

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C., submitted by Florida Public Utilities Company.

DOCKET NO. 070300-EI
ORDER NO. PSC-07-0558-PAA-EI
ISSUED: July 3, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING TEMPORARY WAIVER OF
RULE 25-6.0342(2), 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.

In order to address the vulnerabilities of the State of Florida's electric distribution and transmission system to powerful storms, this Commission initiated a multi-faceted approach to address storm preparation and has made significant progress. One area we have pursued is "storm hardening." Storm hardening entails upgraded design and construction practices, as well as maintenance practices, so that electric facilities are better able to withstand extreme weather such as high wind speeds and flooding. The purpose of implementing storm hardening activities is to reduce outages from storms and lower the cost of restoring service. We have initiated several proceedings directed at providing a higher level of preparedness and hardening of the electric infrastructure throughout the state to prepare for future storm events.

In one of our rulemaking proceedings, we adopted Rule 25-6.0342, Florida Administrative Code, which requires each investor-owned utility (IOU) to file a comprehensive storm hardening plan for our review and approval, the first of which was due to be filed by May 7, 2007.

On May 4, 2007, Florida Public Utilities Company (FPUC) filed its Petition for Variance from Rule 25-6.0342(2), Florida Administrative Code (Petition), pursuant to Section 120.542,

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Florida Statutes. FPUC seeks a waiver of Rule 25-6.0342(2), Florida Administrative Code, which is the portion of the rule that requires each IOU to file for our approval a detailed Storm Hardening Plan by May 7, 2007. Specifically, FPUC seeks an additional 60 days to file its 2007 Storm Hardening Plan. In its Petition, FPUC cites to the plans previously filed with this Commission pursuant to Order No. PSC-06-0351-PAA, issued in Docket No. 060198-EI, and the subsequent Petitions filed by FPUC seeking recovery of the costs to implement the storm preparedness initiatives. In addition, on April 27, 2007, FPUC submitted a Test Year Notification letter stating that it intends to file a Petition to increase its rates and charges by September 17, 2007.

Pursuant to Section 120.542, Florida Statutes, notice of FPUC's Petition was filed with the Florida Administrative Weekly (FAW) on May 15, 2007, and subsequently published on May 25, 2007. No comments on FPUC's Petition were received. However, on May 30, 2007, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) filed comments regarding FPUC's Petition in response to our staff's Request for Preliminary Comments from Interested Persons and Third-Party Attachers.

Section 120.542, Florida Statutes, authorizes us to grant variances or waivers to the requirements of our rules where the person subject to the rule has demonstrated that the underlying purpose of the statute has been or will be achieved by other means, and strict application of the rule would cause the person substantial hardship or would violate principles of fairness. "Substantial hardship" as defined in this section means a demonstrated economic, technological, legal, or other hardship to the person requesting the variance or waiver.

Rule 25-6.0342, Florida Administrative Code, implements Sections 366.04(2)(c), (5) and (6), and 366.05(1), Florida Statutes. Thus, the rule implements the parts of the Grid Bill¹ that give us jurisdiction over electric utilities to require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes; the planning, development, and maintenance of a coordinated electric power grid to assure an adequate and reliable source of energy for operational and emergency purposes in Florida; and to prescribe and enforce safety standards for transmission and distribution facilities. The rule also implements Section 366.05(1), Florida Statutes, which provides:

In the exercise of such jurisdiction, the commission shall have power to prescribe standards of quality and measurements, including the ability to adopt construction standards that exceed the National Electrical Safety Code, for purposes of ensuring the reliable provision of service, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto.

¹ The Grid Bill is made up of Sections 366.04(2)(c), (d), (e), (f), 366.04(5), 366.05(7) & (8), and 366.055(1), (2), & (3), Florida Statutes. One objective of the Grid Bill was to give us expanded jurisdiction over the planning, development, and coordination of electric utilities throughout the State of Florida.

The rule meets the underlying purpose of these statutes, because the objective of the rule is to enhance reliability and reduce restoration costs and outage times. The underlying purpose of the rule will still be met if FPUC's waiver is granted because FPUC does intend to file its Plan, the goal of which should be to enhance reliability and reduce restorations costs and outage times for its two systems.

Through its Petition, FPUC is seeking an additional 60 days to file its Storm Hardening Plan and has not sought excusal from filing its Plan altogether. If we grant FPUC's waiver, FPUC will be required to file its Plan for our approval on or before July 6, 2007. We believe that even with the additional 60 days, intervenors and our staff will have adequate opportunity to review and evaluate FPUC's Storm Hardening Plan. In addition, because FPUC has asserted that substantial cost increases will be associated with implementing its Plans in excess of its current revenues, we will be able to further evaluate FPUC's Storm Hardening Plan as a substantive issue in FPUC's upcoming rate case. Accordingly, we find that the general purpose of the underlying statutory provisions of the rule will be satisfied if we grant FPUC's request for an additional 60 days to file its Storm Hardening Plans, because we will still have an opportunity to conduct an extensive review of the Plan.

We also find that under the circumstances, application of the May 7, 2007, due date to FPUC would create a substantial hardship for FPUC. FPUC is a substantially smaller company than the other electric IOUs with limited resources and personnel to keep up with FPUC's several pending dockets before this Commission. In consideration of the limitations that it faces with respect to resources and personnel, it would have created a substantial hardship for FPUC to complete its Storm Hardening Plan by May 7, 2007. Thus, we find that the 60 day extension of time to file its Storm Hardening Plan is warranted.

Accordingly, FPUC's petition for a temporary waiver from Rule 25-6.0342(2), Florida Administrative Code, seeking an additional 60 days to file its Storm Hardening Plan is hereby granted. FPUC shall file its 2007 Storm Hardening Plan on or before July 6, 2007. However, if FPUC fails to file its 2007 Storm Hardening Plan on or before July 6, 2007, a show cause proceeding shall be initiated.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Public Utilities Company's request for a temporary waiver of Rule 25-6.0342(2), Florida Administrative Code, seeking an additional 60 days to file its 2007 Storm Hardening Plan is granted. It is further

ORDERED that Florida Public Utilities Company shall file its 2007 Storm Hardening Plan on or before July 6, 2007. It is further

ORDERED that if Florida Public Utilities Company fails to file its 2007 Storm Hardening Plan by July 6, 2007, a show cause proceeding shall be initiated.

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 Commission Clerk, 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.

By ORDER of the Florida Public Service Commission this 3rd day of July, 2007.



ANN COLE
Commission Clerk

(S E A L)

LAH

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

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proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 24, 2007.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.