

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of depreciation study filing requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corporation.

DOCKET NO. 011611-EI
ORDER NO. PSC-02-0242-PAA-EI
ISSUED: February 25, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR RULE WAIVER

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 November 28, 2001, Florida Power Corporation (FPC) filed a petition for a waiver of the filing deadline imposed by Rule 25-6.0436, Florida Administrative Code. Pursuant to Section 120.542(6), Florida Statutes, 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.

We have jurisdiction over this subject matter pursuant to Sections 120.542, 350.115, and 366.06, Florida Statutes.

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FPSC-COMMISSION CLERK

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.

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. 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, on a cost-effective basis, the data required by the rule. 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. We find, however, that while some rate case proceedings have been accompanied by

depreciation studies, that has not been the norm. This 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. In accordance with Rule 25-6.0436(8)(a) and Rule 25-7.045(8)(a), Florida Administrative Code, electric and gas companies are required to provide depreciation studies at least once every four and five years, respectively, from the date of the last submitted study. 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 to do so, file the two petitions simultaneously to enable the revised depreciation rates to be included in the determination of prospective revenue rates. However, requiring depreciation studies only with rate cases can have the effect of changing the purpose of depreciation from the determination of the period of time the plant will be serving the public, to how much bottom-line expense is desired.

We find that requiring FPC to file the depreciation study by December 31, 2001, given its staffing limitations, would create a substantial hardship. We agree with FPC's analysis of the statutes underlying Rule 25-6.0436(8)(a), Florida Administrative Code, and agree that the purposes of the statutes will be served if the waiver is granted. For these reasons, FPC's Petition for Waiver of Rule 25-6.0436(8)(a), Florida Administrative Code, shall be granted. However, in the event that an early settlement is reached on FPC's MFR filing in Docket No. 001148-EI, the filing date for this depreciation study shall be revisited.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power Corporation's Petition for a Waiver of Rule 25-6.0436(8)(a), Florida Administrative Code, is granted. It is further

ORDERED that the filing dates for the next depreciation study shall be revisited if a settlement is reached in Docket No. 001148-EI. It is further

ORDERED that the provisions of this Order, issued as a 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 the Commission Clerk and Administrative Services, 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 25th Day of February, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
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 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 proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 18, 2002.

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.