

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail
rates of Florida Power & Light
Company

DOCKET NO. 001148-EI
ORDER NO. PSC-01-2111-PCO-EI
ISSUED: October 24, 2001

ORDER ESTABLISHING PROCEDURE

By Order No. PSC-01-1346-PCO-EI, issued June 19, 2001, in this docket, Florida Power & Light Company (FPL) was ordered to file Minimum Filing Requirements (MFRs) based on a projected calendar year 2002 test year. By Order No. PSC-01-1535-PCO-EI, issued July 24, 2001, the Commission established the specific MFR schedules to be filed by FPL and the filing dates for those schedules. A hearing has been scheduled for April 10-12, and 15-16, 2002.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for April 10-12, and 15-16, 2002. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by April 1, 2002. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be

DOCUMENT NUMBER - DATE

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numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 500; requests for production of documents, including all subparts, shall be limited to 500; and requests for admissions, including subparts, shall be limited to 100.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Notice and Public Information

Within 15 days of filing the complete MFR schedules required by Order No. PSC-01-1535-PCO-EI, FPL shall place a copy of the MFRs at its official headquarters. The copies of the MFRs shall be available for public inspection during the utility's regular business hours.

FPL shall advise all customers, via a notation on its bills, that service hearings have been scheduled and that details will be provided via newspaper advertisements. At least 7 days and not more than 20 days prior to each service hearing, FPL shall have published in a newspaper of general circulation in the area in which the service hearing is to be held a display advertisement

stating the date, time, location, and purpose of the hearing. The advertisement shall be approved by the Commission staff prior to publication. This advertisement shall also include a statement that any customer comments regarding FPL's service or rates should be addressed to the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and that such comments should identify the docket number assigned to this proceeding.

Prefiled Testimony and Exhibits

Each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 ½ inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of the Commission Clerk and Administrative Services, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

If a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the Prehearing Conference.

Each witness shall prepare an errata sheet incorporating all changes and or corrections to his/her prefiled testimony, if necessary. Each errata sheet will be marked as an exhibit, to be offered at the same time as the prefiled testimony and exhibits.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of the Commission Clerk and Administrative Services by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each

such issue, and which of the party's witnesses will address the issue;

- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the parties' pending requests for confidentiality;
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore; and
- (k) Any objections to a witness's qualifications as an expert must be identified in a party's Prehearing Statement. Failure to identify such objection may result in restriction of a party's ability to conduct voir dire.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held March 14, 2001, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the

issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner. the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Controlling Dates

On August 15, 2001, FPL submitted a letter to staff concerning FPL's proposed schedule for the retail rate review portion of this docket. Staff met with the parties to discuss FPL's proposal on August 29, 2001. FPL identifies three objectives which FPL believes are advanced by its proposed schedule:

- 1) It allows all parties an opportunity to explore possible settlement of parts or all of the matters that could be considered in this proceeding.
- 2) It provides for the staff to issue a recommendation to the Commission on how best to proceed based on its review of the extensive and comprehensive 2002 forecast data contained in the MFRs filed by FPL.
- 3) It permits the identification of factual issues that may be in dispute so that they can be meaningfully addressed and facilitates the possible simplification and resolution of some of those issues short of a full hearing.

Having considered FPL's request, and the comments of the parties, the following schedule is established:

Discovery	Now through April 1, 2002
MFR Filing Complete	10/15/01
Service Hearings	11/29/01, 12/11-13/01
Preliminary Lists of Issues	12/21/01
Issue ID Meeting	01/09/02
Utility Direct Testimony	01/28/02
Intervenor Testimony	02/11/02
Staff Testimony	02/25/02
Prehearing Statements	02/28/02
Rebuttal Testimony	03/11/02
Prehearing Conference	03/14/02
Discovery Complete	04/01/02
Hearing	04/10/01 - 04/12/01 & 04/15/01 - 04/16/01
Briefs	04/28/02

This schedule is compatible with all the objectives suggested in FPL's August 15, 2001, letter. However, FPL's suggestion of requiring a staff recommendation on how best to proceed based on its review of the extensive and comprehensive 2002 forecast data is unnecessary, not practical, and potentially prejudicial to the rights of one or more parties. The Commission, in its deliberations at, and the order issued from, the decision at the May 15, 2001, agenda conference, provided explicit direction as to how to proceed. The Commission ordered the utility to file MFRs to determine what FPL's retail rates should be on a going forward basis. There are two means of addressing that issue with finality in Florida Administrative Law. First, via a settlement, agreed to by all parties to the proceeding and subsequently approved by the Commission. Second, via a hearing conducted pursuant to Sections 120.569 and 120.57, Florida Statutes. The Commission's intent in requiring the filing of MFRs was to facilitate both possible outcomes. This proceeding was initiated by the Commission on its own motion. As such, if, at any point, staff believes the proceeding should be concluded, it can prepare a recommendation for Commission consideration. There simply is no reason to require a recommendation to reconsider the Commission's direction when, if appropriate, the option already exists.

The Commission expected that information in the MFRs would be the starting point for reaching a determination on the reasonableness of FPL's rates. The MFRs in and of themselves, will not provide all the information necessary to ascertain the reasonableness of FPL's retail rates on a going forward basis. An audit, and an adequate period for discovery are necessary to evaluate and, if necessary, challenge the assertions contained in the MFRs. The discovery and audit processes should be permitted to take place without undue time restrictions to allow staff and the parties a fair opportunity to review the MFRs.

FPL has voiced concerns about its ability to respond to issues that will not, and indeed, cannot be identified before the parties and staff have fully reviewed the MFRs. To address that concern, this Order establishes a testimony filing schedule subsequent to the identification of specific issues. The proposed schedule contemplates an opportunity for utility, intervenor, staff and rebuttal testimony. This schedule will allow:

- 1) An opportunity for all parties to fully evaluate the information in the MFRs;

- 2) The identification of specific issues based on that evaluation;
- 3) An opportunity for all parties to file testimony which addresses the specifically identified issues;
- 4) Approximately 90 days from the identification of issues to the hearing to explore settlement of some or all of the issues short of a full hearing; and
- 5) The staff to file a recommendation concerning an alternate procedure for processing this case if it appears to staff to be warranted.

I believe this process accommodates the matters addressed in FPL's letter.

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information.

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Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.


Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 75 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 24th day of October, 2001.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

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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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the

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Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.