

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation for Approval of Non-firm Loan Methodology and Annual Targets.)	DOCKET NO. 870189-EI
)	ORDER NO. 22230
)	ISSUED: 11-28-89
)	

The following Commissioners participated in the disposition of this matter:

- MICHAEL McK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- JOHN T. HERNDON

FINAL ORDER

BY THE COMMISSION:

Rule 25-6.0438, Florida Administrative Code, effective August 21, 1986, requires each investor-owned electric utility that offers non-firm electric service to submit for the Commission's review and approval a proposed method for determining the utility's maximum level of cost-effective non-firm load. Rule 25-6.0438, also states that specific consideration must be given to each type of non-firm electric service offered and that the maximum levels of non-firm load must be reviewed and updated by each utility and filed for Commission approval every two years.

Pursuant to Rule 25-6.0438, Florida Power Corporation (FPC) filed its methodology and non-firm annual target amounts on February 23, 1987. Proposed Agency Action Order No. 17884 was issued on July 21, 1987, approving FPC's petition. Both the Florida Industrial Power Users' Group (FIPUG) and Occidental Chemical Corporation (Occidental) filed timely protests to Order No. 17884 requesting a hearing. Following FIPUG's and Occidental's protests, this docket was consolidated with 870220-EI, the current FPC rate case by Order No. 18153, issued on September 16, 1987. The purpose of the consolidation was to allow testimony to be offered on these issues during the rate case hearings scheduled for January 11-15, 1988.

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On December 10, 1987, all parties to Docket No. 870220-EI entered into a stipulation which resolved all of the issues of the rate reduction docket. This stipulation was approved by the Commission in Order No. 18627, issued on January 4, 1988. The stipulation approved in Order No. 18627 specifically reserved the issues associated with this docket for resolution in a separate proceeding. Order No. 18627 at 12, paragraph 6. Order No. 18802 set new hearing dates of March 30-31, 1988, and established dates for the filing of testimony.

At the prehearing conference held on March 9, 1988, before Commission Wilson, motions to clarify the scope of the docket, or alternatively to continue the hearing filed by Occidental and FIPUG were also ruled upon. That ruling limited the March hearing to the methodology to be used in the development of annual target levels for interruptible, curtailable and load management electric services. Prehearing Order No. 19061, issued on March 30, 1988, at 8-9.

Order No. 19879, issued on August 24, 1988, is the order which memorializes the Commission's decision on FPC's methodology.

At the October 12, 1989 Agenda Conference, this Commission was advised by Staff that Rule 25-6.0438, Florida Administrative Code, had become unworkable to the extent it required annual target levels to be set. Due to problems encountered in both implementing and administering the rule as it relates to annual target levels, we have directed Staff to revisit the rule. We find, therefore, that our ruling on issues in this docket relating to annual target levels should be deferred until Rule 25-6.0438 is revised. Until that time, we will refrain from ruling on issues relating to the proper annual target levels for FPC's non-firm service pursuant to Rule 25-6.0438, Florida Administrative Code; the proper means of implementing those target levels; and whether the provision of standby interruptible service will either impair FPC's ability to render adequate service or place an undue burden on the electric utility pursuant to 18 C.F.R. Subsection 292.305 (b)(2).

We further find that the Commission does not have the authority under Rule 25-6.0438, Florida Administrative Code, and Section 366.076, Florida Statute, to close approved tariffs

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to existing customers. We previously stated this position in In re: Petition of Florida Power & Light Company for Partial Waiver for Requirements of Rule 25-6.0438, Florida Administrative Code, Order No. 18254, Docket No. 870198-EI. In Order No. 18254, we ruled that "should the methodology provided for in Section (5)(a) indicate that the curtailable rate does not offer any economic benefits to FPL's general body of ratepayers ... then the curtailable tariff could only be closed to existing customers in FPL's next rate case." Our reasoning and our decision in Order No. 18254 is applicable to this proceeding. We note that in Order No. 18254, the Commission only addressed this issue as it relates to existing customers receiving service under approved tariffs. We may close approved tariffs to new customers outside the context of a rate case.

Further, we find that Rule 25-6.0438 allows separate annual target levels to be established for interruptible standby service. While Rule 25-6.0438 does not address the setting of separate annual targets for interruptible load and interruptible standby load, nor require that separate targets be set, the rule does contemplate that the cost-effectiveness test submitted by a utility contain separate analyses of the types of non-firm service provided. In fact, it requires that specific consideration of each type of service must be given:

Within six (6) months of the effective date of this Rule, each utility that currently offers non-firm electric service shall submit for the Commission's review and approval a proposed method for determining the utility's maximum level of cost-effective non-firm load over its generation planning horizon and the utility's annual targets for achieving the total level of non-firm load in a cost-effective manner. Specific consideration must be given to each type of non-firm electric service offered.

Rule 25-6.0438(5)(a) (emphasis added).

We also find that the rule does not specify how the types of non-firm load should be separated. We conclude that the manner of separation should be determined on a case-by-case basis.

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In consideration of the foregoing, it is

ORDERED that our ruling on issues associated with FPC's non-firm annual target levels for interruptible load are deferred until Rule 25-6.0438, Florida Administrative Code, is revised. It is further

ORDERED that the Commission does not have the authority under Rule 25-6.0438, Florida Administrative Code, and Section 366.076, Florida Statutes, to close approved tariffs to existing customers. It is further

ORDERED that Rule 25-6.0438, Florida Administrative Code, allows separate annual target levels to be established for interruptible standby service. It is further

ORDERED that this docket shall be closed after the time has run in which to file a petition for reconsideration or notice of appeal if such action is not taken.

By ORDER of the Florida Public Service Commission,
this 28th day of NOVEMBER, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.