STEEL HECTOR & DAVIS

Steel Hector & Davis LLP
215 South Monroe, Suite 601
Tallahassee, Florida 32301-1804
904.222.2300
904.222.8410 Fax

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Charles A. Guyton
904.222.3423

August 22, 1997

By Hand Delivery

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

RE: Comments of Florida Power & Light Company in Docket No. 961378-EG

Dear Ms. Bayó:

ACK ____
AFA 1
APP 1
CAF ____
CMU ____
CTR ____
EAG ____
LEG ____
LIN ____
OPC ____
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Enclosed for filing on behalf of Florida Power & Light Company (FPL) are the original and fifteen (15) copies of FPL's Comments in Docket No. 961378-EG.

If you or your Staff have any questions regarding this filing, please contact me.

Very truly yours,

Charles A. Guyton

CAG/ld
cc: Mary Anne Helton, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Proposed amendment of Rule 25-17.015, F.A.C., Conservation Cost Recovery	**Docket No. 961378-EG** **Filed: August 22, 1997**

Comments Of Florida Power & Light Company

Florida Power & Light Company ("FPL") appreciates Staff's responsiveness to its suggestions prior to and at the workshop which led to the draft proposed rule. The rule as proposed is a much better rule than the original suggested version of the rule. However, FPL respectfully submits that the rule can and should be further refined.

FPL's concerns with the proposed rule relate to subsection (5). The proposed rule states that expenses for advertising which mentions a competing energy source shall not be recovered through the energy conservation cost recovery ("ECCR") clause. FPL believes that this prohibition of cost recovery is too prescriptive and will result in more rather than less customer confusion. The rule also requires as part of a Company's true-up filing "all data sources and calculations used to substantiate" specific claims of potential energy savings or statements of appliance efficiency ratings or savings made in an advertisement. FPL respectfully submits that this filing requirement is unnecessary and wasteful and commits to the rule a matter best left for discovery by interested parties. Simply stated, this onerous filing requirement will have a chilling effect on advertising and keep helpful information from customers without serving a necessary regulatory purpose.

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The Rule's Prohibition For Recovery Of Advertising Which Mentions a Competing Fuel Source.

In urging the Commission to adopt this rule, the Staff offered three different rationales for the prohibition of cost recovery in ECCR for advertisements which mention a competing fuel:

(A) to make clear the Commission's statutory mandate not to allow cost recovery of any company image-enhancing advertising or of any advertising not directly related to an approved conservation program.

(B) to avoid the use of conservation programs as a competitive tool since such was not intended under FEECA.

(C) to avoid customer confusion when customers compare ads.

An examination of each rationale shows that none of the rationales warrant the rule provision proposed.

The "statutory mandate" which it is suggested this rule provision implements is the following sentence found in Section 366.82(5), Florida Statutes:

> Reasonable and prudent unreimbursed costs projected to be incurred, or any portion of such costs, may be added to the rates which would otherwise be charged by a utility upon approval by the commission, provided that the commission shall not allow the recovery of the cost of any company image-enhancing advertising or of any advertising not directly related to an approved conservation program.

With all due respect, a rule prohibiting cost recovery for any advertisement mentioning a competing fuel, without regard to whether the advertisement is company image-enhancing or without regard to whether the advertisement is directly related to an approved conservation program, is not an implementation of the statute, it is a revision to or an extension of the statute. Under the statute, there are only two types of advertisements which the Legislature has found to be improper for ECCR

cost recovery; an advertisement which mentions a competing fuel source is not one of those types of advertisements. The Commission's "statutory mandate" is to allow recovery for all unreimbursed expenses prudently incurred for approved programs except for two limited types of advertisements, neither of which are advertisements mentioning competing fuels. This rule provision is inconsistent with and goes beyond the statute it purports to mandate, and it should not be adopted.

The second rationale for the rule provision prohibiting cost recovery of advertisements which mention a competing fuel is to avoid the use of conservation programs as a competitive tool since such a use is not intended by FEECA. Once again, this rationale is premised upon a misreading of FEECA; the Staff is reading into a neutral statute an intent which is not evidenced anywhere in the language or the history of the Act. Moreover, the Commission recently indicated that it may consider this very issue in upcoming conservation goals proceedings (See, Order No. PSC-97-0927 -FOF-EI); if so, why should the Commission preemptively address it with a policy determination in a rule where it has not been fully developed and addressed?

FPL respectfully submits that FEECA is totally indifferent to gas/electric competition. It certainly does not authorize the Commission to regulate such competition. In passing FEECA the Legislature was aware there was gas vs. electric competition. Its goal in passing FEECA was not to have the Commission enforce, regulate, enhance or diminish gas vs. electric competition. Its goal was to promote conservation and increase energy efficiency by both electric and gas companies. The touchstone for ECCR cost recovery should be whether it achieves the FEECA goal of cost effectively conserving electricity or gas. If advertising accomplishes that FEECA goal, is prudent, and is not misleading or image enhancing, it should be recovered without any further test as to content. Any attempt to develop a "fuel neutrality" policy for ECCR advertising should not be

premised upon a misreading of FEECA that the Legislature had any intent regarding gas vs. electricity competition.

The reality today, just as when FEECA was adopted in 1981, is that gas and electric companies compete. Their competition is funded, in part, with revenues recovered from customers. The fact that some of these revenues are from cost recovery clauses is irrelevant. Given this environment of competition, DSM cannot help but have an impact on competition. The Research Report on which the Staff selectively relied in the Recommendation urging proposal of this rule reached this very conclusion.[1] It also reached the overlooked conclusion that "[t]he Commission policy regarding fuel neutrality has not been clearly defined in the context of today's competitive utility environment." Review at 78. The proposed rule's attempt to keep conservation advertising from having a competitive impact on electric and gas companies simply denies reality. It denies the reality that FEECA is indifferent to electric and gas competition. It denies the reality that FEECA intends for advertising to be used to support approved programs as long as it is not image enhancing. It denies reality that electric and gas competition will continue through DSM even if cost recovery of advertising is improperly prohibited.

The final rationale offered for the rule provision prohibiting ECCR cost recovery for advertisements mentioning competing fuel sources is that the advertisements may cause customer

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[1] The conclusion reached was "[t]he promotion, advertising, and operation of commercial/industrial DSM programs play significant roles in the competition between the electric and gas utilities." Review of Commercial/Industrial Demand-Side Management Programs of Six Florida Utilities, at 79. In reaching that conclusion, the Research Department staff also observed that, "it is unrealistic to expect DSM programs to have no competitive effect on the competitive balance, or to expect such programs would not be used as marketing tools." Id.

confusion. Keeping companies from explaining how their cost-effective DSM measures compare to other energy alternatives is a disservice to customers. Customers need to know and understand their energy options. It is better to provide some information and risk customer confusion than to provide no information and keep customers completely in the dark about Commission-approved alternatives readily available to them which utilities are obligated to promote.

The standard for judging the reasonableness or prudence of advertisements is whether they are truthful and not misleading. That can and should be done on a case by case basis, if a problem arises.[2] Removing advertising from ECCR cost recovery that is truthful, accurate, and consistent with FEECA because it mentions a competing fuel, negatively or otherwise, (1) frustrates FEECA, (2) is a disservice to customers, and (3) is a misdirected effort to regulate gas vs. electric competition. Keep FEECA's focus where the Legislature intended - on conservation.

Aside from rebutting the rationales used to justify this advertising prohibition, FPL has practical concerns about the operation of this part of the rule. At the Commission's instruction, FPL has heavily invested in a gas research and development program designed to assess the cost-effectiveness of gas measures as electric utility conservation measures. The results of that research are still outstanding. Nonetheless, there is the potential that the research will yield some gas

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[2] The two FPL advertisements that the Staff relied upon in the Recommendation urging the proposal of this rule **are more than four years old**. Although the Staff has reviewed all intervening advertisements, it has found nothing to suggest that similar advertising continues. These are two advertisements out of hundreds. This suggests that the "problem" this rule provision is intended to address was initially insignificant and no longer persists. Moreover, the advertisements were truthful. They were accurate. They were a legitimate attempt to deal with the far more serious problem then that other energy service providers were not using reliable numbers in their analyses of customer energy alternatives. This continues to be completely overlooked, even though the Staff has now paraded these dated advertisements before the Commission in no less than five recommendations this year alone.

measures which FPL would be prepared to offer as part of an approved conservation program. If adopted, this rule would prohibit FPL from advertising approved gas conservation measures which may emerge from the current research project. This is yet another reason this provision is unwise. If the rule provision is adopted, perhaps FPL should abandon its gas research and development efforts, for it does not appear that it will be able to promote any such measures.

The rule provision restricting cost recovery under the ECCR clause for advertisements which mention competing fuels should be abandoned. It is inconsistent with and attempts to extend rather than implement the Commission's "statutory mandate." It is premised upon a misreading of the legislative intent of FEECA. It ignores the reality and benefit of electric and gas competition. It is a misguided attempt to cure customer confusion by providing customers with less rather than more information about approved conservation offerings. Finally, it frustrates and perhaps makes worthless existing gas research and development activity being conducted by FPL at the direction of the Commission. This provision of the proposed rule should be dropped.

The Rule Imposes Too Onerous A Filing Requirement Regarding Advertisements

The advertising filing requirement added to the rule is unduly onerous and should be deleted. FPL thought this amendment suggested by the Staff in the original rule draft had been dropped at the workshop, and FPL continues to believe that it should be dropped. It would unnecessarily increase the size of FPL's final true-up filing. The cost of reproducing and mailing the advertisements to all parties cannot be justified. The effort would be largely wasted in that only Staff is interested in advertising. The matter can be handled much more expeditiously and much less

costly through discovery. Advertising costs comprise less than 2% of FPL's total ECCR costs. This additional, costly filing requirement is out of proportion to the significance of ECCR advertising.

FPL is concerned that the imposition of this filing requirement will have a chilling effect that will result in customers being provided less or less relevant information about conservation alternatives. Savings to be achieved and energy efficiency ratings are valuable to customers. It helps them to make informed decisions among competing alternatives (competition here being not only between competing fuel sources but also among various electric alternatives with different efficiencies and prospective savings). If utilities are faced with the prospect of making detailed filings for advertisements addressing specific claimed savings and energy efficiency ratings, the most probable response will be to move to advertisements that do not provide this helpful and valuable information. In other words, the rule will chill helpful advertising and substitute less helpful generic type advertising. Such a result would be a severe disservice to customers.

The filing requirement of "all data sources and calculations used to substantiate" either a "specific claim of potential energy savings or state[ment]s [of] appliance efficiency ratings or savings," serves too little regulatory purpose at too great an expense to utilities and customers. It should be abandoned.

Respectfully submitted,

Steel Hector & Davis LLP
Suite 601, 215 S. Monroe St.
Tallahassee Florida, 32301

Attorneys for Florida Power
& Light Company

By: Charles A. Guyton
Charles A. Guyton