

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: MAY 9, 2002

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

FROM: DIVISION OF ECONOMIC REGULATION (SLEMKEWICZ) JS DM fgs
OFFICE OF THE GENERAL COUNSEL (JAEGER) Next

RE: DOCKET NO. 020112-EI - REQUEST FOR WAIVER OF RULE 25-6.1353, F.A.C., CONCERNING 2002 FORECASTED EARNINGS SURVEILLANCE REPORT, BY FLORIDA POWER CORPORATION.

AGENDA: 5/21/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: MAY 21, 2002 - UTILITY GRANTED ONE DAY EXTENSION, SO PETITION WILL BE DEEMED APPROVED IF NOT GRANTED OR DENIED WITHIN 91 DAYS OF RECEIPT

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\020112.RCM

CASE BACKGROUND

Rule 25-6.1353, Florida Administrative Code, requires investor-owned electric utilities not under an incentive regulation plan or not subject to an earnings cap to file with the Commission a forecasted earnings surveillance report (surveillance report) on or before March 1 of each year. Florida Power Corporation's (FPC or Company) last surveillance report was filed in 2001.

On February 19, 2002, FPC filed a petition for a waiver of the filing of the 2002 surveillance report. Section 120.542(8), Florida Statutes, states that an agency shall grant or deny a petition for waiver within 90 days. However, FPC has waived this requirement and has granted the Commission a one-day extension through May 21, 2002, in which to act.

DOCUMENT NUMBER-DATE

04974 MAY-88

FPSC-COMMISSION CLERK

DOCKET NO. 020112-EI
DATE: April 18, 2002

Pursuant to Section 120.542(6), Florida Statutes, the notice of FPC's petition was submitted to the Secretary of State for publication in the March 15, 2002, 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.

The Commission has jurisdiction over this subject matter pursuant to Sections 120.542, 350.117.1, 366.05(1) and 366.04(2)(f), Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Florida Power Corporation's request for a waiver of Rule 25-6.1353, Florida Administrative Code, be granted?

RECOMMENDATION: Yes. The Commission should grant Florida Power Corporation's request for waiver of the requirement established by Rule 25-6.1353, Florida Administrative Code, for it to file a forecasted earnings surveillance report for calendar year 2002. With this waiver, Florida Power Corporation will not have to file the 2002 report. (Slemkewicz, Jaeger)

STAFF ANALYSIS: FPC seeks a waiver of Rule 25-6.1353, Florida Administrative Code, which provides:

Each investor-owned electric utility that is not under an incentive regulation plan or not subject to an earnings cap shall file with the Commission its forecasted financial information on Commission Form PSC/ECR 22 (1/95) . . . entitled "Investor Owned Electric Utility Forecasted Earnings Surveillance Report," . . . on or before March 1 of each year.

Pursuant to the above-noted rule, FPC was required to file its next surveillance report by March 1, 2002. By its petition, FPC argues that the requirements of the rule have been accomplished by the Commission's decision in Order No. PSC-01-1348-PCO-EI, issued June 20, 2001, in Docket No. 000824-EI, initiating a full revenue requirements rate case for FPC and establishing calendar year 2002 as the projected test year.

According to FPC, the rate proceeding resulted in FPC providing enormous amounts of forecasted information while taxing the company's manpower resources to its limits. Moreover, FPC notes that it had to assemble the massive volume of data and information required to file Minimum Filing Requirements and supporting testimony. FPC then provided extensive information in response to voluminous discovery requests. Finally, FPC states that it has prepared and filed rebuttal testimony of numerous witnesses, and, at the time of filing its petition, was preparing for hearing.

FPC notes that the Commission may grant a waiver of the rule's filing requirement when (a) a demonstration has been made that the

purposes of the underlying statute will be or has been achieved by other means; and (b) when application of the rule would create a substantial hardship or would violate principles of fairness.

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 the purpose of the underlying statute has been met, and argues specifically as follows:

. . . the extensive information, including forecasted financial data, provided by Florida Power for 2002 in its pending rate case has substantially complied with, and exceeded, the requirements of Rule 25-6.1353, F.A.C. As a result, the purpose of the underlying statutes has been achieved by other means. Forecasted surveillance reporting is intended to allow the Commission to monitor projected utility earnings between rate cases by providing pertinent financial information prepared at a relatively high level compared to the level of detail provided during rate cases. Therefore, almost by definition, this type of information becomes largely superfluous during a rate case when a greater quality and quantity of information is available.

(Emphasis supplied by the utility)

With respect to the second criterion for granting the requested waiver, FPC argues that:

. . . filing the forecasted earnings surveillance report for 2002 would require key Florida Power personnel currently involved in important rate case activities to instead devote significant time to preparation of the report. As a result, application of the rule in this instance would impose a substantial hardship on the Company's ability to properly prepare its case in the pending rate proceeding. Preparation of the forecasted surveillance report typically requires a skilled employee approximately two months to complete. Employees capable of performing this task are currently devoting well beyond normal working hours to critical rate case assignments. Reassigning essential manpower to a time consuming task that amounts to little more than reformatting information that has already been provided would constitute a serious and unnecessary detriment to Florida Power's rate case efforts.

Staff notes that subsequent to the filing of the Petition for rule waiver, the pending rate case of FPC was settled and a stipulation was reached between the parties. This stipulation was approved by the Commission at the April 23, 2002, Agenda Conference. Therefore, staff does not believe that much of the above-noted argument of FPC concerning the second criterion is still valid. With the settlement of the rate case, and the cancellation of the hearing, much of FPC's manpower is now free again. However, the argument was valid when the petition was filed and before and up to March 1, when the report was due.

Rule 25-6.1353, Florida Administrative Code, states that it implements Sections 350.117(1), 366.04(2)(f), and 366.05(1), Florida Statutes. Sections 350.117(1) and 366.04(2)(f), Florida Statutes, give the Commission the power to require certain reports. Section 366.05(1), Florida Statutes, merely states that the Commission "shall have the power to prescribe fair and reasonable rates and charges, . . . and to adopt rules . . . to implement and enforce the provisions of this chapter."

Staff does agree with the utility that the purpose of the underlying statute has been achieved. Staff believes that the purpose of the rule was to enable the Commission to prescribe fair and reasonable rates and that the forecasted surveillance reporting was intended to allow the Commission to monitor projected utility earnings by providing pertinent financial information. Staff

believes that the utility has provided all the information needed to prescribe fair and reasonable rates and monitor projected utility earnings. At the April 23, 2002, Agenda Conference, the Commission, using much the same data that would have been provided in any forecasted earnings surveillance report, approved the stipulated final rates. Therefore, staff believes that the first criterion has been met.

However, the second criterion concerning whether "application of the rule would create a substantial hardship or would violate principles of fairness" must also be met. In a letter to staff counsel dated April 16, 2002, counsel for FPC acknowledged that the rate case had been settled, but stated that requiring the filing of "a forecasted surveillance report for 2002 at this juncture would be duplicative and serve no legitimate regulatory purpose, and thus would constitute a hardship in and of itself." Staff agrees and believes that assigning manpower "to a time consuming task [estimated by the utility to be two months] that amounts to little more than reformatting information that has already been provided" could be considered a violation of principles of fairness and would consume valuable manpower of the utility needlessly.

Therefore, staff recommends that FPC's petition to waive Rule 25-6.1353, Florida Administrative Code, be granted. With this waiver, FPC should not be required to file its forecasted earnings surveillance report for the year 2002. It should also be noted that one provision in the aforementioned stipulation, approved in Docket No. 000824-EI, provides that FPC will be subject to a revenue cap for the remainder of 2002 through the end of 2005. Consequently, FPC will be exempt from filing a forecasted earnings surveillance report for the years 2003, 2004, and 2005.

DOCKET NO. 020112-EI
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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.

STAFF ANALYSIS: 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.