collection practices.~~

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1 6. ~~Significantly varied its loan program from that approved~~
2 ~~by the Commission in applying for the guarantee.~~

3 ~~(b) The Commission may also suspend the guarantee of loans made~~
4 ~~by a utility or its subcontracted lending institution if the dollar~~
5 ~~amount of claims paid by the Commission together with the dollar~~
6 ~~amount of claims being processed exceeds five percent (5%) of the~~
7 ~~total dollars lent by the utility or lending institution for loans~~
8 ~~made under the loan guarantee program.~~

9 ~~(c) A utility or its subcontracted lending institution may apply~~
10 ~~for a discontinuance of a suspension if the conditions resulting in~~
11 ~~the suspension no longer exist.~~

12 ~~(d) The Commission shall maintain for each loan made under the~~
13 ~~guarantee program a reserve which is equal to five percent (5%) of~~
14 ~~the outstanding principal balance due on the loan. The~~
15 ~~Commission's guarantee of additional loans shall be suspended when~~
16 ~~the amount required to be reserved under this paragraph exceeds a~~
17 ~~total of \$5,000,000.~~

18 **Specific Authority:** 366.05(1), 366.82, F.S.

19 **Law Implemented:** 366.05(1), 366.82, F.S.

20 **History:** New 10/13/81, Amended 1/5/82, 12/30/82, 2/9/86, _____,
21 formerly 25-17.11.

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M E M O R A N D U M

April 27, 1992

TO: DIVISION OF APPEALS (RULE)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) *CBH om* *4/28/92*

SUBJECT: ECONOMIC IMPACT STATEMENT FOR PROPOSED AMENDMENTS TO RULE 25-17.011, FAC, CONTINUATION OF ENERGY CONSERVATION LOAN GUARANTEES

SUMMARY OF THE RULE

The current Rule 25-17.011, FAC, Energy Conservation Loan Guarantees, contains the requirements for eligibility and application for conservation loan guarantees. The effective time period for the loan guarantee program expired June 30, 1991, so no new loans are being guaranteed.

The proposed rule amendments would reword the loan guarantee rule to reflect that no new loans are being made but that loans underwritten by the utility which received a guarantee by the Florida Public Service Commission (Commission) through June 20, 1991, would continue to receive the guarantee, subject to the terms of the rule. In addition, Energy Conservation Loan Guarantees made to lending institutions through June 30, 1991, would be continued.

Language that allows for application for new loan guarantees would be stricken. Technical language would be modified or deleted as necessary. Also, unsettled disputes between Commission staff and a utility that are requested by the utility would be explicitly submitted to the Commission's Executive Director for identification to the Commission.

DIRECT COSTS TO THE AGENCY

There are currently outstanding conservation loans that the Commission has guaranteed. The period for reapplication has passed so there are no additional loan guarantees being made. The proposed rule changes should not generate any additional paperwork or cause any additional staff time to be devoted to administering loan guarantees. Eventually, each utility and lending

institution will close out their respective loan programs guaranteed by the Commission. This will free some staff time that was previously used in monitoring reporting requirements and recommending loan programs for inclusion in the Commission guarantee program. This savings is minor in nature and would not result in any reduction in staff.

COSTS AND BENEFITS TO THOSE PARTIES DIRECTLY AFFECTED BY THE RULE

The proposed rule changes should not significantly affect any of the utilities or lending institutions which sought loan guarantees from the Commission. No additional loans will be guaranteed due to the expiration of the time period on June 30, 1991. The rule amendments and language changes would clarify the current situation and eliminate some ambiguities in the current rule. This should benefit the affected utilities or lending institutions to a minor degree. There are no quantifiable costs or benefits associated with the proposed rule amendments.

Indirectly, conservation efforts in the State of Florida may be affected by these proposed rule changes. This would depend on the degree to which Commission loan guarantees made more money available or borrowing terms more attractive for conservation measures.

IMPACT ON SMALL BUSINESSES

There may be some lending institutions that are small businesses and have conservation loan guarantees through the Commission. These have not been identified. However, there should be no measurable change to small businesses in costs or compliance due to the rule changes.

IMPACT ON COMPETITION

There should be no impact on competition due to the minor nature of the language changes and technical clarifications of the proposed rule amendments.

IMPACT ON EMPLOYMENT

There should be no impact on employment due to the insignificant nature of the proposed changes.

METHODOLOGY

Discussions were held with knowledgeable Commission staff on the status of the current rule and its administration. Current statutes and Commission rules were reviewed for conformity with the proposed rule changes.

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