

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for waiver of certain requirements of Rule 25-6.0436, F.A.C., as they apply to filing of depreciation study.

DOCKET NO. 010261-EI
ORDER NO. PSC-01-1144-PAA-EI
ISSUED: May 21, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR 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.

Florida Power & Light Company ("FPL") filed its most recent 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 this Commission. Thus, pursuant to the rule, FPL's next depreciation study is due to be filed on or before December 26, 2001.

DOCUMENT NUMBER-DATE

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FILED RECORDS REPORTING

ORDER NO. PSC-01-1144-PAA-EI
DOCKET NO. 010261-EI
PAGE 2

On February 23, 2001, FPL filed a petition for waiver of the filing deadline imposed by the rule and asked for an extension of its depreciation study filing date until April 30, 2002.

Pursuant to Section 120.542(6), Florida Statutes, 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.

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 its petition, 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 this 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 this 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. We agree that the rule was designed to implement the statutes cited by FPL and find that FPL's requested waiver will satisfy the purposes of these statutes.

FPL further asserts that failure to grant its requested rule waiver would create a substantial economic hardship for FPL by requiring it to incur the expense of filing a proposed depreciation study based on estimated 2001 data by December 26, 2001, and a second depreciation study based on actual 2001 data in April 2002. When FPL was last required to file a depreciation study pursuant to the rule, it filed two comprehensive depreciation studies for 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 March 31, 1998, FPL filed another study updated to reflect actual 1997 investment and reserve activity. According to FPL, this double filing resulted in significant and unnecessary duplication of effort and labor costs. FPL contends that absent its requested waiver, it will be required to duplicate its efforts with respect to its next depreciation filing. FPL notes that if its requested waiver is granted, its future depreciation filings will coincide with its fiscal year and comply with the rule.

We agree that the duplication of effort and labor costs required to file two depreciation studies, one using estimated data and the other using actual data, would create a substantial hardship on FPL. Thus, we find that FPL has adequately demonstrated that application of the rule in this instance would create a substantial hardship.

In summary, we find that FPL's requested waiver will satisfy the purposes of the statutes underlying Rule 25-6.0436, Florida Administrative Code, and that FPL has adequately demonstrated that application of the rule in this instance would create a substantial hardship. Therefore, we grant FPL's petition for waiver of Rule 25-6.0436, Florida Administrative Code. FPL shall file its next depreciation study pursuant to the rule no later than April 30, 2002.

ORDER NO. PSC-01-1144-PAA-EI
DOCKET NO. 010261-EI
PAGE 4

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's petition for waiver of the filing deadline imposed by Rule 25-6.0436(8)(a), Florida Administrative Code, is granted. It is further

ORDERED that Florida Power & Light Company shall file its next depreciation study no later than April 30, 2002, and shall otherwise comply with the requirements of Rule 25-6.0436, Florida Administrative Code. 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 Records and Reporting, 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 in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st Day of May, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: _____

Kay Flynn
Kay Flynn, Chief
Bureau of Records

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ORDER NO. PSC-01-1144-PAA-EI
DOCKET NO. 010261-EI
PAGE 5

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 Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 11, 2001.

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