



Public Service Commission

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

DATE: AUGUST 2, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF SAFETY & ELECTRIC RELIABILITY (FUTRELL,
BALLINGER) *JVS RJ MD*
DIVISION OF ECONOMIC REGULATION (SPRINGER) *JVJ*
DIVISION OF LEGAL SERVICES (ELIAS) *RVE* *JDT*

RE: DOCKET NO. 010561-EI - PETITION BY FLORIDA POWER & LIGHT
COMPANY FOR APPROVAL OF RESIDENTIAL ON-CALL RESEARCH
PROJECT AND FOR WAIVER OF RULE 25-6.0438(4)(c), F.A.C., OR
FOR ISSUANCE OF ORDER STATING RULE DOES NOT APPLY.

AGENDA: 08/14/01 - PROPOSED AGENCY ACTION - RULE WAIVER AND
TARIFF - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60 DAY DEADLINE - TARIFF SUSPENDED ON 06/12/01
90-DAY DEADLINE FOR DECISION ON RULE WAIVER
REQUEST WAIVED BY PETITIONER

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\SER\WP\010561.RCM

CASE BACKGROUND

On April 20, 2001, Florida Power and Light Company (FPL) filed a petition for approval of a residential load management research project and associated tariffs. FPL's existing On Call program is a Commission-approved residential load management program, the expenses of which are recovered through the Energy Conservation Cost Recovery Clause. The proposed research project would test the effect lower monetary credits and different marketing strategies would have on participation in the On Call program.

FPL seeks to determine, through the proposed research project, whether lower credits, in conjunction with a new marketing

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strategy, would not adversely affect participation in its residential load management program (On Call). On Call is FPL's largest Demand Side Management (DSM) program, in terms of costs. Expenses associated with the On Call program, in calendar year 2000, amounted to \$65,868,592 which is approximately 42 percent of FPL's total expenses recoverable through the Energy Conservation Cost Recovery (ECCR) Clause. FPL's market survey research indicates that credits could be reduced which would lessen ECCR expenses by approximately \$23 million per year.

FPL's market survey research was conducted from August - September 1999 by ACNielsen BASES under contract with FPL. Surveys were mailed to a sample of On Call participants and non-participants. Each respondent was provided a new description of the On Call program, one of four possible credit levels for eligible equipment, and a questionnaire designed to measure the customer's acceptance of the program. Survey results indicated that reducing average credits from \$79 to \$45 per year, combined with a new program description, would result in a loss of ten percent of FPL's On Call participants. As of April 2001, 667,500 customers participated in the program. FPL estimates that the On Call program will amount to 784 MW in the summer of 2001, and 1,403 MW in the winter of 2001/2002. The survey research also found that new program sign-ups would not be harmed, in fact may slightly increase, with lower credits and the new program description. Program participation, within the past year, has increased between 2,000 and 3,000 customers per month.

The total cost for the ACNielsen BASES survey was \$135,200. FPL was not required to, and did not seek prior approval to perform this survey. FPL charged \$96,800 to ECCR Common Expenses, and \$38,400 to the On Call program. These expenses have been recovered through the ECCR Clause.

FPL proposes to identify three groups of customers to be involved in the research project. A group of 750 existing On Call customers would be selected and notified of a credit reduction. The monthly water heating credit would be lowered from \$3.50 to \$1.50. The monthly air conditioning credit for the period April-October would be lowered from \$6.00 to \$3.00. Included in the notice would be the new program description.

A second group of 625 new On Call customers would be selected and offered the program with the lower credits described above, and the new program description. A third group of 625 customers who are moving into locations where On Call equipment has been installed would be offered the program with the lower credits and

new program description. FPL believes the sample sizes are appropriate in order to have a statistically significant result. Approximately 500 customers are needed in each group. A larger number of existing On Call customers has been targeted due to an expected higher drop-out rate, since these customers will actually have their credits reduced.

On June 27, 2001, the Commission suspended FPL's proposed tariff RSLX by Order No. PSC-01-1376-PCO-EI, to allow staff opportunity to request more supporting data and additional time to evaluate the petition.

FPL also seeks in its petition a waiver of Rule 25-6.0438(4)(c), Florida Administrative Code, or in the alternative, a ruling that the rule does not apply. This rule requires that when a utility proposes a change to any of its non-firm services, it must provide written notice to each affected customer.

Pursuant to Section 120.542(6), Florida Statutes, notice of FPL's petition was submitted to the Secretary of State for publication in the July 20, 2001, Florida Administrative Weekly. As of the date of this recommendation, no comments concerning the Petition for Variance have been filed. The 14-day comment period provided by Rule 28-104.003, Florida Administrative Code, expires on August 3, 2001, one day after the filing of this recommendation. If comments are received, staff will address them at the Agenda Conference.

FPL agreed to waive the requirements of Section 120.542(8), Florida Statutes, which requires an agency to grant or deny a petition for waiver within 90 days after receipt of the original petition.

This recommendation addresses both the petition for approval of the proposed research project and the requested rule waiver. The Commission has jurisdiction over this matter pursuant to Sections 366.81 and 366.82, Florida Statutes. The Commission has jurisdiction to address FPL's Petition for Waiver pursuant to Section 120.542, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Florida Power & Light Company's Petition for a Waiver of Rule 25-6.0438(4)(c), Florida Administrative Code, be granted?

RECOMMENDATION: No. FPL has not demonstrated that the purpose of the underlying statute will be met, nor has it shown that the application of Rule 25-6.0438(4)(c), Florida Administrative Code, would create a substantial hardship to FPL and its customers. (Elias)

STAFF ANALYSIS: Rule 25-6.0438(4)(c), Florida Administrative Code, provides:

When a utility proposes to make a change in any of its non-firm electric service offerings, it must provide written notice to each customer who may be affected by the proposal.

FPL suggests that Rule 25-6.0438(4)(c), Florida Administrative Code, may not be applicable in this situation. However, Rule 25-6.0438(3)(a), Florida Administrative Code defines "Non-firm electric service" as:

....electric service that, in accordance with terms and conditions in the applicable tariff, can be limited or interrupted. Non-firm service includes interruptible, curtailable, load management, and other types of non-firm electric service offered by the utilities pursuant to tariffs approved by the Florida Public Service Commission.

FPL's Residential On Call Program is a load management program and thus, squarely within the ambit of the rule. Staff believes the program proposed by FPL constitutes a change requiring the notice contemplated by Rule 6.0438(4)(c), Florida Administrative Code. Thus, FPL must obtain a waiver of the rule.

Section 120.542(2), Florida Statutes, provides a two pronged test for determining when 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.... For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver.

I. THE PURPOSE OF THE UNDERLYING STATUTE

The statutory provisions underlying the Rule are Sections 366.03, 366.04, 366.041 and subsection 366.05(1) of the Florida Statutes. Among other things, subsection 366.05(1) authorizes the Commission to prescribe "standards of quality and measurements, and service rules and regulations to be observed by each public utility." Section 366.03 states that rates charged shall be fair and reasonable and that "no public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect."

In accordance with Section 120.542(2), Florida Statutes, staff believes FPL has not demonstrated that the purpose of the underlying statutes, Sections 366.03, 366.04, 366.041 and 366.05, Florida Statutes, will still be achieved if the waiver is granted. The underlying purpose of these statutes is to protect the customers of a public utility by assuring, among other things, fair, just, and reasonable rate and charges for service. Staff believes that charging a discriminatory rate without notice in contravention of an express requirement of a rule, is not "fair, just and reasonable." This is true even when the customers will eventually be "made whole." Accordingly, staff believes that FPL has not shown that waiving customer notice in these limited circumstances still achieves the purposes of the underlying statute.

II. SUBSTANTIAL HARDSHIP

FPL estimates that this research project could result in changes to the On Call program which would have the potential to reduce the annual costs recovered through ECCR by approximately \$23 million. FPL asserts this cost represents a substantial savings to FPL's customers, but the reduction may not be realized if the results of this experiment are biased by customer notice. FPL states that the experiment is temporary, so the participants will be made whole, with interest, to offset the reduced On Call credits at the conclusion of the program.

FPL asserts that biased research results have the potential to adversely impact FPL's system reliability. If the research is biased by customer notice and underestimates the customer drop out rate due to reduced credits, then this could lead to a reduction in FPL's reserve margins and its ability to meet peak demand. FPL believes this imposes unnecessary costs to the utility and its customers and represents a hardship that could be avoided through the requested waiver.

Staff believes FPL has not adequately demonstrated that complying with Rule 25-6.0438(4)(c), Florida Administrative Code, would be a substantial hardship upon it within the meaning of Section 120.542, Florida Statutes. Staff believes the substantial hardship alleged is remote, speculative, and several steps removed from the requested waiver. Moreover, utility planning is a complex, inexact, on-going, and dynamic process. Variances from expected results occur on a regular basis. FPL has consistently shown the ability to revise its plans to meet its reliability requirements.

Accordingly, because FPL has not met the statutory requirements for the granting of a waiver, Staff recommends that the Company's request should be denied.

ISSUE 2: Should Florida Power and Light's Residential On Call Research Project be approved, including approval for cost recovery?

PRIMARY RECOMMENDATION: If Staff's recommendation on Issue 1 is approved, the tariff should be denied on the basis that it is inconsistent with Rule 25-6.0438(4)(c), Florida Administrative Code. However, if Staff's recommendation on Issue 1 is denied, staff recommends that the Residential On Call Research Project be approved. The research could provide FPL with further justification to lower On Call program expenses recovered from all customers. Research project expenses, to be recovered through the Energy Conservation Cost Recovery Clause, should be limited to \$247,500. A final report detailing the findings of the research project should be filed with the Commission by March 31, 2003. (Futrell, Springer)

ALTERNATE RECOMMENDATION: If Staff's recommendation on Issue 1 is approved, the tariff should be denied on the basis that it is inconsistent with Rule 25-6.0438(4)(c), Florida Administrative Code. However, if Staff's recommendation on Issue 1 is denied, staff recommends that the Residential On Call Research Project be denied. The current On Call program is cost-effective with a RIM value of 1.25 which indicates no immediate need to reduce credits to participants. The initial survey results indicate a 10% drop off rate. This equates to a decrease in reserve margin of approximately 0.5%, from 21.7% to 21.2% in the summer of 2002. In addition, the proposed pilot program is biased because participants will receive a refund of all reduced credits, including interest. (Ballinger)

PRIMARY STAFF ANALYSIS: FPL believes that despite the findings of its survey research, a field test research project designed to measure customer response to actual changes in credits and marketing changes, or program description changes, should be conducted prior to implementing system-wide program changes.

FPL proposes to conduct the research from November 1, 2001 to October 31, 2002. At the conclusion of the research, each participating customer will receive a credit equal to the difference between the credit under rate schedule RSL and the credit under the proposed rate schedule RSLX, times the number of months the customer took service under RSLX. The credits shall be paid with interest pursuant to Rule 25-6.109(4),(5), Florida Administrative Code.

Critical to the success of this research project is the extent to which participants are kept "in the dark" regarding the nature of the research. This despite the existence of public records at this Commission on the project, as well as potential word-of-mouth from other customers which could bias the research. Participants will not be told of the research, or that they will be made whole with interest at the end of the project. An existing On Call customer, who experiences a reduction in his or her credits and is aware of this provision, may respond differently from those customers who are unaware of the make whole provision. FPL is essentially banking on enough participants not having knowledge of the research in order to achieve statistically significant results.

The research project may provide more predictable results than the previously described survey. Customers who actually experience a reduction in monetary credits may respond very differently than to written questions in a survey. This data may give FPL better information on how to shape any potential changes to the On Call program, such as lowering credits to existing and new participants, lowering credits only to new participants, ending additional participation, or paying credits only during winter or summer. Also, the potential to lower costs to FPL's customers is worth exploring, given the proposed budget for the research project.

The proposed budget for the project is \$247,500, of which approximately \$77,500 is budgeted for the retroactive credits. Other costs include programming FPL's billing systems with the new credits and costs for customer materials associated with the project.

FPL's On Call Research Project should be approved because it may result in lower costs to customers. Expenses to be recovered through the ECCR should be limited to \$247,500. A report detailing FPL's findings should be filed with the Commission by March 31, 2003.

ALTERNATE STAFF ANALYSIS: FP&L's On Call program remains cost-effective even under today's assumptions of avoided generation cost. At issue in this recommendation is not whether FP&L should reduce the credits, but should FP&L expend additional monies on a pilot program to supposedly test customer response to a reduced credit. When Florida Power Corporation (FPC) petitioned the Commission to reduce the credits contained in its residential load management program, the program was no longer cost-effective. Therefore, FPC was faced with two choices: either close the program to new participants and allow attrition to reduce the amount of current customers, or reduce the credits to all customers and

continue to offer the program. The Commission and FPC were deluged with customer complaints regarding the reduced credits. Many customers believed that it was their right to retain the credit, even if it resulted in higher costs to other ratepayers. Ultimately, the reduced credit was approved and FPC experienced a net decrease in total customers for a period of only two months. Within six months, new customer participation quickly overcame the short term drop-off rate such that the total customer participation levels were one again increasing. The lessons learned from the FPC experience are valuable. It is clear that when credits are reduced, some customers will be unhappy. However, FPC was forced to reduce credits to at least a certain level in order to make the program cost-effective to all ratepayers while FP&L has the discretion to reduce credits in small increments.

FP&L contends that a reduction in credits could result in approximately \$23 million in savings and that spending \$247,500 up front to solidify this estimate is money well spent. While the amount of the pilot program pales in comparison with the estimated savings, staff wonders if the pilot will result in any clearer estimates of drop-offs than the initial survey. The initial survey concluded that a reduction in credits coupled with a new program delivery method, should yield a drop-off rate of approximately 10%. A 10% drop-off would result in approximately 80 MW of additional summer load on FP&L's system. While not trivial, this additional load would result in a decrease in reserve margin of approximately 0.5%. Staff questions how the pilot program could yield any clearer results when participants will receive a refund of all reduced credits, including interest. FPL would like the customers to be unaware of this fact, but the proposed tariff includes the refund with interest language. Therefore, FPL is hoping that customers do not read the Commission's Order or the tariff before signing in order to obtain valid experiment results. Staff does not believe that this is a prudent course of action. To truly test customer reaction, the credits should be reduced across the board. To do otherwise is wasting time and insulting to customers.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the proposed agency actions files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

STAFF ANALYSIS: In order to process both the waiver request and the tariff filing simultaneously, we recommend that the proposed agency action process be utilized instead of the tariff process for the portion of the order approving the research project. While both processes provide for a point of entry for protest, under the tariff process, if there is a protest, the tariff would go into effect pending the outcome of the hearing; whereas under the proposed agency action process, if protested, the tariff would not go into effect as the proposed agency action order becomes a nullity. Since it would not be reasonable to have this tariff go into effect if the variance portion of the Commission's order were protested, the tariff should be processed as proposed agency action. If there is no timely protest to either the waiver or the research project portion of the order by a person whose substantial interests are affected, the docket should be closed upon the issuance of a consummating order.