



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-

RECEIVED
APR 19 AM 11:54
REGISTRATION AND FILING

DATE: APRIL 19, 2001

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

FROM: DIVISION OF ECONOMIC REGULATION (P. LEE, GARDNER)
DIVISION OF LEGAL SERVICES (C. KEATING) *wex ROE*

RE: DOCKET NO. 010261-EI - PETITION BY FLORIDA POWER & LIGHT COMPANY FOR WAIVER OF CERTAIN REQUIREMENTS OF RULE 25-6.0436, FLORIDA ADMINISTRATIVE CODE, AS THEY APPLY TO FILING OF DEPRECIATION STUDY.

AGENDA: 05/01/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION-INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: May 24, 2001 - PETITION DEEMED APPROVED IF NOT GRANTED OR DENIED WITHIN 90 DAYS OF RECEIPT

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\010261.RCM

1905

CASE BACKGROUND

Florida Power & Light Company (FPL or the company) filed its last depreciation study on December 26, 1997, with an effective date of January 1, 1998. Rule 25-6.0436(8)(a), Florida Administrative Code, requires investor-owned electric utilities to file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission. In accordance with this Rule, FPL's next depreciation study is due on or before December 26, 2001.

On February 23, 2001, FPL filed a petition for a waiver of the filing deadline imposed by Rule 25-6.0436, Florida Administrative Code, and asked for an extension of its depreciation study filing date until April 30, 2002.

DOCUMENT NUMBER-DATE

04860 APR 19 2001

REC'D-RECORDS REPORTING

DOCKET NO. 010261-EI
DATE: April 19, 2001

Pursuant to Section 120.542(6), Florida Statutes, the notice of FPL's petition was submitted to the Secretary of State for publication in the March 23, 2001, 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. In accordance with Section 120.542(8), Florida Statutes, the petition is deemed approved if the Commission does not grant or deny it by May 24, 2001.

DISCUSSION OF ISSUES

ISSUE 1: Should Florida Power & Light Company's request for a waiver of Rule 25-6.0436(8)(a), Florida Administrative Code, be granted?

RECOMMENDATION: Yes. The Commission should grant FPL's waiver request for an extension of time to file its depreciation study no later than April 30, 2002. The petition satisfies the statutory criteria for a rule waiver. (P. Lee, Gardner, C. Keating)

STAFF ANALYSIS: On February 23, 2001, FPL requested a waiver of Rule 25-6.0436(8)(a), Florida Administrative Code, to obtain an extension of time for the filing of its depreciation study until April 30, 2002. Rule 25-6.045(8)(a), Florida Administrative Code, requires that:

Each company shall file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission.

In this case, FPL's last depreciation study was filed on December 26, 1997, with an effective date of January 1, 1998. Therefore, the new filing date for the requisite study is December 26, 2001.

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.

In the petition filed February 23, 2001, the company states that the waiver it seeks of Rule 25-6.0436(8)(a), Florida Administrative Code is "on a one time basis only" and the request for "extension" is only until April 30, 2002. FPL also states that the granting of this waiver will enable it to comply in the future with Rule 25-6.0436(8)(a), Florida Administrative Code, in a timely, cost effective, and accurate manner based upon actual fiscal year data.

FPL asserts that Rule 25-6.0436, Florida Administrative Code, implements a number of Florida Statutes including Sections 350.115 and 366.06(1). Section 350.115, Florida Statutes, gives the Commission authority to "prescribe by rule uniform systems and classification of accounts for each type of regulated company and approve or establish adequate fair and reasonable depreciation rates and charges". Section 366.06(1), Florida Statutes, gives the Commission authority to "investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and to keep a current record of the net investment of each public utility company, and such property which value, as determined by the Commission, shall be used for rate making purposes and shall be the money honestly and prudently invested by the public utility company in such property...less accrued depreciation...." FPL contends that its requested rule waiver serves the purpose of these underlying statutes by providing the data required by the rule on a cost effective basis. Staff agrees with FPL's analysis of underlying statutes and believes that granting FPL's requested waiver will satisfy the purposes of these statutes.

Staff believes that FPL has adequately demonstrated that application of the rule would create a substantial economic hardship as demonstrated by FPL's previous filing of two comprehensive depreciation studies for the calendar year 1997, one containing estimated depreciation data and one containing actual depreciation data. Because FPL's fiscal year coincides with the calendar year, the depreciation study filed on December 26, 1997 contained estimated investment and reserve data. Subsequently, on

DOCKET NO. 010261-EI
DATE: April 19, 2001

March 31, 1998, FPL filed another study updated to reflect actual 1997 investment and reserve activity. This double filing resulted in significant and unnecessary duplication of effort and labor costs. Absent the requested waiver, FPL will be required to duplicate its efforts with respect to its next depreciation filing. As such, an extension of time should be considered reasonable. As FPL noted, this will allow its future depreciation filings to coincide with its fiscal year and comply with the rule. Staff, therefore, recommends that FPL's request to submit its depreciation study no later than April 30, 2002 be approved.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. A consummating order should be issued, and 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. (C. KEATING)

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