

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for extension of time until July 26, 2002, to file depreciation study for Fernandina Beach electric division with implementation date of 1/1/03, by Florida Public Utilities Company.

DOCKET NO. 020327-EI
ORDER NO. PSC-02-0918-PAA-EI
ISSUED: July 8, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST 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.

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 our review at least once every four years from the submission date of the previous study unless otherwise required by the Commission. Florida Public Utilities Company's ("FPUC" or "company") last depreciation study was filed on April 27, 1998, with an effective date for revised depreciation rates of January 1, 1999. Therefore, FPUC was required to file a new study by April 27, 2002.

DOCUMENT NUMBER-DATE

06960 JUL-8 2002

FPSC-CONSUMER CLERK

By letter dated April 8, 2002, FPUC requested a waiver of the filing deadline imposed by Rule 25-6.0436, Florida Administrative Code, and asked for an extension of ninety days, until July 26, 2002, to file its depreciation study. FPUC filed a formal petition for rule waiver on April 30, 2002. Pursuant to Section 120.542(6), Florida Statutes, notice of FPUC's petition was submitted to the Secretary of State for publication in the May 31, 2002, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day period following publication of the notice, as provided for in Rule 28-104.003, Florida Administrative Code.

We have jurisdiction over this matter pursuant to Sections 120.542, 350.115, and 366.06, Florida Statutes.

In its petition, FPUC contends that granting its requested waiver will enable it to comply with Rule 25-6.0436, Florida Administrative Code, in a timely, cost effective, and accurate manner based upon actual fiscal year data in the future. According to FPUC, its recent acquisition of Atlantic Utilities (South Florida Natural Gas) and the timing of the related work increases along with year-end reporting have compromised its ability to file the depreciation study by April 27, 2002. FPUC explains that it is also involved in other Commission proceedings related to the South Florida Natural Gas acquisition, including proceedings that address conservation, Purchase Gas Adjustment, and unbundling matters. FPUC asserts that the increased workload, timing of events, and recent new hires in the accounting department have contributed to its need for a ninety-day delay in the filing of its depreciation study.

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.

Rule 25-6.0436, Florida Administrative Code, implements a number of Florida Statutes including Sections 350.115 and 366.06(1). Section 350.115 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.

Due to the circumstances described by FPUC in its petition, as set forth above, we find that application of the filing deadline set forth in Rule 25-6.0436(8)(a), Florida Administrative Code, would create a substantial hardship to FPUC. Further, we find that granting an extension of the filing deadline would serve the purposes of the statutes underlying the rule by allowing FPUC to provide the required data in a cost-effective and accurate manner.

We note that the purpose of depreciation is to systematically spread the recovery of prudently invested capital over the period the plant items represented by this capital are providing service. Depreciation rates should be revised, ideally, as the need is perceived. Our rules require electric and gas companies to provide depreciation studies at least once every four and five years, respectively, from the date of the last submitted study, in accordance with Rules 25-6.0436(8)(a) and 25-7.045(8)(a), Florida Administrative Code. These review cycles are based on the perceived relative susceptibility to technological impact for the

ORDER NO. PSC-02-0918-PAA-EI
DOCKET NO. 020327-EI
PAGE 4

two industries. We find that granting the petition will allow us to achieve the purposes of timely setting depreciation rates for FPUC.

For the reasons stated above, we grant FPUC's petition for waiver of the filing deadline established by Rule 25-6.0436(8)(a), Florida Administrative Code. FPUC shall file its depreciation study no later than July 26, 2002.

Based on the foregoing, it is

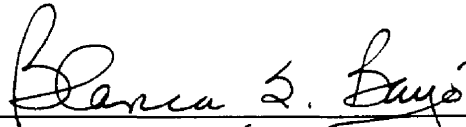
ORDERED by the Florida Public Service Commission that Florida Public Utilities Company's petition for waiver of the filing deadline established by Rule 25-6.0436(8)(a), Florida Administrative Code, is hereby granted as set forth in the body of this Order. It is further

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 the Commission Clerk and Administrative Services, 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.

ORDER NO. PSC-02-0918-PAA-EI
DOCKET NO. 020327-EI
PAGE 5

By ORDER of the Florida Public Service Commission this 8th day
of July, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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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 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,

ORDER NO. PSC-02-0918-PAA-EI
DOCKET NO. 020327-EI
PAGE 6

in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 29, 2002.

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.