

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for waiver of
Rule 25-6.1353, F.A.C.,
concerning 2002 forecasted
earnings surveillance report, by
Florida Power Corporation.

DOCKET NO. 020112-EI
ORDER NO. PSC-02-0782-PAA-EI
ISSUED: June 10, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST FOR TEMPORARY RULE WAIVER

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.

BACKGROUND

Rule 25-6.1353, Florida Administrative Code, requires
investor-owned electric utilities not under an incentive regulation
plan or not subject to an earnings cap to file with this Commission
a forecasted earnings surveillance report (surveillance report) on
or before March 1 of each year. Florida Power Corporation's (FPC
or Company) last surveillance report was filed in 2001.

DOCUMENT NUMBER-DATE
06013 JUN 10 08
FPSC-COMMISSION CLERK

On February 19, 2002, FPC filed a petition for a waiver of the filing of the 2002 surveillance report. Section 120.542(8), Florida Statutes, states that an agency shall grant or deny a petition for waiver within 90 days. However, FPC has waived this requirement and has granted a one-day extension through May 21, 2002, in which we must act.

Pursuant to Section 120.542(6), Florida Statutes, the notice of FPC's petition was submitted to the Secretary of State for publication in the March 15, 2002, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code.

We have jurisdiction over the subject matter pursuant to Sections 120.542, 350.117.1, 366.05(1) and 366.04(2)(f), Florida Statutes.

REQUEST FOR WAIVER

FPC seeks a waiver of Rule 25-6.1353, Florida Administrative Code, which provides:

Each investor-owned electric utility that is not under an incentive regulation plan or not subject to an earnings cap shall file with the Commission its forecasted financial information on Commission Form PSC/ECR 22(1/95) . . . entitled "Investor Owned Electric Utility Forecasted Earnings Surveillance Report," . . . on or before March 1 of each year.

Pursuant to the above-noted rule, FPC was required to file its next surveillance report by March 1, 2002. In its petition, FPC argues that the requirements of the rule have been accomplished by our decision in Order No. PSC-01-1348-PCO-EI, issued June 20, 2001, in Docket No. 000824-EI, by which we initiated a full revenue requirements rate case for FPC and established calendar year 2002 as the projected test year.

Pursuant to this rate proceeding, FPC provided enormous amounts of forecasted information which taxed the company's manpower resources to its limits. Moreover, FPC notes that it had

to assemble the massive volumes of data and information required to file Minimum Filing Requirements and supporting testimony. FPC then provided extensive information in response to voluminous discovery requests. Finally, FPC states that it has prepared and filed rebuttal testimony of numerous witnesses, and, at the time of filing its petition, was preparing for hearing.

FPC notes that we may grant a waiver of the rule's filing requirement when: (a) a demonstration has been made that the purposes of the underlying statute will be or has been achieved by other means; and (b) when application of the rule would create a substantial hardship or would violate principles of fairness.

Section 120.542(2), Florida Statutes, provides that 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 or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

FPC asserts that the purpose of the underlying statute has been met, and argues specifically as follows:

. . . the extensive information, including forecasted financial data, provided by Florida Power for 2002 in its pending rate case has substantially complied with, and exceeded, the requirements of Rule 25-6.1353, F.A.C. As a result, the purpose of the underlying statutes has been achieved by other means. Forecasted surveillance reporting is intended to allow the Commission to monitor projected utility earnings between rate cases by providing pertinent financial information prepared at a

relatively high level compared to the level of detail provided during rate cases. Therefore, almost by definition, this type of information becomes largely superfluous during a rate case when a greater quality and quantity of information is available.

(Emphasis supplied by the utility)

With respect to the second criterion for granting the requested waiver, FPC argued in its Petition that, based on the pending rate investigation and preparation for hearing, application of the rule would impose a substantial hardship on the Company's ability to properly prepare its case. Moreover, FPC argued that reassigning essential manpower to the time consuming task of preparing the surveillance report would amount to little more than reformatting information that has already been provided and would have constituted a serious and unnecessary detriment to Florida Power's rate case efforts.

Subsequent to the filing of the Petition for rule waiver, the pending rate case of FPC was settled and a stipulation was reached between the parties. This stipulation was approved by us at the April 23, 2002, Agenda Conference. Therefore, much of the above-noted argument of FPC concerning the second criterion is no longer valid. However, the argument was valid when the petition was filed and before and up to March 1, 2002, when the report was due.

Rule 25-6.1353, Florida Administrative Code, states that it implements Sections 350.117(1), 366.04(2)(f), and 366.05(1), Florida Statutes. Sections 350.117(1) and 366.04(2)(f), Florida Statutes, give this Commission the power to require certain reports. Section 366.05(1), Florida Statutes, merely states that we "shall have the power to prescribe fair and reasonable rates and charges, . . . and to adopt rules . . . to implement and enforce the provisions of this chapter."

We agree with the utility that the purpose of the underlying statute has been achieved. The purpose of the rule was to enable us to prescribe fair and reasonable rates, and the forecasted surveillance reporting was intended to allow us to monitor projected utility earnings by providing pertinent financial information. The utility has provided all the information needed

to prescribe fair and reasonable rates and monitor projected utility earnings. At the April 23, 2002, Agenda Conference, we, using much the same data that would have been provided in any forecasted earnings surveillance report, approved the stipulated final rates. Therefore, the first criterion has been met.

However, the second criterion concerning whether "application of the rule would create a substantial hardship or would violate principles of fairness" must also be met. In a letter dated April 16, 2002, counsel for FPC acknowledged that the rate case had been settled, but stated that requiring the filing of "a forecasted surveillance report for 2002 at this juncture would be duplicative and serve no legitimate regulatory purpose, and thus would constitute a hardship in and of itself." We agree, and find that assigning manpower "to a time consuming task that amounts to little more than reformatting information that has already been provided" amounts to a violation of principles of fairness and would consume valuable manpower of the utility needlessly.

Therefore, FPC's petition to waive Rule 25-6.1353, Florida Administrative Code, is granted. With this waiver, FPC shall not be required to file its forecasted earnings surveillance report for the year 2002.

Based on the foregoing, it is

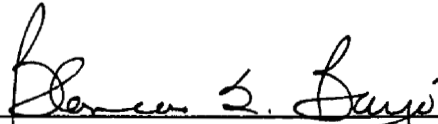
ORDERED by the Florida Public Service Commission that the Petition of Florida Power Corporation to waive Rule 25-6.1353, Florida Administrative Code, is granted, and Florida Power Corporation shall not be required to file its forecasted earnings surveillance report for the year 2002. It is further

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 the Commission Clerk and Administrative Services, 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

ORDER NO. PSC-02-0782-PAA-EI
DOCKET NO. 020112-EI
PAGE 6

ORDERED that if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period, a Consummating Order shall be issued and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of June, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

RRJ

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.

ORDER NO. PSC-02-0782-PAA-EI
DOCKET NO. 020112-EI
PAGE 7

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 1, 2002.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.