

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of) DOCKET NO. 930424-EI
proposal for incentive return on)
demand-side management)
investments by Florida Power)
Corporation.)
_____)
In Re: Request for approval of) DOCKET NO. 930444-EI
proposal for revenue decoupling) ORDER NO. PSC-93-1758-PCO-EI
by Florida Power Corporation.) ISSUED: December 7, 1993
_____)

ORDER ESTABLISHING PROCEDURE

This matter is currently set for an administrative hearing. 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 the rules of this Commission.

The hearing in this docket is set for January 19 and 20, 1994. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by January 8, 1994.

Prehearing Statement

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket. 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 Records and Reporting by the close of business, which is 4:45 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;

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- (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; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

A prehearing conference will be held in this docket at the Fletcher Building, 101 East Gaines Street, Tallahassee, Florida. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, shall be observed. 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-EI
J. Doe Exhibit No. _____
Cost Studies for Minutes of Use by Time of Day

Tentative Issues

Attached to this order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A".

LEAF's Motion to Establish Filing Dates

On December 3, 1993, the Legal Environmental Assistance Foundation (LEAF) filed a motion to establish filing dates, requesting an extension from the dates scheduled on the CASR. In its motion LEAF requests a date of no earlier than December 10, 1993 for filing rebuttal, and no earlier than December 16, 1993 for filing prehearing statements. It appears that LEAF's request is reasonable and I will grant LEAF's motion to the extent that the dates for filing the prehearing statements and rebuttal testimony are both extended until December 10, 1993

Controlling Dates

The following dates have been established to govern the key activities of this case.

- | | |
|---------------------------------------|-----------------------|
| 1) Rebuttal testimony and exhibits | December 10, 1993 |
| 2) Prehearing Statements | December 10, 1993 |
| 3) Prehearing Conference | January 6, 1994 |
| 4) Hearing | January 19 & 20, 1994 |
| 5) Briefs | February 5, 1994 |

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to 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. The rule also provides that 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.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together

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total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

Based upon the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission. It is further

ORDERED that the Motion to Establish Filing Dates filed by the Legal Environmental Assistance Foundation is hereby granted to the extent set forth in the body of this Order.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 7th day of December, 1993.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)
MAP:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2),

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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 Records and Reporting, 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.

Staff believes that the following issues are appropriate for the Commission's consideration. The parties to this docket have also agreed that these issues are appropriate except for Issues 4, 5 and 6, to which LEAF objects:

DECOUPLING ISSUES

1. Is it appropriate for the Commission to make a decision on FPC's pilot decoupling proposal prior to determining the RIM vs. TRC screening issue?
2. Will FPC's decoupling proposal reduce economic disincentives to DSM?
3. What risks would FPC's proposal shift to customers that are presently borne by the utility? Is any shift reasonable in view of the magnitude of the risk and the safeguards proposed?
4. What major factors should be considered in any comparison of conservation programs between Florida utilities and utilities in other states that have adopted decoupling and incentives?
5. If decoupling is to be experimented with, what criteria should be approved at the outset to determine whether the experiment is a success or a failure?
6. If decoupling and incentives are adopted or to be experimented with, should low-use customers be excluded from any adoption or experimentation, and if so, below what KWH level should the exclusion be?
7. Is it appropriate to adopt a decoupling mechanism for FPC?
8. If the Commission adopts a decoupling mechanism, what is the appropriate methodology?
9. Should this docket be closed?

INCENTIVE ISSUES

1. Should the Commission approve a pilot DSM incentive mechanism for FPC?
2. What pilot DSM incentive proposal should be approved for FPC?
3. Should this docket be closed?

Staff believes the following issues requested by LEAF are redundant* and therefore inappropriate for the Commission's consideration in these dockets. The prehearing officer will be asked to determine whether these issues are appropriate:

DECOUPLING ISSUES

1. Are advantages likely to result from implementation of FPC's pilot decoupling proposal? If so, what are they?
2. Are disadvantages likely to result from implementation of FPC's pilot decoupling proposal? If so, what are they?

INCENTIVE ISSUES

1. Are advantages likely to result from implementation of a pilot DSM incentive mechanism for FPC? If so, what are they?
2. Are disadvantages likely to result from implementation of a pilot DSM incentive mechanism for FPC? If so, what are they?

*Staff believes discussion of advantages and disadvantages is implicit in previous issues and that a list of advantages and disadvantages provides no meaningful point upon which the Commission can vote. LEAF believes that a separate discussion of advantages and disadvantages is essential to the Commission's analysis and that separate issues will facilitate a weighing of advantages and disadvantages and assist the Commission in its determination of the larger issues.