

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Ian and Nicole, by Florida Power & Light Company.

DOCKET NO. 20230017-EI
ORDER NO. PSC-2023-0298-PAA-EI
ISSUED: October 2, 2023

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING TEMPORARY RULE VARIANCE OR 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 (F.A.C.).

Background

On January 23, 2023, Florida Power & Light Company (FPL) filed a Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Ian and Nicole. We acknowledged intervention by the Office of Public Counsel (OPC) by Order No. PSC-2023-0081-FOF-EI, issued February 10, 2023. We granted FPL's petition by Order No. PSC-2023-0110-PCO-EI, issued March 3, 2023, and approved a consolidated interim storm surcharge to cover restoration costs and to replenish the storm reserve. We ordered that this docket remain open pending final disposition (true-up) of storm costs.

On July 28, 2023, FPL filed in this docket a petition for a temporary waiver of or variance from Rule 25-6.0143(1)(g), Florida Administrative Code (F.A.C.) (Petition). Rule 25-6.0143, F.A.C., addresses electric utilities' use of accumulated provision accounts 228.1, 228.2, and 228.4.¹ Paragraph 1(g) of Rule 25-6.0143 requires that under the Incremental Cost and Capitalization Approach methodology for determining the allowable costs to be charged to cover

¹ Investor-owned electric utilities are required to maintain their accounts and records in conformity with the Uniform System of Accounts for Public Utilities and Licensees. Rule 25-6.014(1), F.A.C.

storm-related damages, certain storm costs may be charged to Account 228.1 only after review and approval by us. Before we make this determination, the utility may defer the costs if they were incurred prior to June 1 of the year following the storm event.

Rule 25-6.0143(1)(g), F.A.C., further requires that:

By September 30 a utility must file a petition for the disposition of any costs deferred prior to June 1 of the year following the storm event giving rise to the deferred costs.

Hurricanes Ian and Nicole impacted FPL's service area in September and November 2022, respectively. Because the costs for damage from those storms were incurred prior to June 1, 2023, FPL is required by Rule 25-6.0143(1)(g) to file its petition and documentation concerning disposition of deferred storm costs related to Hurricanes Ian and Nicole not later than September 30, 2023.

FPL is requesting a temporary variance from or waiver of the September 30 filing requirement. FPL asks that it be allowed until December 31, 2023, to file its petition and supporting documentation.

Notice of FPL's Petition was published in the August 1, 2023, edition of the *Florida Administrative Register*, Vol. 49, No. 148 as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the Petition within the 14-day comment period provided by Rule 28-104.003, F.A.C. Commission staff issued one data request, to which FPL filed responses on August 11, 2023. We must approve or deny the Petition by November 1, 2023, under Section 120.542(8), F.S., or the Petition will be deemed approved.

This Order addresses only the request for waiver or variance. We have jurisdiction under Sections 120.542, 350.115, 366.04, 366.05, and 366.06, F.S.

Decision

FPL is requesting a temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C. Pursuant to this rule provision, as discussed immediately above, FPL is required to file its petition for disposition of certain deferred costs by September 30, 2023.

1. Legal Standard for Rule Variances or Waivers

Pursuant to Section 120.542(2), F.S., we are required to grant waivers and variances from our 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." A "substantial hardship" is defined by this statute as a "demonstrated economic, technological, legal, or other type of hardship."

2. FPL's Petition

Rule 25-6.0143, F.A.C., implements Section 350.115, F.S., which allows us to prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges. The rule also implements Section 366.04(2)(a), F.S., which gives us power over electric utilities to prescribe uniform systems and classifications of accounts.

FPL stated that application of Rule 25-6.0143(1)(g), F.A.C., to require the preparation and filing of the petition and documentation supporting the review and true-up of the total actual incremental storm restoration costs related to Hurricanes Ian and Nicole no later than September 30, 2023, will create a substantial hardship. FPL stated that Hurricane Ian was a powerful Category 4 storm that impacted more than 2.1 million customers, with Hurricane Nicole following soon thereafter as a Category 1 and impacting 480,000 customers. FPL noted that it mobilized a workforce numbering in the tens of thousands to restore service to these customers. In its petition for recovery of incremental storm restoration costs in this docket, FPL initially estimated storm-related costs for Hurricanes Ian and Nicole to be \$1.3 billion and \$175.8 million, respectively. FPL stated that because of the large volume of invoices and financial records corresponding to these storm-related costs, it “was not able to finalize the internally approved storm restoration invoices until mid-2023.”

Also due to the magnitude of restoration costs related to the damage caused by Hurricane Ian, FPL is required to engage an outside auditor to complete an audit of its requested restoration costs prior to submitting its petition for final disposition. Specifically, in a settlement agreement approved by us in 2019, FPL committed to “engage an independent outside audit firm to conduct an audit of the Company's filed recoverable storm costs of the first named tropical system named by the National Hurricane Center for which claimed damages exceed \$250 million.”² Hurricane Ian is that first named tropical system. FPL represented that because it does not anticipate this audit being complete until November 2023, it cannot comply with the September 30 deadline and the requirement to complete the independent audit prior to filing for final disposition of storm restoration costs.

FPL also argued that no party or anticipated party to the proceedings and no customers will be prejudiced by granting its Petition for temporary variance or waiver. Further, FPL alleged that the requested temporary variance or waiver does not contravene the rule's implementing statutes.

FPL represented that OPC has no objection to the relief requested in the Petition for temporary variance or waiver, and asks that we expedite consideration of the Petition.

² Order No. PSC-2019-0319-S-EI, issued August 1, 2019, in Docket No. 20180049-EI, *In re: Evaluation of storm restoration costs for Florida Power & Light Company related to Hurricane Irma*.

3. Analysis and Conclusion

To obtain our approval of a temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C., FPL must demonstrate that application of the Rule in this instance will cause a substantial hardship and that the purpose of the underlying statute(s) will be achieved even if we grant the requested variance or waiver.

a. Purpose of the Underlying Statutes

Sections 350.115 and 366.04(2)(a), F.S., give us power to prescribe by rule uniform systems and classifications of accounts and to approve or establish adequate, fair, and reasonable depreciation rates and charges for electric utilities. The purpose of the September 30 filing date is to facilitate a timely review of storm restoration costs and afford us adequate oversight on the use of Commission-approved storm reserves (Account 228.1). Often the initial filings made pursuant to Rule 25-6.0143, F.A.C., reflect estimated costs used to implement an interim cost recovery mechanism. As such, we conclude that the purpose of Sections 350.115 and 366.04(2), F.S., will be unaffected by granting the requested temporary variance or waiver.

Further, no anticipated party to any proceedings and no customers will be prejudiced or adversely affected by granting FPL's Petition for temporary variance or waiver. For these reasons, the purpose of the statutes will still be achieved as required by Section 120.542, F.S., if FPL's Petition for temporary variance or waiver is granted.

b. Substantial Hardship

The facts presented by FPL to demonstrate a substantial hardship focus on the volume of work FPL needs to complete before filing its petition and supporting documentation for final storm restoration cost disposition. The cost estimates for restoration related to Hurricane Ian exceed by five times the threshold to trigger an independent audit. The consumption of utility staff and management time to take on this appreciable amount of work was increased by the addition of restoration costs related to Hurricane Nicole. All of this internal work needed to be completed before FPL could then turn to the task of an independent audit. The audit, in turn, must be completed before FPL can then file for final disposition.

We considered and granted a similar request for waiver or variance from FPL in 2021.³ In that docket, the enhanced workload arose from a rate case hearing that was proceeding on a contemporaneous track as storm recovery. As noted in the order granting FPL's petition in that docket, we have in the past granted petitions for variance or waiver on the basis that application of a rule's filing deadline created substantial hardship because of utility staffing limitations

³ Order No. PSC-2021-0361-PAA-EI, issued September 16, 2021, in Docket No. 20210128-EI, *In re Petition for temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C., to file for prudence review of Florida Power & Light Company storm costs related to Hurricane Isaias and Tropical Storm Eta, and for prudence review and recovery of Gulf Power Company storms costs related to Hurricane Sally and Hurricane Zeta.*

caused by the specific circumstances alleged in those petitions.⁴ Under the specific facts presented here, we conclude that FPL has demonstrated substantial hardship under Section 120.542, F.S.

c. Conclusion

For the reasons explained above, we grant FPL's Petition for a temporary variance or waiver of Rule 25-6.0143(1)(g), F.A.C., and allow FPL to file its petition for certain deferred costs no later than December 31, 2023.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Petition for a temporary waiver of or variance from Rule 25-6.0143(1)(g), Florida Administrative Code, is hereby granted. It is further

ORDERED that FPL is granted a temporary variance from or waiver of the September 30, 2023, filing requirement in Rule 25-6.0143(1)(g), F.A.C., and is allowed until December 31, 2023, to file its petition and supporting documentation relating to disposition of deferred storm costs related to Hurricanes Ian and Nicole. 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 Commission Clerk, 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

ORDERED that this docket shall remain open.

⁴ Order No. PSC-2019-0067-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*; Order No. PSC-12-0354-PAA-GU, issued July 9, 2012, in Docket No. 20120081-GU, *In re: Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by August 17, 2012, by Florida Division of Chesapeake Utilities Corporation*; Order No. PSC-2002-0242-PAA-EI, issued February 25, 2002, in Docket No. 20011611-EI, *In Re: Petition for Waiver of Depreciation Study Filing Requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corporation*; Order No. PSC-01-2376-PAA-EI, issued December 10, 2001, in Docket No. 20011088-EI, *In re: Florida Power & Light Company*

By ORDER of the Florida Public Service Commission this 2nd day of October, 2023.



ADAM J. TEITZMAN

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 23, 2023.

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.