

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa Electric Company.

DOCKET NO. 20240026-EI

In re: Petition for approval of 2023 depreciation and dismantlement study, by Tampa Electric Company.

DOCKET NO. 20230139-EI

In re: Petition to implement 2024 generation base rate adjustment provisions in paragraph 4 of the 2021 stipulation and settlement agreement, by Tampa Electric Company.

DOCKET NO. 20230090-EI

ORDER NO. PSC-2024-0189-FOF-EI
ISSUED: June 11, 2024

The following Commissioners participated in the disposition of this matter:

MIKE LA ROSA, Chairman
ART GRAHAM
GARY F. CLARK
ANDREW GILES FAY
GABRIELLA PASSIDOMO

FINAL ORDER DENYING OFFICE OF PUBLIC COUNSEL'S EXPEDITED MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE AND REQUEST FOR ORAL ARGUMENT

BY THE COMMISSION:

BACKGROUND

On April 2, 2024, Tampa Electric Company ("TECO") filed a Petition for Rate Increase, minimum filing requirements ("MFRs"), and testimony. TECO is a public utility subject to regulation by the Florida Public Service Commission ("Commission"). TECO provides electric service to approximately 844,000 customers in a 2,000 square mile service territory spanning Hillsborough and portions of Polk, Pasco, and Pinellas counties, Florida.

On March 8, 2024, the Office of Public Counsel ("OPC") filed a Motion for Expedited Joint Docket Scheduling Conference¹ which it later supplemented on April 3, 2024.² In its

¹ Office of Public Counsel's Mot. Expedited Joint Scheduling Conference, Docket No. 20240026-EI, Document No. 01094-2024, Mar. 8, 2024.

² Suppl. Office of Public Counsel's Mot. Expedited Joint Docket Scheduling Conference, Docket No. 20240026-EI, Document No. 01589-2024, Apr. 3, 2024.

motion, OPC requested a conference “to consider fair and equitable key activities and hearing dates, consistent with due process.”³ On April 4, 2024, TECO filed a response opposing OPC’s proposed procedural schedule. Having fully considered the parties’ detailed arguments and proposals, OPC’s motion was denied and the Order Establishing Procedure and Consolidating Dockets (“OEP”), Order No. PSC-2024-0096-PCO-EI, was issued on April 16, 2024. The OEP established controlling dates and procedures for this proceeding, including for the filing of prefiled testimony and exhibits, the conducting discovery, and other prehearing and hearing activities. Included among these events was the requirement that, in advance of the hearing, parties provide electronic copies of all exhibits they intend to offer into evidence at the hearing. Finally, the OEP scheduled these matters for an administrative hearing for August 26–30, 2024.

On April 22, 2024, OPC timely filed an Expedited Motion for Reconsideration or, in the Alternative, Motion for Continuance (“Motion”)⁴ concurrently with a request for oral argument.⁵ Florida Rising Inc. (“Florida Rising”) and League of United Latin American Citizens (“LULAC”) filed a joint Notice of Joinder on April 22, 2024.⁶ Sierra Club filed a Notice of Joinder on April 24, 2024,⁷ and Florida Retail Federation (“FRF”) filed one on April 29, 2024.⁸

On April 29, 2024, TECO filed its response to the Motion and OPC’s request for oral argument.⁹ TECO states that it is difficult to imagine how oral argument would further assist the Commission on understanding the alleged issues any more than the 30-page Motion already does.

DECISION

Oral Argument

Rule 25-22.0022(1), Florida Administrative Code (“F.A.C.”), allows a party to request oral argument before the Commission for any dispositive motion (including motions for reconsideration) by filing a separate written pleading concurrently with the motion on which argument is requested, and stating with particularity why oral argument would aid the

³ Office of Public Counsel’s Mot. Expedited Joint Scheduling Conference, p. 1.

⁴ Citizen’s Expedited Mot. Recons. or, in the Alternative, Mot. Continuance, Docket No. 20240026-EI, Document No. 02230-2024, Apr. 22, 2024.

⁵ Citizens’ Req. Expedited Oral Arg. on Citizens’ Expedited Mot. Recons., or, in the Alternative, Mot. Continuance, Docket No. 20240026-EI, Document No. 02231-2024, Apr. 22, 2024.

⁶ Florida Rising’s & League of United Latin American Citizens’ Notice of Joinder in Citizens’ Expedited Mot. Recons. or, in the Alternative, Mot. Continuance, Docket No. 20240026-EI, Document No. 02236-2024, Apr. 22, 2024.

⁷ Sierra Club’s Notice of Joinder in Citizens’ Expedited Mot. Recons. or, in the Alternative, Notice of Joinder in Florida Rising’s & League of United Latin American Citizens’ Mot. Continuance, Docket No. 20240026-EI, Document No. 02343-2024, Apr. 24, 2024.

⁸ The Florida Retail Federation’s Notice of Joinder in Citizens’ Mot. Recons. or, in the Alternative, Mot. Continuance, Docket No. 20240026-EI, Document No. 02541-2024, Apr. 29, 2024.

⁹ Tampa Electric Company’s Resp. to Citizens’ Expedited Mot. Recons. or, in the Alternative, Mot. Recons.; Florida Rising & LULAC’s Joinder; Sierra Club’s Notice of Joinder; and Citizens’ Req. Expedited Oral Arg., Docket No. 20240026-EI, Document No. 02492-2024, Apr. 29, 2024.

Commission. Granting or denying oral argument is within the sole discretion of the Commission under Rule 25-22.0022(3), F.A.C.

We find that the pleadings are sufficient on their face to evaluate and decide the Motion. Therefore, we decline to hear oral argument from the parties.

Reconsideration

The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order under review.¹⁰ It is not appropriate to reargue matters that have already been considered.¹¹ Furthermore, a motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review.”¹²

In the Motion, OPC acknowledges that the standard of review on a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider. However, OPC argues that a de novo standard of review should apply in this case because the underlying order is a procedural order that has not been issued by the full Commission or been the subject of a hearing.

We decline OPC’s invitation to modify our well-settled standard of review and are not persuaded by its attempt to distinguish our precedent. The setting of a procedural schedule for a hearing-track docket is a function of the Prehearing Officer’s duties, not those of the Commission as an agency. Nor are such procedural matters appropriate for an evidentiary hearing. Furthermore, the Commission has held that a mistake of fact or law standard applies to reconsideration by the Commission of a Prehearing Officer’s order.¹³ Having resolved the question surrounding the appropriate standard of review for reconsideration, we turn to the Motion’s remaining arguments.

¹⁰ See *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 162 (Fla. 1st DCA 1981).

¹¹ *Sherwood v. State*, 111 So.2d 96 (Fla. 3d DCA 1959) (citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So.2d 817 (Fla. 1st DCA 1958)).

¹² *Stewart Bonded Warehouse, Inc.*, 294 So.2d at 317.

¹³ See *In re: Petition for rate increase by Fla. Power & Light Co.*, Docket No. 20160021-EI, Order No. PSC-2016-0231-FOF-EI (Fla. PSC June 10, 2016); *In re: Petition to Determine Need for an Elec. Power Plant in Martin Cty. by Fla. Power & Light Co.*, *In re: Petition to Determine Need for an Elec. Power Plant in Manatee Cty. by Fla. Power & Light Co.*, Docket Nos. 20020262-EI & 20020263-EI, Order No. PSC-2002-1442-FOF-EI (Fla. PSC Oct. 21, 2002); *In re: Consideration of BellSouth Telecomms., Inc.’s entry into interLATA servs. pursuant to Section 271 of the Federal Telecomms. Act of 1996*, Docket No. 19960786A-TL, Order No. PSC-2001-2021-FOF-TL (Fla. PSC Oct. 9, 2001); *In re: Petition to Resolve territorial dispute with Gulf Coast Elec. Coop., Inc. by Gulf Power Co.*, Docket No. 19930885-EU, Order No. PSC-1997-0098-FOF-EU (Fla. PSC Jan. 27, 1997); *In re: Standard offer contract for the purchase of firm capacity & energy from a qualifying facility between Panda-Kathleen, L.P., & Fla. Power Corp.*, Docket No. 19950110-EI, Order No. PSC-1996-0133-FOF-EI (Fla. PSC Jan. 29, 1996).

With respect to the merits of the Motion, OPC and the parties who joined it request the Commission to reconsider the hearing schedules for six reasons: (1) intervenors have insufficient time to prepare testimony; (2) the utilities could have easily avoided this scheduling “disaster” and are not entitled to new rates by January 1, 2025; (3) the current ratemaking framework cannot fully accommodate analysis of Duke Energy Florida, LLC’s three proposed test years simultaneously and then contemporaneously with the TECO rate case docket; (4) Commission staff does not have sufficient time to conduct their standard audit; (5) the certainty that OPC does not have enough time to prepare their cases outweighs the possibility that the timeline may need to be delayed; and (6) asymmetrical advance knowledge of the hearing dates created additional harm to intervenors. OPC also contends that it is burdensome and a violation of due process to require the parties to provide, in advance of the hearing, electronic copies of all exhibits they plan to offer into evidence at the hearing.

Florida Rising and LULAC additionally notes that they had to wait for their intervention to be granted before it could file enforceable discovery. Sierra Club argues that the current hearing schedule prejudices its ability for a fair hearing. FRF asserts it has a substantial interest in the Motion being granted.

In response, TECO argues that OPC has not identified a mistake of law or fact that would justify reconsideration of the hearing schedule. TECO contends that OPC’s concerns about Docket No. 20240025-EI should not be a basis for adjusting the schedule in this docket, and that OPC improperly minimizes the importance of the legislative deadline found in Section 366.06(3), Florida Statutes. TECO notes that the schedule in the OEP appears crafted to avoid the operation of the statutory deadline in this case, and that it has worked in good faith with all parties to facilitate discovery, even prior to the filing of its Petition for Rate Increase and to the granting of intervenor status to certain parties. TECO also argues that OPC’s motion improperly attempts to turn procedural conversations with Commission staff about the possible timing of a hearing into something significant.

At the Commission, the Prehearing Officer is the procedural administrator of a hearing-track case. They rule on motions and procedural matters and conduct prehearing conferences, prior to referral of such cases to the Commission for final decision. Pursuant to Rule 28-106.211, F.A.C., the Prehearing Officer may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding. The Prehearing Officer has wide discretion in balancing the interests of parties in the furtherance of the orderly administration of justice.¹⁴ The schedule approved by a Prehearing Officer is controlled in part by the selection of hearing dates by the Chairman, which is in turn based upon the availability of the Commission’s calendar and the existence of any applicable statutory deadlines.

¹⁴ *In re: Petitions of S. Bell Tel. & Telegraph Co. for Rate Stabilization & Implementation Orders & Other Relief*, Docket No. 19880069-TL, Order No. 25245 (Fla. PSC Oct. 23, 1991) (balancing competing interests of new counsel desiring more time to prepare and party seeking to proceed with discovery by delaying deposition).

The statutory deadlines in this docket are established under Section 366.06(3), Florida Statutes (F.S.), which requires the Commission to take action on TECO's proposed final rates within eight months. If the Commission does not act by the end of this eight month period, pursuant to Section 366.06(3), F.S., TECO is entitled to place its proposed rates into effect, subject to refund. The statute further provides that the Commission must take final action in the docket and enter its final order within 12 months of the commencement date for final agency action. The official filing date for this proceeding is April 2, 2024, pursuant to Section 366.06(3), F.S. Therefore, the eight month period expires on December 2, 2024. Before the Commission can take a final vote on TECO's proposed rates, there are a number of post-hearing activities that must take place: post-hearing briefs are filed by the parties, and two post-hearing recommendations and two post-hearing votes take place—one on the revenues and one on the final rates. The OEP balances the needs of both pre-hearing and post-hearing process, for the parties, Commission staff, and Commissioners, consistent with the deadlines under Section 366.06(3), F.S. Adherence to the eight month clock is a consistent and appropriate Commission practice. The schedule in this docket is driven by when a utility elects to file its case, which is not a matter susceptible to the Commission's control, and the requirements of the Commission's authorizing statutes.

As to requiring the provision of exhibits in advance of the hearing, Rule 28-106.209, F.A.C., provides that any time after a matter has been filed with an agency, the presiding officer can direct the parties to confer for the purpose of examining documents and other exhibits. The purpose of discovery is to eliminate the element of surprise, encourage settlement, and to assist in arriving at the truth.¹⁵ The exchange of exhibits in advance of hearing is a common feature in proceedings before the Division of Administrative Hearings, and was used in a number of virtual hearings before the Commission during the pandemic. The requirement that parties and Commission staff list and exchange all exhibits in advance of the hearing promotes due process, transparency, and judicial economy.

Finally, much of OPC's argument on reconsideration repeats matters raised in its Motion for Expedited Joint Docket Scheduling Conference, which the Prehearing Officer considered in setting the hearing schedule. It is not appropriate to reargue matters on reconsideration that have already been considered. The Motion does not clearly identified any specific mistakes of fact or law the Prehearing Officer made in issuing the OEP. Without a specific mistake of fact or law, a motion for reconsideration must be denied, even if the reviewing body would have reached a different decision.¹⁶ In light of the above, we deny the reconsideration relief requested.

Continuance

In the alternative, OPC (and the parties who joined it) move the Commission to continue the final hearing and to adjust the major activity dates correspondingly. Movants argue they have

¹⁵ *In re: Review of Storm Prot. Plan, pursuant to Rule 25-6.030, F.A.C., Fla. Power & Light Co.*, Docket No. 20220051-EI, Order No. PSC-2022-0194-PCO-EI (Fla. PSC May 25, 2023).

¹⁶ *Stewart Bonded Warehouse, Inc.*, 294 So.2d at 317; *In re: Petition for rate increase by Fla. Power & Light Co.*, Docket No. 20160021-EI, Order No. PSC-2016-0231-FOF-EI, p. 5 (Fla. PSC June 10, 2016).

met the burden established by Rule 28-106.210, F.A.C., which governs motions for continuance and grants the presiding officer the authority to continue a hearing for good cause shown. Generally, hearing officers enjoy broad discretion when ruling on motions to continue.¹⁷

Section 366.06(3), F.S., establishes an eight month time period during which the Commission can withhold its consent to the operation of rates proposed by a utility and after which the rates take effect subject to refund. The dates established by the OEP are designed to allow the parties and Commission staff the maximum time to prepare for and conduct the final hearings in this matter within that statutory framework. Any delay in the established schedule increases the likelihood that the proposed rates will go into effect subject to refund. Because, as mentioned above, the OEP balances the needs of both pre-hearing and post-hearing processes consistent with statutory deadlines, the movants' request for continuance is denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's request for oral argument is DENIED as set forth herein. It is further

ORDERED that the Expedited Motion for Reconsideration or, in the Alternative, Motion for Continuance is DENIED as set forth herein.

¹⁷ *Milanick v. Osborne*, 6 So.3d 729, 730 (Fla. 5th DCA 2009) (“A motion for continuance is addressed to the sound judicial discretion of the trial court and absent abuse of that discretion its decision will not be reversed on appeal.”).

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By ORDER of the Florida Public Service Commission this 11th day of June, 2024.



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

CMM

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas, or telephone utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.