

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of certain requirements of Rule 25-6.0437, F.A.C., as they apply to General Service Non-Demand Rate Class, by Florida Power & Light Company.

DOCKET NO. 001199-EI
ORDER NO. PSC-00-2433-PAA-EI
ISSUED: December 19, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ

PROPOSED AGENCY ACTION
ORDER GRANTING WAIVER OF
RULE 25-6.0437, 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.

On August 22, 2000, Florida Power & Light Company (FPL) filed its load research sampling plan pursuant to Rule 25-6.0437, Florida Administrative Code. The rule requires the four major investor-owned electric utilities to file every two years for Commission approval of a sampling plan that details the manner in which load research data will be collected for the next load research period.

Load research results obtained using the approved sampling plan must be filed with the Commission every two years. FPL's proposed sampling plan will be used to collect load research data for the calendar year ended December 31, 2001.

On August 22, 2000, FPL filed its request for a waiver of certain requirements of the load research rule, and for approval of

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its sampling plan. In its petition, FPL requests a waiver of two distinct requirements of Rule 25-6.0437, Florida Administrative Code. First, FPL seeks a waiver of that portion of subsection (3) of the rule that requires the use of a plus or minus 10% precision criterion in estimating the winter peak hour for the General Service Non-demand rate class. Second, FPL seeks a continuing waiver of the portions of subsections (6) and (7) of the rule that requires the replacement of load research samples every two years.

Pursuant to Section 120.542(6), Florida Statutes, notice of FPL's petition was submitted to the Secretary of State for publication in the October 13, 2000, Florida Administrative Weekly. No comments concerning the petition were filed in the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code.

Jurisdiction in this matter is vested in the Commission by Sections 366.04, 366.05 and 366.06, Florida Statutes, as well as Section 120.542, Florida Statutes.

Standard for Granting a Rule Waiver

Section 120.542(2), Florida Statutes, provides a two-pronged test for determining when 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 For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. (Emphasis added).

Waiver of Requirements Relating to (GS) Rate Class

Rule 25-6.0437, Florida Administrative Code, addresses the requirements for cost of service load research. This load research is used to allocate costs to the rate classes in rate cases and in the capacity, environmental, and conservation cost recovery clauses. The rule requires that a load research sampling plan be filed for Commission approval every two years. Pursuant to subsection (3) of the rule, the plan must be designed to achieve a

minimum level of precision for estimates of each rate class' summer and winter peak demands, and for the average of their 12 monthly coincident peak demands. Specifically, the rule requires that the estimates be within plus or minus 10% of the actual values at the 90% confidence level.

FPL requests that the precision level required by the rule be relaxed for the estimate of the winter peak hour for its General Service Non-Demand (GS) rate class. FPL seeks approval to design its load research sampling plan such that the GS winter peak estimate is within plus or minus 15% of the actual value at the 90% confidence level.

The Purpose of the Underlying Statute

Rule 25-6.0437, Florida Administrative Code, implements several statutes, primarily those that authorize the Commission to require the filing of periodic reports, and to prescribe fair and reasonable rates and charges. Section 366.04(2)(f), Florida Statutes, grants the Commission the power to require utilities to "prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder." Section 366.05(1), Florida Statutes, grants the Commission the power to "prescribe fair and reasonable rates and charges." Section 366.06(1), Florida Statutes, gives the Commission "the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service." This section also directs the Commission, in fixing rates, to consider, to the extent practicable, "the cost of providing service to the class" and "the consumption and load characteristics of the various classes of customers."

FPL's requested waiver affects the precision of the estimate of only the winter peak hour, and only for FPL's GS rate class. FPL seeks approval to design its load research sampling plan such that the GS winter peak estimate is within plus or minus 15% of the actual value at the 90% confidence level.

We have approved requests for waiver of the rule with respect to the precision of the GS winter peak hour for FPL's last several filed sampling plans, most recently for FPL's sampling plan used to collect data for calendar year 1999 (See Order No. PSC-98-1573-FOF-EI in Docket No. 981064-EI). In granting FPL's waiver for the 1999 calendar year, and in previous years, we noted that a waiver should

be granted when the peak hour for the class in question does not occur within the season for which the waiver is requested, and when the Commission is not currently using, for any utility, a cost of service methodology that allocates production plant costs based on a single peak hour.

The first condition ensures that the estimate of the class peak hour used to develop an allocation factor for distribution plant meets the precision requirement of the rule. The second condition insures that the allocation factors developed for production plant used in rate cases and in the recovery clauses meet the accuracy requirements of the rule.

In this case, FPL asserts that both conditions are satisfied, and we agree. FPL's GS class (non-coincident) peak demand for 1999 occurred in the summer, based on load research results that met the 10% precision criterion. In addition, no utility is currently using a production plant allocation method for any purpose that relies on a single coincident peak hour. We therefore find that the use of FPL's load research results for rate setting purposes will not be affected by granting the requested rule waiver, and that the purpose of the underlying statutes will continue to be achieved.

Substantial Hardship

FPL is requesting a waiver due to the excessive cost of installing and reading the additional sample meters needed to meet the 10% accuracy level. FPL estimates that an additional 116 sample meters would be required to increase the GS winter peak precision from the proposed 15% level to the 10% level required by the rule. FPL estimates that the additional meters would result in removal and installation costs of \$35,000 and an increase in ongoing metering expenses of \$115,000 over the planned three-year life of the sample. Additional capital costs of \$50,000 would also be incurred to purchase the necessary meters. We find this \$200,000 added cost is a substantial hardship within the meaning of Section 120.542, Florida Statutes.

Waiver of Two-Year Sample Replacement Cycle

In its sampling plan filed in 1994 to be used for calendar year 1995, FPL proposed to change its practice of replacing load research samples every two years to a program under which they replace the meters every three years. We granted FPL's waiver

request in Order No. PSC-94-1501-FOF-EI, issued December 7, 1994. Waivers were again requested in both 1996 and 1998 for the sampling plans to be used for calendar years 1997 and 1999 respectively, and were approved in Order Nos. PSC-97-0379-FOF-EI and PSC-98-1573-FOF-EI. FPL requests that it be allowed to continue to replace its load research samples every three years for the same reasons cited in its three previously-approved waiver requests.

The Purpose of the Underlying Statute

Rule 25-6.0437, Florida Administrative Code, implements several statutes, primarily those that authorize the Commission to require the filing of periodic reports, and to prescribe fair and reasonable rates and charges. Section 366.04(2)(f), Florida Statutes, grants the Commission the power to require utilities to "prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder." Section 366.05(1), Florida Statutes, grants the Commission the power to "prescribe fair and reasonable rates and charges." Section 366.06(1), Florida Statutes, gives the Commission "the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service." This section also directs the Commission, in fixing rates, to consider, to the extent practicable, "the cost of providing service to the class" and "the consumption and load characteristics of the various classes of customers."

Rule 25-6.0437(6), Florida Administrative Code requires the four major investor-owned electric utilities to file every two years for Commission approval of a sampling plan that details the manner in which load research data will be collected for the next load research period. Rule 25-6.0437(7), Florida Administrative Code, requires that the load research results obtained using the approved sampling plan be filed with the Commission every two years.

FPL asserts that the use of a three-year cycle instead of a two-year cycle should not impair the usefulness of the load research results reported because FPL's sampled rate classes (RS, GS and GSD) have remained relatively stable over the last several years. As stated in its petition, in order to maintain randomness, FPL monitors and replaces sample points when necessary. In addition, FPL notes that it currently collects and analyzes load research data every year, although Commission rules require that

the data only be reported every two years. FPL's proposed change means that any given load research sample will be used for only one additional year (three versus two).

Based on our review, we agree that FPL's sampled rate classes have remained relatively stable over the last several years. We note that FPL will continue to file its load research results and load research sampling plans with the Commission every two years, as required by the rule. Consequently, we find that the purpose of the underlying statutes will continue to be achieved if the requested rule waiver is granted.

Substantial Hardship

FPL asserts that using the sample for three years instead of two results in cost savings of approximately \$285,000 over a six-year period due to the elimination of approximately 1,059 installations and removals of sample metering. FPL also suggests that a three-year cycle results in a more balanced workload for its field metering personnel. Because imposition of the rule as promulgated will require FPL to forego roughly \$285,000 in cost savings, we find that FPL has shown that application of the rule creates a substantial hardship.

FPL's Proposed Load Research Sampling Plan

Based on FPL's filed sampling plan, FPL meets the requirements of Rule 25-6.0437, Florida Administrative Code, except for the winter peak hour for the GS class and the replacement cycle for load research samples. Having approved FPL's rule waiver requests for these two items, the sampling plan should be approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light's request for the waiver of Rule 25-6.0437(3), Florida Administrative Code, to design its load research sampling plan such that the GS winter peak estimate is within plus or minus 15% of the actual value at the 90% confidence level, is granted. It is further

ORDERED that Florida Power & Light's request for waiver of Rule 25-6.0437(6) and (7), Florida Administrative Code, to continue

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to replace its load research samples every three years rather than every two years, is granted. It is further

ORDERED that Florida Power & Light's proposed load research sampling plan is approved. 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 Records and Reporting, 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 19th day of December, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

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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, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 9, 2001.

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.