



Public Service Commission

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COMMISSION CLERK

DATE: JANUARY 24, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (MEEKS, P. LEE) DM 190
OFFICE OF GENERAL COUNSEL (DODSON) *flaw* *Walt*

RE: DOCKET NO. 011611-EI - PETITION FOR WAIVER OF DEPRECIATION STUDY FILING REQUIREMENT IN RULE 25-6.0436(8)(a), FLORIDA ADMINISTRATIVE CODE, IN ORDER TO EXTEND TIME FOR FILING STUDY TO APRIL 30, 2003, BY FLORIDA POWER CORPORATION.

AGENDA: 02/05/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION-INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: FEBRUARY 26, 2002 - PETITION DEEMED APPROVED IF NOT GRANTED OR DENIED WITHIN 90 DAYS OF RECEIPT

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\011611.RCM

CASE BACKGROUND

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 Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission. Florida Power Corporation's (FPC or Company) last depreciation study was filed on December 1, 1997, and has an effective date of January 1, 1998. Therefore, FPC was required to file a new study by December 1, 2001.

On November 28, 2001, FPC filed a petition for a waiver of the filing deadline imposed by Rule 25-6.0436, Florida Administrative Code, and asked for an extension of time to file its depreciation study, requesting until April 30, 2003, to do so. Pursuant to

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Section 120.542(6), Florida Statutes, the notice of FPC's petition was submitted to the Secretary of State for publication in the December 21, 2001, Florida Administrative Weekly. No comments concerning the petition were filed within the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code.

However, on December 14, 2001, the Office of Public Counsel (OPC) filed a response opposing the request for waiver. OPC argues that the petition ignores the fact that rate case proceedings are "normally" accompanied by depreciation represcriptions.

The Commission has jurisdiction over this subject matter pursuant to Sections 120.542, 350.115, and 366.06, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Florida Power Corporation's request for a waiver of Rule 25-6.0436(8)(a), Florida Administrative Code, be granted?

RECOMMENDATION: Yes. The Commission should grant FPC's waiver request for an extension of time to file its depreciation study no later than April 30, 2003. The requested waiver will serve the purposes of the underlying statutes, and FPC will experience substantial economic hardship if its Petition is denied. However, the filing date should be revisited if a settlement is reached in Docket No. 000824-EI. (MEEKS, DODSON)

STAFF ANALYSIS: FPC seeks a waiver of Rule 25-6.0436(8)(a), which provides:

Each company shall file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission.

Under Rule 25-6.0436(8)(a), FPC was required to file its next depreciation study by December 31, 2001. By its petition, FPC seeks an extension of this date to April 30, 2003. FPC argues that granting this waiver will enable it to comply with Rule 25-6.0436(8)(a), Florida Administrative Code, in a timely, cost effective, and accurate manner based upon actual fiscal year data in the future.

According to FPC, heavy workload and staffing limitations compromised FPC's ability to file the depreciation study in 2001. FPC explains that the Company was required to file Minimum Filing Requirements (MFRs) and supporting testimony on September 14, and November 15, 2001, respectively. FPC expects that discovery and a hearing on the MFRs will follow. FPC further explains that the MFRs are prepared by the same individuals responsible for preparing the depreciation study, and that this staffing limitation makes it difficult to complete the comprehensive depreciation study by the filing date.

FPC argues that an attempt to meet the December 31, 2001, filing date would not only compromise the company's rate case efforts, but would also adversely affect the quality and thoroughness of the depreciation study. FPC claims that the same adverse effect would result if an attempt had been made to hire outside assistance or temporary manpower to prepare the 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.

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

FPC contends that because of the above-described circumstances, application of the rule would create a substantial economic hardship and that an extension of the filing time serves the purpose of these underlying statutes by providing the data required by the rule on a cost-effective basis. FPC states that if an early settlement is reached on the rate case, FPC may be in a position to file its depreciation study earlier than the requested date of April 30, 2003.

On December 14, 2001, the Office of Public Counsel (OPC) filed a response opposing the request for waiver. OPC argues that the

petition ignores the fact that rate case proceedings are "normally" accompanied by depreciation represcriptions. While some rate case proceedings have been accompanied by depreciation studies, staff asserts that has not been the norm. The Commission's policy has historically been to keep the setting of depreciation rates separate and apart from the setting of customer rates.

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. Commission 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 Rule 25-6.0436(8)(a) and Rule 25-7.045(8)(a), Florida Administrative Code. These review cycles are based on the perceived relative susceptibility to technological impact for the two industries.

Historically, depreciation studies have not triggered rate proceedings, and, conversely, rate proceedings have not triggered depreciation studies. If a utility, however, was petitioning for increased revenue rates and its depreciation study is due the next year, it could, although not required, file the two petitions simultaneously to enable the revised depreciation rates to be included in the determination of prospective revenue rates. Requiring depreciation studies only with rate cases can have the affect of changing the purpose of depreciation from the determination of the period of time the plant will be serving the public to how much of a bottom-line expense is desired.

Staff recommends that FPC's petition to waive Rule 25-6.0436(8)(a) should be granted. FPC should be given until April 30, 2003, to file its next depreciation study since it appears a timely filing, given its staffing limitations, would create a substantial hardship. In addition, staff agrees with FPC that the purposes of the statutes underlying Rule 25-6.0436(8)(a) would be served if the waiver is granted. However, staff recommends that in the event that an early settlement is reached on FPC's MFR filing, the filing date should be revisited. It should be noted that this waiver recommendation is consistent with the Commission's decision in Order No. PSC-01-2376-PAA-EI, issued December 10, 2001, in Docket No. 011088-EI for Florida Power and Light Company.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. A consummating order should be issued, and this docket should be closed if no person whose substantial interests are affected by the proposed action files a protest within the 21-day protest period. (DODSON)

STAFF ANALYSIS: At the conclusion of the protest period, if no protest is filed, a consummating order should be issued and this docket should be closed.