



David Lee  
Senior Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
(561) 691-7263  
(561) 691-7135 (Facsimile)  
E-mail: david.lee@fpl.com

January 7, 2022

**-VIA ELECTRONIC FILING -**

Adam Teitzman  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**Re: Docket No. \_\_\_\_\_  
Florida Power & Light Company's Petition for Temporary Waiver of Rule 25-  
6.078(3), Florida Administrative Code**

Dear Mr. Teitzman:

Attached for filing please find Florida Power & Light Company's ("FPL") Petition for Temporary Waiver of Rule 25-6.078(3), Florida Administrative Code. FPL is requesting that this petition be assigned a new docket number.

Should you have any questions regarding this filing, please contact me.

Sincerely,

*s/ David M. Lee*

\_\_\_\_\_  
David M. Lee

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Florida Power & Light Company for  
Temporary Waiver of Rule 25-6.078(3), Florida  
Administrative Code

Docket No. \_\_\_\_\_

Filed: January 7, 2022

**FLORIDA POWER & LIGHT COMPANY’S PETITION FOR TEMPORARY WAIVER  
OF RULE 25-6.078(3), FLORIDA ADMINISTRATIVE CODE**

Pursuant to Rule 28-104.002, Florida Administrative Code (“F.A.C”) and Section 120.542, Florida Statutes (“F.S.”), Florida Power & Light Company (“FPL” or the “Company”) respectfully petitions the Florida Public Service Commission (the “Commission”) for a temporary waiver of Rule 25-6.078(3), F.A.C.

In support, FPL states:

**I. PRELIMINARY INFORMATION**

1. The name and address of the Petitioner is:

Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408

2. Any pleading, motion, notice, order, or other document required to be served upon FPL

or filed by any party to this proceeding should be served upon the following individual(s):

Kenneth A. Hoffman  
Vice President Regulatory Affairs  
Florida Power & Light Company  
134 W. Jefferson Street  
Tallahassee, FL 32301  
850-521-3919  
850-521-3939 (fax)  
ken.hoffman@fpl.com

David M. Lee  
Senior Attorney  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
561-691-7263  
561-691-7135 (fax)  
david.lee@fpl.com

3. FPL is a corporation organized and existing under the laws of the State of Florida and is an electric utility as defined in Section 366.02(2), F.S.

4. The Commission has jurisdiction pursuant to Sections 366.03, 366.04, 366.05, 366.06, 366.076, and 120.542, F.S.

5. This petition is being filed consistent with Rule 28-104.002, F.A.C. and Section 120.542, F.S., and although this petition is not being filed pursuant to Rules 28-104.004 and 28-104.005, F.A.C., FPL is requesting that this Petition be considered by the Commission on the February 1, 2022 Agenda.

## **II. REQUEST FOR TEMPORARY WAIVER**

6. Section (3) of Rule 25-6.078, F.A.C., provides:

(3) On or before October 15 of each year, each utility shall file with the Commission Clerk, using current material and labor costs, Form PSC 1031 (08/20), entitled “Overhead/Underground Residential Differential Cost Data,” which is incorporated by reference into this rule and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-12425>. If the cost differential as calculated in Form PSC 1031 (08/20) varies from the Commission-approved differential by plus or minus 10 percent or more, the utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (4) and (5) of this rule on or before April 1 of the following year; however, each utility shall file a written policy and supporting data and analyses at least once every 3 years.

7. As required under Rule 25-6.078(3), F.A.C., FPL and Gulf Power Company (“Gulf”) filed their Form PSC 1031 (08/20) on October 15, 2021, with the Commission Clerk. These filings for both FPL and Gulf indicated that their estimated average cost differentials were zero.

8. Gulf’s most recent written policy and supporting data and analyses were filed and approved in 2020. FPL filed a written policy and supporting data and analyses in 2019.

9. As part of FPL’s Petition for Rate Unification and for Base Rate Increase in Docket Number 20210015-EI, FPL filed its tariffs, which contained an updated written policy for FPL regarding the installation of underground facilities in new subdivisions.

10. On October 26, 2021, the Commission approved the settlement agreement in Docket Number 20210015-EI. As a result of the approval of the settlement, the Commission approved FPL’s tariffs, consolidating FPL and Gulf for ratemaking purposes. Approved tariff sheet numbers 6.100-

6.115 reflect an estimated average cost differential for underground versus overhead installations of zero dollars<sup>1</sup>, and state the basis upon which FPL will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service will be extended.

11. The underlying supporting data and analyses used to calculate the estimated average cost differential for the installation of underground facilities in new subdivisions was based upon 2020 costs at FPL and Gulf while the companies were operating separately from a rates and cost perspective.

12. When FPL and Gulf filed their individual PSC 1031 (08/20) forms on October 15, 2021, as required by Rule 25-6.078(3), F.A.C., both companies' calculated cost differentials remained zero, which was the same as the Commission-approved differentials for both companies. The rule requires a utility to file a new written policy and supporting data and analysis if the differential between the amount on Form PSC 1031 (08/20) differs from the Commission-approved cost differential by plus or minus 10 percent or more. Rule 25-6.078(3), F.A.C. FPL has not triggered this requirement to file a new written policy with supporting data and analyses.

13. However, the rule also states that "each utility shall file a written policy and supporting data and analyses at least once every 3 years." Rule 25-6.078(3), F.A.C. Although FPL did file and the Commission approved the new written policy as part of the approved settlement in Docket Number 20210015-EI, the supporting data and analyses were not included in the filings. It is this requirement to file a new written policy *and* supporting data and analyses once every three years technically required under the rule from which FPL is seeking a one-year waiver.

14. The statute governing requests for rule variances, Section 120.542(2), F.S., states:

(2) 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

---

<sup>1</sup> The cost differential is actually a negative number, so the differential is set to zero.

other means by the person and when application of a 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.

The statute also states that “Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances.” Section 120.542(1), F.S.

15. It is FPL’s position that strict application of Rule 25-6.078(3), F.A.C., in this instance would lead to unreasonable and unintended results and cause a substantial hardship to FPL.

16. A filing by April 1, 2022, of a new policy<sup>2</sup> would be based upon the previous year’s costs, which would still be calculated using supporting data and analyses from FPL and Gulf operating separately from a cost and rate perspective. If FPL were to file the new policy on April 1, 2022, some of the underlying costs would change, but the estimated average cost differential is not likely to change from zero. Assuming that during each ensuing year the estimated average cost differential would still be zero, then FPL would not be required to file its next written policy and supporting data and analyses until April 1, 2025. Strict compliance with Rule 25-6.078(3), in this instance, would have the unintended result of delaying the Commission having the more meaningful combined cost data and analyses that would be available if FPL were granted this one-year waiver to file the consolidated written policy and supporting data and analyses in 2023.

17. Requiring FPL to file the new policy on April 1, 2022, based upon the 2021 underlying costs is not likely to change the estimated average cost differential from zero, and it would require FPL

---

<sup>2</sup> FPL’s written policy was in fact filed and approved as part of its tariffs in the rate case and settlement in Docket Number 20210015-EI, but this did not include the supporting data and analyses described in the rule.

to devote substantial resources to the determination of the supporting underlying costs. This expenditure of resources would be directed at providing the Commission unnecessary information as the estimated average cost differential amount is not likely to change.

18. FPL's proposal and petition would conserve time and resources, enhance efficiencies, and deliver the best and most accurate cost information reflecting consolidated Power Delivery operations to the Commission sooner. For these reasons, requiring FPL to develop cost data and analyses for a time period prior to the two companies being consolidated for cost and ratemaking purposes to meet the technical rule requirement would be contrary to the intent and purpose of the rules and impose a substantial hardship on FPL. Therefore, a rule waiver is appropriate.

19. Strict compliance with the technical requirement of the rule would result in having the opposite effect of delaying the more meaningful combined data being provided to the Commission. In addition, as the estimated average cost differential is not likely to change, there will be no adverse impacts to customers by granting FPL's request.

20. By allowing the filing to be deferred for one year, FPL will be able to provide a more accurate, more informed filing consistent with rate consolidation approved by the Commission in terms of reflecting cost data for true consolidated operations for 2022. This is consistent with the intent and purpose of Rule 25-6.078, F.A.C., as well as the underlying statutes, specifically sections 366.03, 366.04(1), (2)(f) and (4) and 366.06(1), F.S. In relevant part, the underlying statutes require a utility to charge fair and reasonable rates and gives the Commission the authority to: set rules and regulations to fix fair, just and reasonable rates; regulate and supervise utility rates and service; and require utilities to file periodic reports and data as may be reasonably available. Granting FPL's requested waiver to file its written policy and supporting data and analyses on April 1, 2023 based upon more meaningful

consolidated 2022 operations data serves the intent and purpose of the underlying statutes and Rule 25-6.078, F.A.C., and it will enhance the quality of the filing.

21. This requested variance or waiver is temporary in nature. If the Commission grants FPL's request, FPL will file its next written report and supporting data and analyses on April 1, 2023.

**III. REQUEST FOR EXPEDITED CONSIDERATION**

22. Although this petition was not filed pursuant to Rules 28-104.004 and 28-104.005, FPL is requesting expedited consideration of this petition to allow FPL sufficient time to develop and timely file the necessary information should the Commission deny this Petition.

23. FPL is requesting that the Commission place this item for consideration on the February 1, 2022 Agenda Conference.

**IV. CONCLUSION**

WHEREFORE, FPL respectfully requests that the Florida Public Service Commission:

- (i) consider this petition on an expedited basis,
- (ii) publish notice of this petition on an expedited basis,
- (iii) issue an order granting FPL a temporary waiver of Rule 25-6.078(3), F.A.C. as specifically requested herein, and
- (iv) grant such other relief as the Commission deems appropriate.

Respectfully submitted this 7th day of January, 2022.

David M. Lee  
Senior Attorney  
Fla. Bar No. 103152  
Florida Power & Light Company

700 Universe Boulevard  
Juno Beach, Florida 33408-0420  
(561) 691-7263  
(561) 691-7135 (fax)  
david.lee@fpl.com

By: s/ David M. Lee  
David M. Lee  
Fla. Bar No. 103152