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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20220012-EI

Petition for temporary waiver
of Rule 25-6.078(3), F.A.C. by
Florida Power & Light Company.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 1

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, May 3, 2022

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
112 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN FAY: Commissioners, next we will
3 take Item No. 1. I'll give our folks a second to
4 get to their seats.

5 Okay. Mr. Rubottom, when you're ready, you
6 can present a summary on Item No. 1.

7 MR. RUBOTTOM: Good morning, Chairman,
8 Commissioners. Job Rubottom with General Counsel's
9 Office. Item No. 1 is staff's recommendation to
10 grant Florida Power & Light company's motion to
11 dismiss. FPL's motion asks for the dismissal of
12 the requests for hearing that were filed in this
13 docket after the Commission issued its PAA order,
14 granting FPL a temporary waiver of subsection three
15 of Rule 25-6.078 of the Florida Administrative
16 Code. That rule addresses contributions in aid of
17 construction for installation of electric
18 underground facilities in new residential
19 subdivisions, and requires an investor-owned
20 electric utility to file its written policy and
21 supporting data and analyses at least once every
22 three years. In its PAA order, the Commission
23 granted FPL's rule waiver and extended the time for
24 FPL to file its new written policy and supporting
25 data and analyses by one year. The Commission's

1 order address reporting requirements for the
2 installation of underground facilities, the PAA
3 order had no impact on current customer rates.
4 Staff recommends that FPL's motion to dismiss be
5 granted because the requests for hearing do not
6 state a cause of action upon which relief can be
7 granted. Rather than raising substantial interests
8 affected by the Commission's PAA order in this
9 docket, the requests instead attempt to re-argue
10 the facts of FPL's 2021 rate case, which are
11 outside the scope of this rule waiver docket.

12 Additionally, because staff believes that
13 granting leave to amend would not result in a
14 legally sufficient pleading, staff recommends that
15 the dismissal be without leave to amend and that
16 this docket be closed after the issuance of a
17 consummating order finalizing the PAA order.

18 Representing FPL in support of its motion is
19 David Lee, who is present and available for
20 questions. Regarding participation on this item,
21 also present and requesting time to address the
22 commission is one customer who filed a request for
23 hearing on the PAA order. While participation is
24 at the discretion of the Commission, staff
25 recommends denying oral argument on this matter for

1 three reasons. First, the issues raised in
2 requests for hearing are wholly irrelevant to the
3 Commission's PAA order in this docket and the
4 argument offered would have no bearing on the
5 Commission's decision in this matter. Second, the
6 issues raised relating to the effects of FPL's 2021
7 rate case are outside the scope of this docket and
8 beyond the jurisdiction of the Commission.
9 Finally, no customer filed a response to FPL's
10 motion to dismiss or a timely request for oral
11 argument. For all these reasons, staff recommends
12 that the Commission decide the motion to dismiss
13 without hearing oral argument.

14 Staff is available for questions.

15 CHAIRMAN FAY: Thank you, Mr. Rubottom.
16 Commissioners, what I'd like to do is probably take
17 up the question Mr. Rubottom presented last there,
18 as the engagement or public comment or engagement
19 on the oral argument. We do have a summary on
20 that, before we take the position of the
21 recommendations on the item itself. I do have a
22 question or two and then I'll allow you, if you
23 have any other questions from our staff -- and, Mr.
24 Rubottom, this is something that's outside of your
25 purview, legal. Other folks on legal can answer

1 this. You're welcome to defer to them. I know
2 you're briefed on this item, but --

3 MS. HELTON: Mr. Chairman, I'm sorry to
4 interrupt, but I'm not sure that there are any
5 customers here present in the room right now. We
6 were told that there would perhaps be two that
7 would want to speak, but I'm not sure that anybody
8 is here.

9 CHAIRMAN FAY: Okay. With that, I think the
10 recommendation mentioned there might be one person,
11 but with that, if there's nobody here to speak,
12 then we'll take up the -- looks like there's not --
13 we'll take up the item itself. I'll give staff a
14 second here just to make sure, but --

15 MS. HELTON: I stand corrected. They just
16 came in.

17 CHAIRMAN FAY: Okay. No worries. I
18 appreciate you making sure we get that right. So
19 then with that, Commissioners, we would take up
20 that question first and then we could take up the
21 recommendation holistically on that item.

22 So my first question just as -- for purposes
23 of oral argument, what is required? So we have a
24 dispositive motion in front of us. What is
25 required for oral argument to be granted?

1 MR. RUBOTTOM: In this circumstance, because
2 is it a dispositive motion, the filer would -- is
3 required by our rules to file also at the same time
4 a request for oral argument by a certain -- a
5 certain date. And no requests were received in
6 this -- on this motion.

7 CHAIRMAN FAY: Okay. And then on the actual
8 testimony itself, if we do grant oral argument,
9 would the comments be limited -- I know if it's
10 related to future docket, we wouldn't be able to
11 speak about any of that, but if it's related to a
12 previous docket, that would also be prohibited, I'm
13 presuming, if we don't have jurisdiction under it?

14 MR. RUBOTTOM: That's a question I'll have to
15 defer to other legal staff.

16 CHAIRMAN FAY: Okay. Great. Is there someone
17 on legal who could just clarify that? If something
18 is -- if something has been addressed in a previous
19 docket by the Commission and it's no longer in our
20 jurisdiction, can we take oral argument related to
21 that issue?

22 MS. HELTON: For something that's no longer
23 under your jurisdiction, I would recommend that you
24 not hear argument on that, because -- and if you're
25 speaking of the rate case, the rate case is

1 currently under appeal and it's before the Florida
2 Supreme Court. What's before you today is the rule
3 waiver request to extend by a year of filing report
4 dealing with underground facilities. I would also
5 like to say that with respect -- I agree with what
6 Mr. Rubottom said with respect to the requirements
7 for oral argument. You also have discretion to
8 hear oral argument if no one requested it, if you
9 think that it would aid you in resolving the issue
10 before you. Our belief is that oral argument would
11 not help you today.

12 CHAIRMAN FAY: Okay. And just one more
13 follow-up for legal. If we receive information
14 that's not related to the docket before us today,
15 does that create some potential prejudice, or we
16 would just dismiss that information and decide only
17 based on what we have here?

18 MS. HELTON: I think you could just dismiss it
19 and base your decision on the information before
20 you.

21 CHAIRMAN FAY: Okay. Great. Commissioners,
22 we don't have a specific motion for this oral
23 argument. I don't know if anybody has any other
24 comments as to if they would want to hear these
25 comments related to this docket. Commissioner

1 Clark.

2 COMMISSIONER CLARK: Mr. Chair, I would be
3 inclined to -- these are customers that have
4 specific comments related to the item at hand and
5 would certainly be willing to entertain those
6 comments.

7 CHAIRMAN FAY: Sure. And just to confirm,
8 Mary Anne, do we know -- do we have how many
9 customers we have here in attendance?

10 MS. HELTON: I believe that Ms. Zedek and Ms.
11 James came into the audience as the item started,
12 and it's my understanding that those are the two
13 that wish to address the Commission this morning.

14 CHAIRMAN FAY: Okay. Great. If both of you
15 are here, if you wouldn't mind coming up here to
16 the front so we can get a mic in front of you to
17 provide your testimony.

18 And just before I recognize you, as legal
19 stated, we have a specific docket in front of us
20 related to the undergrounding of utility lines and
21 the data that's received from the Commission on
22 those and there was a -- essentially a temporary
23 waiver for that data that's received. So we can
24 take testimony today related to that portion of the
25 docket in front of us. As legal stated, we can't

1 take testimony on any other future dockets and/or
2 any other previous decisions that have made --
3 which could prejudice essentially a decision we
4 make legally, and so it's very significant. It
5 seems like you understand that. You're nodding
6 your head and we appreciate that. Commissioner
7 Clark stated he would like to still hear from you.
8 But I'd just ask you to keep in mind the specific
9 docket that's in front of us and we'll allow you
10 each three minutes to speak. I apologize. I don't
11 know which one is first. But I have Ms. Zedek here
12 is the information in front of me.

13 So, Ms. Zedek, if you'd like to first I'll
14 recognize you for three minutes. And just make
15 sure you have your light on in front of there, the
16 green light, so we can hear you. Perfect. We got
17 you.

18 MS. ZEDEK: Okay. Thank you. There is one
19 reference in my paper here to the other docket, but
20 it's just a reference. I'm basically addressing
21 the waiver today, before I speak, I wanted to let
22 you know.

23 CHAIRMAN FAY: Okay. You could exclude that
24 reference to specific -- another docket. Just
25 because legally, specifically if it's something

1 that's under appeal, otherwise, we absolutely
2 cannot take that information on that docket today,
3 and so just ask you to do that. Legal has stated,
4 we're mindful to ignore that information if
5 received, but it won't have any weight or bearing
6 today, if you say --

7 MS. ZEDEK: Okay. And I'm just going to read
8 through because I feel like that's best.

9 CHAIRMAN FAY: Sure.

10 MS. ZEDEK: I had that I stand before you, but
11 actually sit before you today, as a voice
12 representing myself, as well as many friends and
13 neighbors in Northwest Florida area. Many of them,
14 as well as myself, have sent you notification of
15 hardship because of a drastic rate hike. I urge
16 you not to dismiss these letters and I also urge
17 you not to grant a waiver to Florida Power & Light
18 regarding the time frame for providing an accurate
19 expense report to justify the rate hike that has
20 already been put in place.

21 In regard to the docket on the rate hike, I
22 and thousands of others were not notified of a
23 public meeting. We now know that the meeting was
24 done by videotape during the pandemic. So the vast
25 majority of citizens were completely unaware and

1 unable to attend. My presence and my voice here
2 today can be multiplied thousands of times over. A
3 petition with over 20,000 names was put together by
4 a Northwest Florida citizen. All of those names
5 represent people who are suffering due to the rate
6 hike. Again, these names represent the people who
7 were aware of the petition. Thousands of others
8 were not aware of the petition and are suffering.

9 I myself placed a call to you, the Florida
10 Public Service Commission, in January. I filed a
11 formal complaint. I was never contacted back by
12 anyone or any of you or Florida Power & Light.
13 FPL's lawyer states that we have no standing. We
14 are the public that you have been appointed to
15 serve, and you have not been appointed to serve
16 Florida Power & Light, who have no standing. You
17 are paid by us and appointed to serve us.

18 Many Northwest Florida citizens have become
19 aware of a very large company named BlackRock.
20 They are a large shareholder of NextEra who is
21 FPL's parent company. BlackRock is currently
22 buying up much of the real estate market in the
23 United States and driving prices so high that most
24 young families can't afford to buy and others are
25 not even able to rent. Many have been forced to

1 live with family members, some have sadly been put
2 out on the street. Florida's homeless population
3 is skyrocketing. FPL and BlackRock are both
4 playing a large role in this disaster. BlackRock
5 has many foreign investors and does not serve the
6 public interest of the American citizens or the
7 citizens of Northwest Florida. You, as Florida
8 Public Service Commissioners, have been appointed
9 to serve and protect the citizens of Florida.

10 CHAIRMAN FAY: Ms. Zedek, sorry to interrupt
11 you, but you are over your time now. If you could
12 just close it back to the item related here.

13 MS. ZEDEK: Okay. Can I finish? I don't have
14 much more.

15 CHAIRMAN FAY: If you can be quick, yes.

16 MS. ZEDEK: Okay.

17 CHAIRMAN FAY: And I'll allow Ms. James to
18 address the Commission --

19 MS. ZEDEK: Okay. Throwing out these letters
20 of hardship and striking them from the record,
21 agreeing that the citizens have no standing and
22 allowing a company already making millions of
23 dollars off the citizens of Floridians to be
24 granted a waiver to now have to prove justification
25 of their rate hike does not serve the public.

1 Throwing out citizens' pleas for help does not
2 serve the public. Not responding to the complaints
3 that have been filed, or letters of many city
4 councils requesting help in regard to the FPL
5 extreme and unjustified rate hike does not serve
6 the public.

7 So I'm before you today on behalf of the
8 citizens of Northwest Florida, all who are on the
9 petition, and all who have requested that you not
10 grant this waiver, who have shared their positions
11 of hardship. And I urge you to do the right thing
12 on behalf of the citizens you have been appointed
13 to serve.

14 CHAIRMAN FAY: Thank you for your testimony,
15 Ms. Zedek. Ms. James, you're recognized.

16 MS. JAMES: Good morning.

17 CHAIRMAN FAY: Good morning.

18 MS. JAMES: I'm here -- I understand that it's
19 two separate dockets. We're here today about the
20 waiver to file the data and that analysis that was
21 agreed in the previous docket. So I can't get away
22 from mentioning it, because in the stipulated
23 agreement for the rate hike and unification on page
24 99, at 11.212(c), they say that the underground
25 distribution facilities by the applicant is not

1 expected to cause the general body of ratepayers to
2 incur greater costs. So that means that the
3 general body of ratepayers does have costs, it's
4 just not expected to make it greater. And for them
5 to say that they don't expect it to make it
6 greater, well, we were also told that our electric
7 bill would go up by 10 or \$15. So I don't really
8 think that we the people can rely on what they
9 think may be greater or not greater.

10 So, relying on that, that's where we are here.
11 So I think it's important for us to see what their
12 costs are, that they don't expect to be greater.
13 And that does prove that we the ratepayers do have
14 some costs associated with that. And just to
15 repeat, that's on page 99, at 11.212(c) paragraph
16 of their stipulated agreement. So I think we need
17 to see what that is, especially since we've went up
18 three-fold on our bills, not 10 or \$15.

19 CHAIRMAN FAY: Just to clarify, Ms. James,
20 you're not stating that that's in this
21 recommendation. You're saying that's in the
22 previous settlement agreement?

23 MS. JAMES: On the stipulated agreement where
24 they agreed to file the data and analyses that is
25 the matter of today's docket; in that document,

1 they stated that the underground distribution
2 facilities --

3 CHAIRMAN FAY: I got you. I got you.

4 MS. JAMES: -- was not expected to cause a
5 greater cost to the taxpayer, so -- or to the
6 general ratepayer, rather, not taxpayer.

7 CHAIRMAN FAY: With that, you're fine to
8 proceed. I didn't mean to interrupt you. I just
9 want to make sure I understood what you were
10 referencing.

11 MS. JAMES: Right. So that's what I'm
12 referencing. So it is costing us something. So,
13 as ratepayers, we do have the right to see what
14 that is in a timely fashion and to see what they --
15 how are they expecting that it not go up.

16 You know, the people of Northwest Florida,
17 we've had a rough time with this. And when we've
18 brought to attention certain things to FPL, we've
19 been retaliated against. We've had our power cut
20 off over four different amounts that doesn't match.
21 The PSC sends it over to FPL, who then doesn't
22 rectify the situation. So I think at this point,
23 this regulatory body, who has the right to regulate
24 a monopoly, should take a look at everything
25 they're doing that's going to cost the ratepayer

1 money at the end of the day.

2 CHAIRMAN FAY: Thank you for being within the
3 time. I appreciate that.

4 With that, Commissioners, I'm happy to take
5 any questions from the speakers. If not, I
6 appreciate your testimony here today. You're
7 welcome to sit back in your seats if you don't want
8 to stay up here.

9 I do have a question for staff, just as a
10 follow-up. So under the -- essentially under the
11 waiver that's presented, the temporary waiver
12 that's presented to us. Is this data -- and this
13 might be for you, Mr. Rubottom -- is this data that
14 we receive -- is the data essentially being
15 delayed, or is there some sort of cost implications
16 in the item before us? My understanding that it's
17 just essentially a delay of the receiving that
18 information.

19 MR. COSTON: Commissioner, Tripp Coston with
20 Commission staff. Yes, what this waiver would do
21 is allow the companies to delay the filing of their
22 three-year requirement of their total cost analysis
23 looking at what the underground/overhead
24 differential would be. Part of the Rule 25-6.078
25 does require the company to provide on an annual

1 basis if there is a 10 percent differential based
2 on initial analysis, rather, in the company if they
3 believe that that differential that is in place at
4 the moment would change. And so what the company
5 had did, because they were not at that moment in
6 time when the prior case or docket was taken up,
7 was not required to file their three-year annual
8 information, Gulf nor FPL was, as individual
9 companies. Prior to the rate case, the companies
10 had filed in October that there was no change in
11 the differential -- or there was not at least a 10
12 percent change in differential, rather. And so
13 that information was taken into account when the
14 companies consolidated underground/overhead tariff
15 sheets that were provided within that rate case
16 docket. That information was included in that
17 analysis.

18 CHAIRMAN FAY: Okay. So if we stay with
19 staff's recommendation, do they still have to
20 submit the information?

21 MR. COSTON: They will submit the information
22 under the -- under the approved waiver. They will
23 submit a combined consolidated analysis in 2023.

24 CHAIRMAN FAY: Okay. And would they be
25 allowed to ask for another variance at that time,

1 or we would expect it at that point?

2 MR. COSTON: I think at that point in time,
3 based on the decision, we would expect the company
4 to file a full, complete analysis, what would be
5 expected per rule that they would be required to
6 file on the three-year annual.

7 CHAIRMAN FAY: Okay. So this is essentially
8 just a temporary --

9 MR. COSTON: It's a temporary one. One thing
10 to take -- based on the October filings of both
11 Gulf Power and FPL when they were filed, the
12 companies, both companies stated that there was not
13 a significant change in the differential, and so
14 there would not be a change. One thing to note is
15 that the differential going into the rate case, and
16 currently is in place in the tariff, is that there
17 is no differential based on the requirements of the
18 rule between an overhead installation and an
19 underground installation. So it's kind of neutral.

20 CHAIRMAN FAY: Meaning there are no
21 additional --

22 MR. COSTON: No additional cost to a developer
23 who would be installing.

24 CHAIRMAN FAY: Okay. All right. So it makes
25 sense to me. Commissioners, do we have any

1 questions? Commissioner Clark, you're recognized.

2 COMMISSIONER CLARK: Just a couple of points
3 of clarification. This primarily relates to CIAC,
4 is that correct?

5 MR. COSTON: That is correct. This is for --
6 and specifically for developers building
7 subdivisions.

8 COMMISSIONER CLARK: So does it typically have
9 an impact on the ratepayers themselves, unless that
10 number was shifted such that those costs were not
11 being correct -- correctly calculated, that would
12 mean the ratepayers were picking some of them up?

13 MR. COSTON: Right.

14 CHAIRMAN FAY: And if I remember right, this
15 probably -- actually was an advantage to Northwest
16 compared to the rest of the FPL system when the
17 rates were consolidated. If I remember right, the
18 FPL cost differential was much less than the
19 Northwest Florida cost differential. So the
20 current assessment of bringing those two numbers
21 together has actually benefited developers in
22 Northwest Florida compared to the rest of the
23 state. Is that a fair statement?

24 MR. COSTON: I think that is a fair statement,
25 taking into account that the rule takes into

1 account form costs when they can calculate the net
2 present values that are part of the calculation of
3 this.

4 COMMISSIONER CLARK: Thank you.

5 CHAIRMAN FAY: Commissioner La Rosa, you're
6 recognized.

7 COMMISSIONER LA ROSA: Thank you, Chairman.
8 And I think Commissioner Clark started to hit on
9 it. But what would some of the benefits of those,
10 a time delay, be for the company?

11 MR. COSTON: Thank you. Yes. I think the
12 benefit that staff recognized during this process
13 is the two companies were on two different time
14 frames for providing the three-year required
15 analysis. FPL's legacy company was acquired in
16 2022, Gulf in 2023. The analysis that the
17 utilities were providing was based on historic
18 data. And when you look at that, the two utilities
19 had not combined and did not have the opportunity
20 to have a historic perspective as a combined
21 utility. What the waiver would do, based on the
22 petition from Florida Power & Light would allow the
23 company to have and create one year of historical
24 data, therefore allowing the two legacy companies'
25 information to be combined and provided. It's kind

1 of a unified versus having to look at them
2 separately, just how it would have -- the companies
3 would have had to provide the information if they
4 were required to file in 2022.

5 COMMISSIONER LA ROSA: Will we have more
6 accurate information?

7 MR. COSTON: So I believe that -- staff
8 believes that the information, based on the current
9 structure of the company, would be more accurate.

10 COMMISSIONER LA ROSA: Thank you.

11 CHAIRMAN FAY: With that, Commissioners, no
12 other questions, I'm happy to take a motion on this
13 item.

14 COMMISSIONER CLARK: Move approval of the
15 waiver, Mr. Chairman.

16 COMMISSIONER GRAHAM: Second.

17 CHAIRMAN FAY: Have a motion and a second for
18 approval of the waiver. All that support say --

19 MS. DUVAL: I'm sorry. Mr. Chairman, I
20 believe that we would need to phrase that as
21 granting FPL's motion to dismiss at this point.

22 CHAIRMAN FAY: Okay. So let's make sure we
23 get it in the right legal posture. So the PAA was
24 originally granted. We have this motion, or these
25 petitions were received, and then there was a

1 motion to dismiss those. So to essentially to keep
2 the PAA in place and grant the motion to dismiss,
3 we would need that to be our motion. Is that --

4 MS. DUVAL: Correct, yes, to grant FPL's
5 motion to dismiss and issue the consummating order
6 for the PAA order.

7 CHAIRMAN FAY: Okay. Great.

8 MS. DUVAL: Then close the docket.

9 CHAIRMAN FAY: Great. Yeah. Thank you, so --

10 COMMISSIONER CLARK: Move to grant the motion
11 to dismiss to issue the order and close the docket.

12 COMMISSIONER GRAHAM: Second.

13 CHAIRMAN FAY: Okay. Great. We have a motion
14 and a second on that item. All that supports say,
15 yea.

16 (Chorus of ayes.)

17 CHAIRMAN FAY: All that oppose, no.

18 (No comments made.)

19 CHAIRMAN FAY: With that, the motion passes.
20 Thank you for your time. And for both of you, if
21 you could please meet with our communication staff
22 before you leave. Cindy Muir is in the room and
23 she'll be able to speak with you. I just want to
24 make sure that our agency was responsive to you.
25 You reached out to us. Thank you.

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(Agenda item concluded.)

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CERTIFICATE OF REPORTER

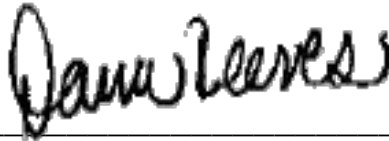
STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 18th day of May, 2022.



DANA W. REEVES
NOTARY PUBLIC
COMMISSION #GG970595
EXPIRES MARCH 22, 2024