

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request to exclude April 11-12, 2004
and June 13, 24, and 26, 2004 outage events
from annual distribution service reliability
report by Tampa Electric Company.

DOCKET NO. 041375-EI
ORDER NO. PSC-05-0209-PAA-EI
ISSUED: February 22, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR VARIANCE/WAIVER OF RULE

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.

Case Background

On December 7, 2004, Tampa Electric Company ("Tampa Electric" or "the utility") filed a request for exclusion of outages associated with severe weather systems on April 11 and 12, 2004, and on June 13, 24, and 26, 2004, pursuant to Rule 25-6.0455(3), Florida Administrative Code. In conjunction with its request for exclusion, Tampa Electric filed a petition seeking a variance or waiver from that portion of Rule 25-6.0455(3), which provides that a request must be filed within 30 days of the outage event for which an exclusion is requested. Notice of Tampa Electric's rule waiver petition was published in the Florida Administrative Weekly on January 7, 2005. No comments were received in response to the petition.

At our February 1, 2005, Agenda Conference, Tampa Electric orally withdrew its request to exclude outages associated with the weather events of June 13, 24, and 26. This order addresses Tampa Electric's rule waiver petition only as it applies to the utility's request to exclude outages associated with the weather events of April 11 and 12, 2004. This order does not address Tampa Electric's request to exclude outages, which will be disposed of separately.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

We have jurisdiction pursuant to Section 120.542, Florida Statutes, and Chapter 366, Florida Statutes, including Sections 366.04 and 366.05, Florida Statutes.

Standard of Review

Section 120.542(1), Florida Statutes, provides a two-pronged test for determining when waivers and variances from agency rules shall be granted:

Variances and waivers 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 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.

Tampa Electric's Arguments

Tampa Electric requests a one-time, temporary waiver of the provision in Rule 25-6.0455(3), Florida Administrative Code, that requires a utility's request to exclude an outage event to be filed within 30 days of the outage event. In its petition, Tampa Electric states that it experienced severe weather conditions across its entire service territory on April 11 and 12, 2004, that caused extensive and widespread service interruptions to its customers. Tampa Electric asserts that when the weather events of April 11 and 12 occurred, it was not aware that these conditions were caused by a weather phenomenon known as a Mesoscale Convective System or Complex. Tampa Electric states that it became aware of the existence of this type of weather phenomenon after reviewing Florida Power & Light Company's ("FPL") request to exclude outages related to such a system passing through FPL's service territory on April 13, 2004, and Progress Energy Florida's ("Progress") similar request to exclude outages from such a system passing through Progress' service territory on April 11 and 12, 2004. Tampa Electric asserts that the occurrence of such a phenomenon in the deep southeastern region of the country is extremely rare and that it appears no previous occurrence in Florida has ever been recorded by the National Weather Service ("NWS").

Tampa Electric asserts that upon reviewing the filings of FPL and Progress, it immediately began accumulating information regarding the system's impact on Tampa Electric's operations on April 11 and 12. Tampa Electric states that its analysis showed that it was affected by these same systems in much the same way that FPL and Progress were affected.

Tampa Electric asserts that Rule 25-6.0455 in general, and subsection (3) in particular, implement a number of specific statutory provisions from Chapter 366 that collectively establish this Commission's broad authority over the reliability of service provided by electric utilities. Tampa Electric notes that this Commission, in approving our staff's recommendation to adopt

the current version of Rule 25-6.0455, recognized that “the information required by the revised rules will enable the Commission to better track reliability and quality of service and to better measure improvement.” Further, with respect to subsection (3) of the rule, Tampa Electric notes our conclusion that “[t]he purpose of allowing the utility to exclude from its report an outage event over which it has no control and cannot reasonably prevent is to ensure that the reliability report fairly represents the quality of service the utility delivers to its customers.” Tampa Electric contends that granting its requested rule waiver will achieve the statutory purpose of allowing us to evaluate a utility’s performance in providing reliable service by allowing us to consider whether the outage events of April 11 and 12, 2004, were beyond the control and reasonable ability of Tampa Electric to prevent.

Tampa Electric further contends that a rigid application of the 30-day filing period required by the rule would impose a hardship on Tampa Electric by denying it the opportunity to have this significant outage event considered on its merits. Tampa Electric also contends that application of the rule would be contrary to basic fairness because the additional time required to file the exclusion request has not and will not prejudice any potential party’s interests nor adversely impact this Commission’s ability to thoroughly consider the merits of the request. Tampa Electric asserts that an inflexible application of the rule would penalize Tampa Electric because of the time required to develop the information necessary to submit a proper filing concerning this unusual weather event.

Findings

For the reasons set forth below, we find that Tampa Electric has satisfied the requirements of Section 120.542(1), Florida Statutes; therefore, we grant Tampa Electric’s rule waiver petition with respect to the outage events of April 11 and 12, 2004.

Purpose of the Underlying Statutes

Rule 25-6.0455, Florida Administrative Code, which requires the submission of annual distribution service reliability reports from each investor-owned utility in the state, was promulgated under the authority of Section 366.05(1), Florida Statutes. This section provides this Commission the power, among other things, to prescribe standards of quality and measurement. We use the information gathered through these reports in exercising our jurisdiction under Section 366.04(5), Florida Statutes, over the maintenance of a coordinated electric power grid throughout Florida to assure a reliable source of energy for Florida. We also use this information to help determine adequacy and value of service in the context of rate-setting pursuant to Section 366.06, Florida Statutes.

The provisions of Rule 25-6.0455 are intended to ensure that utilities’ distribution service reliability is fairly measured by allowing for the exclusion of certain outage events beyond the utilities’ control and outside of their ability to reasonably prevent. We believe that Tampa Electric’s requested rule waiver would achieve this end and the purpose of the statutes noted above by allowing us to consider whether exclusion of the April 11 and 12 outage events experienced by Tampa Electric will fairly and accurately reflect the quality of service provided by Tampa Electric.

Substantial Hardship /Principles of Fairness

For purposes of a rule waiver or variance, principles of fairness are violated when the literal application of the rule affects a particular person in a manner significantly different from the way its affects similarly situated persons who are subject to the rule. By Order No. PSC-04-1268-PAA-EI, issued December 22, 2004, we approved a petition by Progress for waiver of the 30-day filing requirement in Rule 25-6.0455(3) in conjunction with its request to exclude the outage events of April 11 and 12. In light of our decision to grant Progress a waiver of the 30-day requirement, we believe it would be consistent and fair to grant Tampa Electric's rule waiver petition so that we can consider its request to exclude outage events associated with the same April 11 and 12 weather system.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's petition for a one-time, temporary waiver of the 30-day filing deadline set forth in Rule 25-6.0455(3), Florida Administrative Code, is granted. It is further

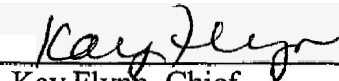
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission 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 22nd day of February, 2005.

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

By:



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.

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 15, 2005.

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.