



Public Service Commission

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

DATE: OCTOBER 22, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF ELECTRIC AND GAS (WHEELER) *DAW*
DIVISION OF LEGAL SERVICES (KEATING) *WEX FIVE*

RE: DOCKET NO. 981064-EI - PETITION FOR WAIVER OF CERTAIN REQUIREMENTS OF RULE 25-6.0437, F.A.C., THAT ARE APPLICABLE TO THE GENERAL SERVICE NON-DEMAND RATE CLASS BY FLORIDA POWER & LIGHT COMPANY.

AGENDA: 11/3/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NOVEMBER 23, 1998 - PETITION DEEMED APPROVED IF NOT GRANTED OR DENIED WITHIN 90 DAYS OF RECEIPT

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\981064.RCM

CASE BACKGROUND

On August 21, 1998, Florida Power & Light Company (FPL) filed its load research sampling plan pursuant to Rule 25-6.0437, Florida Administrative Code. The rule requires the four major investor-owned electric utilities to file every two years for Commission approval of a sampling plan that details the manner in which load research data will be collected for the next load research period. Load research results must be filed with the Commission every two years, and FPL's sampling plan will be used to collect load research data for the calendar year ended December 31, 1999. This recommendation addresses FPL's August 25, 1998, requests for a waiver of certain requirements of the load research rule, and for approval of their sampling plan.

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In its petition, FPL requests a waiver of two distinct requirements of Rule 25-6.0437, Florida Administrative Code. First, FPL seeks a waiver of that portion of subsection (3) of the rule which requires the use of a plus or minus 10% precision criterion in estimating the winter peak hour for the General Service Non-demand rate class. Second, FPL seeks a waiver of the portions of subsections (6) and (7) of the rule which require the replacement of load research samples every two years.

Pursuant to Section 120.542(6), Florida Statutes, notice of FPC's petition was submitted to the Secretary of State for publication in the September 25, 1998, Florida Administrative Weekly. No comments concerning the petition were filed in the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code. In accordance with Section 120.542(8), Florida Statutes, the petition is deemed approved if the Commission does not grant or deny it by December 16, 1998.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Florida Power & Light Company's request for waiver of certain requirements of Rule 25-6.0437, Florida Administrative Code, that are applicable to the General Service Non-Demand rate class?

RECOMMENDATION: Yes. [WHEELER]

STAFF ANALYSIS: Rule 25-6.0437, Florida Administrative Code, addresses the Commission requirements for cost of service load research. This load research is used to allocate costs to the rate classes in rate cases and in the capacity, environmental, and conservation cost recovery clauses. The rule requires that a load research sampling plan be filed for Commission approval every two years. The plan must be designed to achieve a minimum level of precision for estimates of each rate class' summer and winter peak demands, and for the average of their 12 monthly coincident peaks. Specifically, the rule requires that the estimates be within plus or minus 10% of the actual values at the 90% confidence level. The rule allows utilities to apply to the Commission for waiver of this requirement for any rate class.

FPL has requested that the precision level required by the rule be relaxed for the estimate of the winter peak hour for its General Service Non-Demand (GS) rate class. It is asking to be allowed to design its load research sampling plan such that the GS winter peak estimate is within 15% of the actual value at the 90% confidence level. FPL is asking for this waiver due to the excessive cost of installing and reading the additional sample meters needed to meet the 10% accuracy level. FPL estimates that an additional 554 meters would be required to increase the GS winter peak precision from the proposed 15% level to the 10% level required by the rule. FPL estimates that the additional meters would result in removal and installation costs of \$120,000 and an increase in ongoing metering expenses of \$530,000 over the planned three-year life of the sample. The cost to purchase the additional meters would be approximately \$235,000.

The Commission has approved requests for a waiver of the rule with respect to the precision of the GS winter peak hour for FPL's last six filed sampling plans. In evaluating these waiver requests in the past, staff has asserted that they should be granted when the peak hour for the class in question does not occur within the season for which the waiver is requested, and when the Commission is not currently using, for any utility, a cost of service methodology that allocates production plant costs based a single peak hour. The first condition insures that the estimate of the

class peak hour used to develop an allocation factor for distribution plant meets the precision requirement of the rule. The second condition insures that the allocation factors developed for production plant used in rate cases and in the recovery clauses meet the accuracy requirements of the rule.

Here, both conditions are satisfied. FPL's GS class (non-coincident) peak demand for 1997 occurred in the summer, based on load research results that met the 10% precision criterion. In addition, no utility is currently using a production plant allocation method that relies on a single coincident peak hour.

Section 120.542, Florida Statutes, mandates threshold proofs and notice requirements for variances and waivers from agency rules. Subsection (2) of the statute states:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes 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 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.

FPL asserts that application of the rule creates a substantial hardship. FPL further asserts that the purpose of the statutes underlying this rule will be achieved if the requested waiver is granted.

Rule 25-6.0437, Florida Administrative Code, implements several statutes, primarily those that authorize the Commission to require the filing of periodic reports, and to prescribe fair and reasonable rates and charges. Section 366.04(2)(f), Florida Statutes, grants the Commission the power to require utilities to "prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder." Section 366.05(1), Florida Statutes, grants the Commission the power to "prescribe fair and reasonable rates and charges." Section 366.06(1), Florida Statutes, gives the Commission "the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or

collected by any public utility for its service." This section also directs the Commission, in fixing rates, to consider, to the extent practicable, "the cost of providing service to the class" and "the consumption and load characteristics of the various classes of customers." Rule 25-6.0437, Florida Administrative Code, implements the above statutes by requiring utilities to file load research data that allow the Commission to allocate costs among the various rate classes, both in rate cases and through the various cost recovery clauses.

As discussed above, because the requested waiver affects the precision of the estimate of only the winter peak hour for the GS class, the use of load research results for rate setting purposes will not be affected. Staff, therefore, believes that the purpose of the underlying statutes will continue to be achieved if the requested waiver is granted.

Further, as discussed above, requiring FPL to design its GS sample size to meet the plus or minus 10% requirement for the winter peak hour will result in an additional cost of approximately \$885,000. Therefore, staff believes FPL has demonstrated that application of the rule in this instance creates a substantial economic hardship.

In conclusion, staff recommends that FPL's request for waiver of Rule 25-6.0437, Florida Administrative Code, with respect to the precision of the GS winter peak hour, be granted. FPL has demonstrated that application of the rule creates a substantial hardship and that the purpose of the statutes underlying the rule will be achieved if the requested waiver is granted.

ISSUE 2: Should the Commission approve FPL's petition for a continued waiver of the two-year sample replacement cycle for all rate classes required by Rule 25-6.0437, Florida Administrative Code?

RECOMMENDATION: Yes. [WHEELER]

STAFF ANALYSIS: In its sampling plan filed in 1994 to be used for calendar year 1995, FPL proposed to change its practice of replacing load research samples every two years to a program under which they replace the meters every three years. The Commission granted FPL's waiver request in Order No. PSC-94-1501-FOF-EI, issued December 7, 1994. The waiver was again requested in 1996 for the sampling plan to be used for calendar year 1997, and was approved by the Commission in Order No. PSC-97-0379-FOF-EI, issued April 7, 1997. FPL is now requesting that it be allowed to continue to replace its load research samples every three years. Under the requested waiver, FPL would continue to file its load research results and load research sampling plans with the Commission every two years, as required by the rule.

FPL is requesting this rule waiver for the same reasons cited in its two previously-approved waiver requests. First, FPL asserts that using the sample for three years instead of two results in cost savings of approximately \$250,000 over a six-year period due to the elimination of approximately 1,100 installations and removals of sample metering. FPL also indicates that a three-year cycle results in a more balanced workload for its field metering personnel. Under the three-year cycle, FPL will install a new Residential sample for use in 1999, a new GS sample for 2000, and new General Service-Demand and General Service-Large Demand samples for 2001. Because application of the rule will require FPL to forego roughly \$250,000 in cost savings, staff believes FPL has demonstrated that application of the rule creates a substantial hardship for FPL.

Second, FPL asserts that the use of a three-year cycle in lieu of a two-year cycle should not impair the usefulness of the load research results reported because FPL's rate classes have remained relatively stable over the last several years. Staff agrees. Therefore, staff believes FPL has demonstrated that the purpose of the underlying statutes, as discussed in Issue 1, will continue to be achieved if the requested rule waiver is granted.

In conclusion, staff recommends that FPL's request for waiver of Rule 25-6.0437, Florida Administrative Code, with respect to the required two-year sample replacement cycle, be granted. FPL has demonstrated that application of the rule creates a substantial

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hardship and that the purpose of the statutes underlying the rule will be achieved if the requested waiver is granted.

ISSUE 3: Should the Commission approve FPL's proposed load research sampling plan?

RECOMMENDATION: Yes. [WHEELER]

STAFF ANALYSIS: Based on FPL's filed sampling plan, FPL meets the requirements of Rule 6.0437, Florida Administrative Code, with the exception of the winter peak hour for the GS class and the replacement cycle for load research samples. If the Commission approves FPL's rule waiver requests in Issues 1 and 2, the sampling plan should be approved.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: This docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period. [KEATING]

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, this docket should be closed.