

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of) DOCKET NO. 941232-EG
Modifications to the Residential) ORDER NO. PSC-95-0917-PHO-EG
Load Management Rate Schedule by) ISSUED: July 28, 1995
Florida Power Corporation)
)

Pursuant to Notice, a Prehearing Conference was held on Friday, July 21, 1995, in Tallahassee, Florida, before Commissioner Joe A. Garcia, as Prehearing Officer.

APPEARANCES:

JAMES A. MCGEE, Esquire, Post Office Box 14042, St. Petersburg, Florida 33733-4042.
On behalf of Florida Power Corporation.

BENJAMIN OCHSHORN, Esquire, 2121 Delta Boulevard, Tallahassee, Florida 32303.
On behalf of Florida Client's Council.

BETH CULPEPPER, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
On behalf of the Commission Staff.

PRENTICE PRUITT, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

On November 22, 1994, Florida Power Corporation (FPC) filed a petition for approval of modifications to Rate Schedule RSL-1, Residential Load Management, with a proposed effective date of April 1, 1995. FPC filed an amended petition on December 27, 1994, that reflected a reduction in the notice period required of a residential load management customer in order for the company to transfer that customer to standard service. On March 31, 1995, Order No. PSC-95-0434-FOF-EI was issued granting FPC's petition. A protest was filed in this docket on April 12, 1995. A customer hearing was held in this docket on July 13, 1995 and a prehearing conference was held July 21, 1995. A technical hearing is scheduled for August 2-3, 1995.

DOCUMENT NUMBER-DATE

07183 JUL 28 95

FPSC-RECORDS/REPORTING

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall

be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to

appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>	<u>Subject Matter</u>
<u>Direct</u>			
J. Denise Jordan	FPC	1, 2, 3, 4	Load Management T a r i f f Modifications

V. BASIC POSITIONS

FPC: Prior to the modifications initially approved by the Commission, FPC's Residential Load Management program was not cost-effective, largely due to a substantial decrease in the cost of generation deferred by the program. The only way to restore the program's cost-effectiveness was to significantly reduce the amount of credits paid out to program participants. FPC chose to do this by focusing on those participants who contribute the least demand reduction. Load research data showed that the demand reduction contribution of participants using less than 600 kWh per month was so low that their inclusion prevented the program's overall average demand reduction from reaching a cost-effective level. Accordingly, the program has been modified to exclude the first 600 kWh in

calculating the monthly credit for all participants. This modification does not discourage energy conservation, because the program's credits are not and have never been paid as a reward for conservation. Rather, the credits are intended as compensation for the peak demand reduction contributed by program participants, which the modification will allow to be paid more equitably. However, to mitigate the effects of the modification on low-income customers, FPC has reached an agreement with LEAF to develop a customized energy conservation program targeted to deliver DSM to the low-income market segment of FPC's service territory.

LEAF: Leaf takes no position and has entered into a stipulation of settlement with FPC.

FCC: The Petition of Florida Power Corporation to modify the Rate Schedule for the Company's Residential Load Management Program should be denied. The requested modifications create a prohibited declining block rate. The exception to the prohibition, that such a rate is economically necessary, does not apply, because Florida Power has failed to prove that a declining block rate structure is economically necessary to the cost-effectiveness of the load management program. The rate modification petition should further be denied in light of the criteria for evaluating rates listed under Fla. Stat. §§ 366.041(1), 366.06(1), and 366.80-85, particularly the criteria relating to energy conservation and incentives to conserve; the history of the rate and of its predecessor; the value of the service to the public; and public acceptance of the rate structure. FPC's stipulation with LEAF does not provide mitigation to affected low-income customers, and, moreover, merely implements, in part, FPC's obligations under the conservation goals order of the Commission. Once the Petition is denied, the Commission should initiate proceedings to determine an appropriate rate structure as provided for in Fla. Stat. § 366.06(2).

Staff: Staff takes no basic position at this time. Staff's positions contained herein are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: Are the proposed modifications to Florida Power Corporation's Load Management Rate Schedule cost-effective?

POSITIONS

FPC: Yes. The modifications recently implemented by FPC have restored the Residential Load Management program to a cost-effective status.

LEAF: Leaf takes no position and has entered into a stipulation of settlement with FPC.

FCC: Florida Power Corporation has not shown that the proposed modifications are cost-effective.

STAFF: Yes.

ISSUE 2: If Florida Power Corporation continued payment of credits to Load Management customers for usage below 600 kwh per month, would Florida Power Corporation's Residential Load Management Program cost-effectively avoid the need to build additional power plants?

POSITIONS

FPC: No. If the 600 kwh per month threshold were to be eliminated, the Residential Load Management program would cost FPC and its ratepayers more than the cost of building the additional generation that is deferred by the program.

LEAF: Leaf takes no position and has entered into a stipulation of settlement with FPC.

FCC: Florida Power Corporation has not shown that the elimination of credits for usage below 600 kWh per month is necessary for the continued cost-effectiveness of the Residential Load Management Program.

STAFF: No.

ISSUE 3: Does the establishment of a 600 kWh threshold improperly reward high-usage customers or penalize low-usage customer?

POSITIONS

FPC: No. Load Management credits are not paid on the basis of a participant's usage level, high or low, but rather for a participant's demand reduction contribution during peak hours. FPC's load research data confirms the widely recognized fact that low-usage customers do not contribute significantly to peak demand reduction and that high-usage customers do. Accordingly, it would be improper not to recognize this fact in the payment of credits to Load Management participants.

LEAF: Leaf takes no position and has entered into a stipulation of settlement with FPC.

FCC: The establishment of a 600 kWh threshold improperly rewards high-usage customers and penalizes low-usage customers in the load management program. The threshold has a devastating financial impact on low-usage customers, particularly those on low fixed incomes, as it raises their electric rates by over 25% and their electric bills by about 20%. The threshold also significantly discourages energy conservation.

STAFF: Staff takes no position at this time.

ISSUE 4: Should the Petition of Florida Power Corporation to modify its Residential Load Management Rate Schedule be approved?

POSITIONS

FPC: Yes. The Commission should reaffirm its initial approval of FPC's petition because the modifications are necessary to restore the cost-effectiveness of the Residential Load Management program and to remedy the inequity that previously existed between the credits paid to low demand reduction contributors and those paid to high demand reduction contributors.

LEAF: Leaf takes no position and has entered into a stipulation of settlement with FPC.

FCC: The petition of Florida Power Corporation to modify its

Residential Load Management Rate Schedule should be denied.

STAFF: Staff takes no position at this time.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Jordan	FPC	_____ (JDJ - 1)	Comparison of Low vs. High Usage Under Old Program
Jordan	FPC	_____ (JDJ - 2)	Analysis of kWh Usage vs. Percent Bill Reduction
Jordan	FPC	_____ (JDJ - 3)	Monthly Credit Comparison by kWh Usage per Season
Jordan	FCC	_____ (FCC - 1)	Florida Power Corporation's Response to Staff's First Set of Interrogatories to Florida Power Corporation (Nos 1 - 31)
Jordan	FCC	_____ (FCC - 2)	Florida Power Corporation's Response to Florida Client Council's First Set of Interrogatories to Florida Power Corporation (Nos 1 - 2)

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

Florida Power Corporation and the Legal Environmental Assistance Foundation (LEAF) have jointly filed a proposed stipulation. In the stipulation, LEAF agrees to withdraw from participation in Docket Nos. 941232-EG and 941171-EG. In turn, FPC agrees to undertake three actions. First, FPC will incorporate certain language into its initial filing of the Standard and Procedures established pursuant to its DSM plan. Second, FPC will retain a consultant acceptable to LEAF to assist in reevaluating certain areas of FPC's DSM plan and implement the consultant's recommendations to the extent consistent with the stipulation.

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Third, FPC will develop a customized energy conservation program targeted to deliver DSM to the low-income market segment of FPC's service territory. Attached hereto are FPC and LEAF's proposed Stipulation and their Joint Motion to Approve Stipulation.

IX. PENDING MOTIONS


Florida Power Corporation and the Legal Environmental Assistance Foundation, Inc.'s Joint Motion to Approve Stipulation, filed July 7, 1995. Because the stipulation could effect the positions of the parties in Docket No. 941171-EG, this motion will be ruled upon in that docket.

X. RULINGS - None

It is therefore,

ORDERED by Commissioner Joe A. Garcia, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 28th day of July, 1995.



JOE GARCIA, Commissioner and
Prehearing Officer

(S E A L)

BC

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.