

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company.

DOCKET NO. 20180230-GU
ORDER NO. PSC-2019-0067-PAA-GU
ISSUED: February 22, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
DONALD J. POLMANN
GARY F. CLARK
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
PETITION FOR A TEMPORARY WAIVER OF RULE 25-7.045, F.A.C.

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 (F.A.C.).

I. Background

On December 26, 2018, Florida Public Utilities Company (FPUC) filed a petition to temporarily waive Rule 25-7.045(4)(a), F.A.C.,¹ which requires natural gas distribution utilities to file a depreciation study at least once every five years. FPUC's next study was due January 14, 2019. FPUC is requesting that it be permitted to submit its study no later than March 4, 2019. It also requests that subsequent due dates be based on the March filing date.

Notice of FPUC's petition was published in the January 4, 2019, edition of the Florida Administrative Register, Vol. 45, No. 3, as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the petition. We have jurisdiction under Sections 120.542, 350.115, 366.04, .05, and .06, F.S.

¹ FPUC cites paragraph (8)(a) of Rule 25-7.045, F.A.C., but that paragraph no longer exists. It was renumbered as paragraph (4)(a) when the rule was amended in 2016.

II. Legal Standard for Rule Waivers

Pursuant to Section 120.542(2), F.S., we are required to grant waivers and variances from our rules “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 a rule would create a substantial hardship or would violate principles of fairness.” The section defines a “substantial hardship” as a “demonstrated economic, technological, legal, or other type of hardship.”

Under Rule 25-7.045(4)(a), F.A.C., natural gas distribution utilities are required to submit a depreciation study for our review at least once every five years. The rule implements several statutes. Section 350.115, F.S., allows us to “approve or establish adequate, fair, and reasonable depreciation rates and charges.” As a part of establishing those rates, Section 366.06(1), F.S., mandates that we “investigate and determine the actual legitimate costs of the property of each utility company, . . . less accrued depreciation.” In order to accurately determine the legitimate costs of property and accrued depreciation, we are permitted under Section 366.04(2)(f), F.S., to “prescribe and require the filing of periodic reports and other data as may be reasonably available.”

III. FPUC’s Petition

FPUC’s current depreciation study was due on January 14, 2019, but the utility claims that preparing the study would create a substantial hardship. FPUC states that it was severely affected by Hurricane Michael, which wreaked havoc in several counties FPUC serves in the Florida panhandle. FPUC argues that due to the effects of Hurricane Michael, its “plant accounting [personnel] have been faced with an unusually increased workload, some of which is outside the scope of their typical tasks.” FPUC claims that preparing the depreciation study is a “time-consuming, difficult task” under ordinary circumstances, but marshalling its already strained resources to complete the study before the recently passed deadline under current circumstances would have resulted in an undue hardship.

FPUC also argues that the purpose of the underlying statutes will still be fulfilled should we grant the waiver. FPUC will still furnish us with the required data, albeit slightly delayed.

FPUC has asked that it be permitted to submit its study on or before March 4, 2019. FPUC has also requested that its next depreciation study be due within five years of the extended March 2019 filing date.

IV. Conclusion

We find that FPUC has met the statutory requirements and is therefore entitled to a temporary waiver of Rule 25-7.045(4)(a), F.A.C. FPUC sufficiently alleged that complying with the rule would cause a substantial hardship. We have previously determined that staffing

limitations can create substantial hardships in the timely filing of depreciation studies.² We have also recently granted FPUC a waiver from the rule requiring it to send out monthly billing statements based on the effects of Hurricane Michael.³ Based on these previous decisions, we find that a staffing limitation caused by Hurricane Michael constitutes a substantial hardship under the statute.

We further find that the purpose of the underlying statutes will still be achieved if FPUC is granted a seven-week extension of its original deadline to submit its depreciation study. Section 366.04(2)(f), F.S., permits us to require a utility to periodically file depreciation studies in order to facilitate our duty under Sections 350.115 and 366.06(1), F.S., to determine accurate depreciation costs for the utility. The short delay in receiving this information will not affect our ability to establish adequate, fair, and reasonable depreciation rates and charges. Therefore, the purpose of the statute will still be achieved if FPUC is granted a seven-week extension to submit its study.

FPUC is hereby granted a temporary rule waiver until March 4, 2019. Pursuant to Rule 25-7.045(4)(a), F.A.C., FPUC's next depreciation study shall be due within five years from the date that it files its March 2019 depreciation study.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Public Utilities Company's request for temporary waiver of Rule 25-7.045(4)(a), Florida Administrative Code, is granted. Florida Public Utilities Company shall submit its depreciation study on or before March 4, 2019. It is further

ORDERED that Florida Public Utilities Company's next depreciation study shall be due within five years from the date it files the depreciation study that is now due on March 4, 2019. 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 Office of the Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 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 received to the proposed agency action, a Consummating Order shall be issued upon the expiration of the protest period, and this docket shall be closed.

² Order No. PSC-02-0242-PAA-EI, issued February 25, 2002, in Docket No. 011611-EI, *In re: Petition for Waiver of Depreciation Study Filing Requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corp.*

³ Order No. PSC-2018-0529-PAA-EI, November 8, 2018, in Docket No. 20180195-EI, *In re: Petition for temporary waiver of Rule 25-6.100, F.A.C., by Florida Public Utilities Co.*

By ORDER of the Florida Public Service Commission this 22nd day of February, 2019.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

ABK

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 15, 2019.

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 docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.