

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Alabama
Electric Cooperative, Inc. for
waiver of Rule 25-22.071,
F.A.C., Submission and Review of
Ten-year Site Plan.

DOCKET NO. 980652-EC
ORDER NO. PSC-98-0952-FOF-EC
ISSUED: July 14, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR WAIVER OF RULE 25-22.071, FLORIDA
ADMINISTRATIVE CODE

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.

Alabama Electric Cooperative, Inc., (AEC) filed a petition on
May 14, 1998, for a waiver of Rule 25-22.071, Florida
Administrative Code, requiring electric utilities in Florida with
a generating capacity of over 250 megawatts (mW) to file a Ten-Year
Site Plan each year outlining their plans to build capacity or
transmission facilities in Florida.

Rule 25-22.071, Florida Administrative Code provides in
pertinent part that:

All electric utilities in the State of Florida with
existing generating capacity of 250 megawatts (mW) or
greater shall prepare a ten-year site plan, and submit 25

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copies to the Florida Public Service Commission's Division of Records and Reporting on the first working day of April of each year, unless extended. The plan shall date from December 31, of the prior calendar year.

In Rule 25-22.070, Florida Administrative Code, electric utility is defined for the purposes of Rule 25-22.071, Florida Administrative Code, as:

. . . any municipal electric utility, investor-owned electric utility, rural electric cooperative, public utility district, joint operating agency, or combinations thereof, that owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

These Rules implement Section 186.801(1), Florida Statutes, which reads:

Beginning January 1, 1974, each electric utility shall submit to the Public Service Commission a 10-year site plan which shall estimate its power-generating needs and the general location of its proposed power plant sites.

When read together, the statute and the Rules show that the intent of the Ten-Year Site Plan is to track each electric utility's proposed planning. We believe that AEC is an electric utility as defined by Rule 25-22.070, Florida Administrative Code. While AEC has more capacity than the 250 mW threshold of Rule 25-22.071, Florida Administrative Code, its only generating unit in Florida is an 11 mW diesel turbine unit on Eglin Air Force Base in Walton County. AEC has only limited distribution in Florida. Its transmission in Florida is limited mainly to other electric cooperatives in the extreme northwest corner of the state.

We note that one interpretation of the rule could exclude AEC from the filing requirement because it has less than 250 mW of generating capacity in the State of Florida. The rule can also reasonably be construed to apply to Florida utilities with 250 mW of capacity or more, without considering where the generating capacity is located.

Notice of AEC's Petition was published in the Florida Administrative Weekly on June 5, 1998. No comments were received.

We grant AEC's Petition for Waiver of Rule 25-22.071, Florida Administrative Code, until such time as AEC plans to add generation capacity in this state.

Section 120.542(1), 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. (Emphasis added).

I. THE PURPOSES OF THE UNDERLYING STATUTE

AEC states that the granting of a waiver of Rule 25-22.071, Florida Administrative Code would not interfere with the statutory requirement of Section 186.801, Florida Statutes, which mandates gathering information from electric utilities in Florida in order to plan for future generation, transmission and distribution needs in this state. Furthermore, AEC asserts that requiring AEC to file a 10 year site plan would work a substantial hardship upon AEC by forcing it to file a specific set of data for its limited presence in Florida which is not required of it by Alabama or by the federal government.

In accordance with Section 120.542(1), Florida Statutes, we believe that AEC has adequately demonstrated in its Petition that the purpose of the underlying statute, Section 186.801, Florida Statutes, will be achieved by granting this waiver. The underlying purpose of the statute is to provide us with sufficient information to determine the suitability of long range (10 year) plans for siting generation and transmission facilities in Florida by electric utilities.

AEC has a very limited presence in Florida and has stated in its petition that it does not intend to increase its presence by adding generation facilities, distribution facilities, or retail customers in this state. Because of AEC's minimal presence in

Florida, we believe that there is no need to include its information in reviewing the Ten-Year Site Plans until such time as AEC plans to add generating facilities in this state.

II. SUBSTANTIAL HARDSHIP

We also believe that AEC has adequately demonstrated that complying with the Ten-Year Site Plan requirements of Rule 25-22.071, Florida Administrative Code, would be a substantial hardship upon it within the meaning of Section 120.542, Florida Statutes. AEC states in its Petition that preparation of a Ten-Year Site Plan for Florida would require the commitment of economic and personnel resources to prepare information for Florida in a format not otherwise required of AEC in its filings to federal or Alabama authorities. We believe that such an expenditure of resources constitutes an "economic hardship" within the meaning of Section 120.542, Florida Statutes.

Accordingly, because AEC has met the statutory requirements for the granting of a waiver, we hold that the Company's request should be granted.

Based on the foregoing, it is

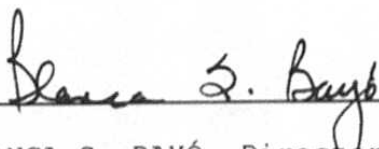
ORDERED by the Florida Public Service Commission that Alabama Electric Cooperative's Petition for Waiver of Rule 25-22.071, Florida Administrative Code, is granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, 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 or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 14th
day of July, 1998.



BLANCA S. BAYÓ, 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 120.569(1), 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.

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 and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 August 4, 1998.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.