

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of certain requirements of Rule 25-6.0437, F.A.C., and for approval of 2002 Load Research Sampling Plan by Florida Power & Light Company.

DOCKET NO. 020920-EI
ORDER NO. PSC-02-1628-PAA-EI
ISSUED: November 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 RULE WAIVER AND
APPROVING LOAD RESEARCH SAMPLING PLAN

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.

I. Background

On August 26, 2002, 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.

DOCUMENT NUMBER-DATE

12894 NOV 25 02

FPSC-COMMISSION CLERK

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 ending December 31, 2003.

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 require 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 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.

We have jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes, as well as Section 120.542, Florida Statutes.

II. Request for Waiver of Rule 25-6.0437, Florida Administrative Code

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 and to design rates in both rate case proceedings and the capacity, environmental, and conservation cost recovery clauses. The rule requires that a load research sampling plan be filed for our approval every two years. Pursuant to subsection three of the rule, the plan must be designed to achieve a minimum level of precision for estimates of each rate class's 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 has requested 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 is seeking 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.

A. 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).

FPL asserts that its waiver request meets the required criteria.

B. The Purpose of the Underlying Statute

Rule 25-6.0437, Florida Administrative Code, implements several statutes, primarily those that authorize us to require the filing of periodic reports, and to prescribe fair and reasonable rates and charges. Section 366.04(2)(f), Florida Statutes, grants us 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 our jurisdiction. Section 366.05(1), Florida Statutes, grants us the power to "prescribe fair and reasonable rates and charges." Section 366.06(1), Florida Statutes, gives us "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 us 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, Florida Administrative Code, implements the above statutes by requiring utilities to file load research data that allow us to appropriately allocate costs among the various rate classes, both in rate cases and through the various cost recovery clauses. Specifically, Rule 25-6.0437(3), Florida Administrative Code, requires that utilities file a sampling plan that is designed to provide estimates of the summer and winter peak demands by class and the averages of the 12 monthly coincident peaks for each class within plus or minus 10% at the 90% confidence level.

The requested waiver affects the precision of the estimate of only the winter peak hour, and only for FPL's GS rate class. FPL is seeking approval to design its load research sampling plan such that the GS winter peak estimate is within plus or minus 15% (vs. 10%) 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 2001. See, Order No. PSC-00-243-PA-EI in Docket No. 001199-EI.

In granting FPL's waiver for the 2001 calendar year, and in previous years, we noted in our orders 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 we are 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 are based on data that 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 2001 occurred in the summer, based on load research results that met the 10% precision criterion. In addition, none of the five investor-owned utilities are currently using a production plant allocation method for any purpose that relies on a single coincident peak hour. We therefore believe 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.

C. 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 for the GS rate class. FPL estimates that an additional 294 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 \$65,000 and an increase in ongoing metering expenses of \$217,000 over the planned three-year life of the sample. Additional capital costs of \$146,000 would also be incurred to purchase the necessary meters. We believe this added cost is a substantial hardship within the meaning of Section 120.542, Florida Statutes.

D. Conclusion

We believe that FPL has shown that application of the rule creates a substantial hardship, and that the purpose of the statutes underlying the rule will be achieved if the requested waiver is granted. Accordingly, we find that FPL's request for waiver of Rule 25-6.0437(3), Florida Administrative Code, with respect to the precision of the GS winter peak hour is granted.

III. Continued Waiver of Rule 25-6.0437, Florida Administrative Code

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 1996, 1998, and 2000 for the sampling plans to be used for calendar years 1997, 1999, and 2001, respectively, and were approved by the Commission in Order Nos. PSC-97-0379-FOF-EI, PSC-98-1573-FOF-EI, and PSC-00-243-PA-EI. FPL is requesting 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.

A. 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).

FPL asserts that their waiver request meets the required criteria.

B. 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 us 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 our jurisdiction. Section 366.05(1), Florida Statutes, grants us the power to "prescribe fair and reasonable rates and charges." Section 366.06(1), Florida Statutes, gives us "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 us 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, Florida Administrative Code, implements the above statutes by requiring utilities to file load research data that allow us to appropriately allocate costs among the various rate classes, both in rate cases and through the various cost recovery clauses. Specifically, Rule 25-6.0437(6), Florida Administrative Code, requires the four major investor-owned electric utilities to file every two years for our 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 us 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 our 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 also note that FPL will continue to file its load research results and load research sampling plans with us every two years, as required by the rule. Consequently, we believe that the purpose of the underlying statutes will continue to be achieved if the requested rule waiver is granted.

C. Substantial Hardship

FPL asserts that using the sample for three years instead of two results in cost savings of approximately \$183,000 over a six-year period due to the elimination of approximately 829 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 application of the rule will require FPL to forego roughly \$183,000 in cost savings, we believe FPL has shown that application of the rule creates a substantial hardship.

D. Conclusion

We find that FPL's request for waiver of Rules 25-6.0437(6) and (7), Florida Administrative Code, with respect to the required two-year sample replacement cycle, is hereby granted. FPL has demonstrated that application of the rule creates a substantial hardship and that the purpose of the statutes underlying the rule will be achieved if the requested waiver is granted.

IV. 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's request for waiver of certain requirements of Rule 25-6.0437, Florida Administrative Code, that are applicable to the General Service Non-Demand rate class is hereby granted. It is further

ORDERED that Florida Power & Light Company's request for waiver of Rule 25-6.0437, Florida Administrative Code, with respect to the required two-year sample replacement cycle is hereby granted. It is further

ORDERED that Florida Power & Light Company's load research sampling plan is approved as stated herein. It is further

ORDER NO. PSC-02-1628-PAA-EI
DOCKET NO. 020920-EI
PAGE 9


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 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 if no timely protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 25th day of November, 2002.

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

By:



Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

KNE

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 December 16, 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.