

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 25, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Cowdery) *K S.M.C.*
Division of Economics (Higgins) *W.M. J.H.*

RE: Docket No. 20190130-EI – Petition for waiver of depreciation study filing requirement in Rule 25-6.0436(4)(a), F.A.C., by Florida Public Utilities Company.

AGENDA: 08/06/19 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: September 16, 2019 – The Commission must vote to grant or deny the petition by this date.

SPECIAL INSTRUCTIONS: None

Case Background

On June 17, 2019, Florida Public Utilities Company (FPUC) filed a petition for a temporary waiver of Rule 25-6.0436(4)(a), Florida Administrative Code (F.A.C.). The rule requires all electric public utilities to file a depreciation study at least once every four years from the submission date of its previous study or as specified in a Commission order. FPUC filed its last depreciation study on July 1, 2015. Therefore, pursuant to Rule 25-6.0436(4)(a), F.A.C., FPUC's next depreciation study was due July 1, 2019. FPUC is requesting that it be permitted to submit its study no later than September 3, 2019. It also requests that subsequent due dates be based on the September filing date.

Notice of FPUC's petition was published in the June 20, 2019, edition of the Florida Administrative Register, Vol. 45, No. 120, as required by Section 120.542(6), Florida Statutes

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(F.S.). No one commented on the petition within the 14-day comment period provided by Rule 28-104.003, F.A.C. Pursuant to Section 120.542(8), F.S., the petition is deemed approved if the Commission does not grant or deny it by September 16, 2019.

The Commission has jurisdiction under Sections 120.542, 350.115, 366.04, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission grant FPUC's request for a temporary waiver of Rule 25-6.0436(4)(a), F.A.C.?

Recommendation: Yes. The Commission should grant FPUC's petition and require that it file a depreciation study no later than September 3, 2019. The Commission should also order that FPUC's next depreciation study will be due within four years from the date that it files its September 2019 depreciation study. (Cowdery, Higgins)

Staff Analysis: FPUC is requesting that the Commission grant it a temporary waiver of Rule 25-6.0436(4)(a), F.A.C. Pursuant to the rule, FPUC was required to file a depreciation study by July 1, 2019.

Legal Standard for Rule Waivers

Pursuant to Section 120.542(2), F.S., the Commission is required to grant waivers and variances from its rules "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 a rule would create a substantial hardship or would violate principles of fairness." The statute defines a "substantial hardship" as a "demonstrated economic, technological, legal, or other type of hardship."

Under Rule 25-6.0436(4)(a), F.A.C., electric public utilities are required to submit a depreciation study for Commission review at least once every four years. The rule implements several statutes. Section 350.115, F.S., allows the Commission to "approve or establish adequate, fair, and reasonable depreciation rates and charges." Section 366.06(1), F.S., requires the Commission to "investigate and determine the actual legitimate costs of the property of each utility company, . . . less accrued depreciation." To accomplish these tasks, the Commission is permitted under Section 366.04(2)(f), F.S., to "prescribe and require the filing of periodic reports and other data as may be reasonably available."

FPUC's Petition

FPUC's current depreciation study was due on July 1, 2019, but it asserts that preparing the study by that date would create a substantial hardship. FPUC states that it continues to be hindered by resource constraints due to the impact of Hurricane Michael on its Northwest Division. FPUC states that preparing the depreciation study is a time-consuming, difficult task under ordinary circumstances, but under current circumstances it has not been able to finalize the figures reflecting the full impact of Hurricane Michael on the Northwest Division's plant.

FPUC has asked that it be permitted to submit its study on or before September 3, 2019. FPUC has also requested that its next depreciation study be due within four years of the extended September 2019 filing date.

FPUC states that the purpose of the underlying statutes, Sections 350.115 and 366.06, F.S., will still be fulfilled should the Commission grant the waiver. This is because FPUC will provide the Commission with the required depreciation study by September 3, 2019, which is only nine weeks after the current due date.

Staff's Analysis and Conclusion

The Commission has recently granted FPUC a waiver from the rule requiring it to send out monthly billing statements under Rule 25-6.100(1), F.A.C., based on the effects of Hurricane Michael.¹ The Commission also granted FPUC a temporary waiver of Rule 25-7.045, F.A.C., and extended the time for filing FPUC's natural gas depreciation study because of substantial hardship caused by Hurricane Michael.² Staff believes FPUC has demonstrated that it would have been a substantial hardship for it to file a depreciation study by July 1, 2019, given its constrained resources resulting from Hurricane Michael.

Section 366.04(2)(f), F.S., allows the Commission to require a utility to periodically file depreciation studies in order to facilitate the Commission's duty under Sections 350.115 and 366.06(1), F.S., to determine accurate depreciation costs for the utility. The short delay will not affect the Commission's ability to establish adequate, fair, and reasonable depreciation rates and charges. For this reason, staff believes that FPUC has demonstrated that the purpose of the underlying statute will be achieved if FPUC is granted a nine-week extension of time to submit its depreciation study.

Staff believes that FPUC's request for a temporary rule waiver is reasonable and recommends that FPUC should be allowed to file its depreciation study on or before September 3, 2019. Moreover, the Commission should order that FPUC's next depreciation study will be due within four years from the date that it files its September 2019 depreciation study.

¹ Order No. PSC-2018-0529-PAA-EI, issued Nov. 8, 2018, in Docket No. 20180195-EI, *In re: Petition for temporary waiver of Rule 25-6.100, F.A.C., by Florida Public Utilities Company.*

² Order No. PSC-2019-0067-PAA-GU, issued February 22, 2019, in Docket No. 20180230-GU, *In re: Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company.*

Issue 2: Should this docket be closed?

Recommendation: Yes. 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, a consummating order should be issued and this docket should be closed. (Cowdery)

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, a consummating order should be issued and this docket should be closed.