

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** August 27, 2021

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of the General Counsel (Cowdery) *SMC*  
Division of Accounting and Finance (Mouring) *ALM*

**RE:** Docket No. 20210128-EI – Petition for temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C, to file for prudence review of Florida Power & Light Company storm costs related to Hurricane Isaias and Tropical Storm Eta, and for prudence review and recovery of Gulf Power Company storm costs related to Hurricane Sally and Hurricane Zeta.

**AGENDA:** 09/08/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**CRITICAL DATES:** 11/01/21 (date by which Petition must be ruled on pursuant to Section 120.542, F.S.)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On August 3, 2021, Florida Power & Light Company (FPL) filed a petition for a temporary waiver from or variance of Rule 25-6.0143(1)(g), Florida Administrative Code (F.A.C.) (Petition). Investor-owned electric utilities are required to maintain their accounts and records in conformity with the Uniform System of Accounts for Public Utilities and Licensees.<sup>1</sup> Rule 25-6.0143, F.A.C., addresses electric utilities' use of accumulated provision accounts 228.1, 228.2, and 228.4. Paragraph (1)(g) of Rule 25-6.0143 requires that under the Incremental Cost and

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<sup>1</sup> Rule 25-6.014(1), F.A.C.

Capitalization Approach methodology for determining the allowable costs to be charged to cover storm-related damages, certain costs may be charged to Account 228.1 only after review and approval by the Commission. Before the Commission makes this determination, the costs may be deferred if they were incurred prior to June 1 of the year following the storm event.

Paragraph (1)(g) of the rule further requires that:

By September 30 a utility must file a petition for the disposition of any costs deferred prior to June 1 of the year following the storm event giving rise to the deferred costs.

FPL is asking the Commission for a temporary variance from or waiver of the September 30 filing requirement. FPL asks that it be allowed until December 31, 2021, to file its paragraph (1)(g) petition concerning deferred storm costs related to Hurricane Isaias and Tropical Storm Eta, and for Gulf Power Company (Gulf) to file its petition concerning deferred storm costs related to Hurricane Sally and Hurricane Zeta.

Notice of FPL's Petition was published in the August 5, 2021, edition of the Florida Administrative Register, Vol. 47, No. 151 as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the Petition within the 14-day comment period provided by Rule 28-104.003, F.A.C. The Commission must approve or deny the Petition by November 1, 2021, under Section 120.542(8), F.S., or the Petition would be deemed approved.

The Commission has jurisdiction under Sections 120.542, 350.115, 366.04, .05, and .06, F.S

## Discussion of Issues

**Issue 1:** Should the Commission grant Florida Power & Light Company's Petition for a temporary waiver or variance from Rule 25-6.0143(1)(g), F.A.C.?

**Recommendation:** Yes. The Commission should grant Florida Power & Light Company's Petition for a temporary variance or waiver of Rule 25-6.0143(1)(g), F.A.C., to allow FPL and Gulf to file petitions for certain deferred costs no later than December 31, 2021. (Cowdery, Mouring)

**Staff Analysis:** FPL is requesting that the Commission grant FPL and Gulf a temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C. Pursuant to this rule provision, as explained in the Case Background, FPL and Gulf are required to file their petitions for disposition of certain deferred costs by September 30, 2021.

### Legal Standard for Rule Variances or Waivers

Pursuant to Section 120.542(2), F.S., the Commission is required to grant waivers and variances from its 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." A "substantial hardship" is defined by statute as a "demonstrated economic, technological, legal, or other type of hardship."

Rule 25-6.0143, F.A.C., implements Section 350.115, F.S., which allows the Commission to prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges. The rule also implements Section 366.04(2)(a), F.S., which gives the Commission power over electric utilities to prescribe uniform systems and classifications of accounts.

### FPL's Petition

FPL states that preparation and filing of the petitions for deferred costs related to the four named storms no later than September 30, 2021, will create a substantial hardship. FPL states that FPL and Gulf are engaged in the litigation of and preparations for a number of proceedings, including the hearing in the FPL rate case in Docket No. 20210015-EI and clause proceedings scheduled for final hearings on November 2 through November 4, 2021. FPL explains that its Power Delivery Business Unit provides much of the information and data necessary to the preparations and filing of the referenced storm dockets and also is responsible for maintaining the grid, preparing for and responding to tropical storms and hurricanes, and stands ready to assist other utilities whose service territories are impacted by natural disasters and other emergency events. FPL alleges that requiring the preparation and filing of the identified storm cost proceedings will necessarily detract from and adversely impact FPL's and the Power Delivery Business Unit's "ability to devote its full attention and resources to these critical tasks."

FPL also argues that no anticipated party to the proceedings and no customers will be prejudiced by granting its Petition for temporary variance or waiver. Further, FPL alleges that the requested temporary variance or waiver does not contravene the rule's implementing statutes.

FPL represents that the Office of Public Counsel has no objection to the relief requested in the Petition for temporary variance or waiver, and asks that the Commission expedite consideration of the Petition and consider it at the September 2021 Commission Conference.

### **Purpose of the Underlying Statutes**

Sections 350.115 and 366.04(2)(a), F.S., give the Commission power to prescribe by rule uniform systems and classifications of accounts and to approve or establish adequate, fair, and reasonable depreciation rates and charges for electric utilities. The purpose of the September 30 filing date is to facilitate a timely review of storm restoration costs and afford the Commission adequate oversight on the use of Commission-approved storm reserves (Account 228.1). Often the initial filings made pursuant to Rule 25-6.0143, F.A.C., reflect estimated costs used to implement an interim cost recovery mechanism. As such, staff believes that the purpose of Sections 350.115 and 366.04(2), F.S., will be unaffected by granting the requested temporary variance or waiver.

Further, no anticipated party to any proceedings and no customers will be prejudiced or adversely affected by granting FPL's Petition for temporary variance or waiver. For these reasons, the purpose of the statutes will still be achieved as required by Section 120.542, F.S., if FPL's Petition for temporary variance or waiver is granted.

### **Substantial Hardship**

The Commission has previously granted petitions for variance or waiver on the basis that application of a rule's filing deadline created substantial hardship because of utility staffing limitations caused by the specific circumstances alleged in those petitions.<sup>2</sup> Staff believes that the essence of FPL's substantial hardship allegations is that under the specific circumstances alleged, FPL is experiencing staffing limitations caused by the number of dockets FPL's Power Delivery Business Unit is currently involved in, which is in addition to the unit's regular responsibilities concerning maintaining the grid and preparing for and responding to named storms. Under the specific facts presented, staff believes that FPL has demonstrated substantial hardship under Section 120.542, F.S.

### **Conclusion**

For the reasons explained above, the Commission should grant Florida Power & Light Company's Petition for a temporary variance or waiver of Rule 25-6.0143(1)(g), F.A.C., to allow FPL and Gulf to file petitions for certain deferred costs no later than December 31, 2021.

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<sup>2</sup> Order No. PSC-2019-0067-GU, issued February 22, 2019, in Docket No. 20180230-GU, *In re: Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company*; Order No. PSC-12-0354-PAA-GU, issued July 9, 2012, in Docket No. 20120081-GU, *In re: Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by August 17, 2012, by Florida Division of Chesapeake Utilities Corporation*; Order No. PSC-2002-0242-PAA-EI, issued February 25, 2002, in Docket No. 20011611-EI, *In Re: Petition for Waiver of Depreciation Study Filing Requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corporation*; Order No. PSC-01-2376-PAA-EI, issued December 10, 2001, in Docket No. 20011088-EI, *In re: Florida Power & Light Company*

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed. (Cowdery)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed.