

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.

DOCKET NO. 041291-EI

In re: Petition for rate increase by Florida Power & Light Company.

DOCKET NO. 050045-EI

In re: 2005 comprehensive depreciation study by Florida Power & Light Company.

DOCKET NO. 050188-EI

ORDER NO. PSC-05-0499-PCO-EI

ISSUED: May 9, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

ORDER ADDRESSING MOTION TO CONSOLIDATE DOCKETS

BY THE COMMISSION:

On November 4, 2004, Florida Power & Light Company ("FPL") filed a petition seeking authority to recover prudently incurred restoration costs, in excess of its storm reserve balance, related to the hurricanes that struck its service territory in 2004. The petition was assigned Docket No. 041291-EI. By Order No. PSC-05-0283-PCO-EI, issued March 16, 2005, we granted FPL leave to amend its original petition to reflect an updated estimate of the storm-related costs contained in its original petition. A formal administrative hearing on FPL's petition, as amended, was scheduled for April 20 - 22, 2005.

On March 17, 2005, FPL filed a depreciation study for this Commission's review that was assigned Docket No. 050188-EI. A hearing was not scheduled for that docket.

On March 22, 2005, FPL filed an application for a base rate increase that was assigned Docket No. 050045-EI. A formal administrative hearing on the application was set for August 22 - 26 and August 31 - September 2, 2005.

DOCUMENT NUMBER-DATE

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On March 29, 2005, the Office of Public Counsel (“OPC”) filed its Motion for Leave to File Supplemental Testimony in Docket No. 041291-EI to Address Implications of FPL’s New Depreciation Study Showing \$1.24 Billion Surplus in FPL’s Depreciation Reserve Accounts and Motion to Consolidate Storm Cost, Depreciation, and Revenue Requirements Dockets. On April 5, 2005, FPL filed a response in opposition to OPC’s motion.

OPC’s motion for leave to file supplemental testimony was granted at the Prehearing Conference held April 8, 2005, in Docket No. 041291-EI. This Order addresses OPC’s motion to consolidate the storm cost recovery docket (Docket No. 041291-EI), the depreciation study docket (Docket No. 050188-EI), and the rate case (Docket No. 050045-EI). We have jurisdiction over this matter pursuant to Chapters 120 and 366, Florida Statutes.

Consolidation of administrative proceedings is permitted by Rule 28-106.108, Florida Administrative Code, which provides:

If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

In its motion, OPC contends that by consolidating FPL’s storm cost recovery docket, depreciation study docket, and rate case, this Commission will have more options to address a \$1.24 billion surplus in FPL’s depreciation reserve as reported in FPL’s depreciation study.

In response, FPL argues that OPC’s motion does not meet the standard for consolidation. First, FPL asserts that the issues involved in the dockets are not similar enough to support consolidation. FPL states that the issues in the storm cost recovery docket are narrow and related only to recovery of storm restoration costs through a mechanism independent of base rates, while the issues in the rate case are vast and cover every aspect of FPL’s base rates. Second, FPL asserts that consolidation would not promote the just, speedy, and inexpensive resolution of the storm cost recovery docket, but would instead create delay in resolution of that docket. FPL notes that, in the storm cost recovery docket, all testimony has been filed, almost all discovery has been completed, and only two weeks remain prior to the scheduled hearing. Third, FPL asserts that consolidation would unjustly allow certain parties in the storm cost recovery docket the opportunity to seek extension of the discovery deadline and testimony due dates to accommodate their interests after failing to advance those interests within the existing procedural schedule. Finally, FPL asserts that consolidation would unduly prejudice FPL by delaying resolution of the storm cost recovery despite prior Commission orders indicating that the Commission would act expeditiously to address deficits in the company’s storm reserve. FPL states that consolidation would delay a decision on its request for storm cost recovery until nearly the end of the 2005 hurricane season and would leave a cloud over FPL’s financial picture in the eyes of the investment community.

While we believe that we have the discretion to consolidate all three dockets at issue, we find that only the depreciation study docket and the rate case docket shall be consolidated. We

do not believe that consolidation of the storm cost recovery docket with these dockets is warranted.

Consolidation of the depreciation study docket and the rate case will ensure that our findings on appropriate depreciation rates can be incorporated into the rates established in the rate case. Currently, the depreciation study docket is scheduled to be addressed without a hearing as proposed agency action at an agenda conference shortly before the rate case hearing begins. If our proposed agency action concerning the appropriate revised depreciation rates is protested, a final decision might not be rendered in sufficient time to incorporate the revisions into the rate case. As a result, both the annual depreciation expense and the accumulated depreciation reserve could be misstated for the purpose of setting future base rates. This situation can be avoided if the depreciation study docket and the rate case docket are consolidated to allow both dockets to proceed on the same hearing track.

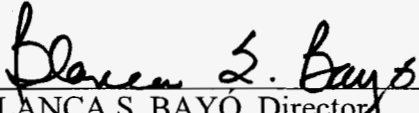
We see no need, however, to consolidate the storm cost recovery docket with the depreciation study docket and the rate case. Through the supplemental testimony allowed in the storm cost recovery docket, we may consider what impact, if any, FPL's depreciation reserve surplus should have on FPL's storm reserve deficit. With consolidation of the depreciation study docket and the rate case, we will also be able to consider different alternatives for the disposition of the depreciation reserve surplus. Further, as is true in any rate case, we maintain our authority in the rate case to consider all matters relevant and germane to setting rates on a going-forward basis. If deemed appropriate, this could include a modification to the method for recovery of all or a portion of the storm restoration costs that may be approved for recovery in the storm cost recovery docket. Thus, consolidating the storm cost recovery docket with the other two dockets provides us with no additional flexibility. Because the storm cost recovery docket is already scheduled for hearing beginning on April 20, 2005, we believe it would be more expeditious to proceed to hearing as scheduled to address the specific storm-related issues rather than incorporate those issues into the much broader rate case.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's motion to consolidate Docket Nos. 041291-EI, 050045-EI, and 050188-EI is denied. It is further

ORDERED that Docket Nos. 050045-EI and 050188-EI are hereby consolidated for all purposes, including hearing.

By ORDER of the Florida Public Service Commission this 9th day of May, 2005.


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

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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; 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the 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.