

FLORIDA PUBLIC SERVICE COMMISSION  
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Tallahassee, Florida 32399-0850

MEMORANDUM

SEPTEMBER 15, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF AUDITING & FINANCIAL ANALYSIS (SLEMKEWICZ JS  
CAUSSEAU, S. JONES, LEE, MAUREY) AVE FOLWCK PVE A PC  
DIVISION OF LEGAL SERVICES (KEATING, ELIAS) RVE  
DIVISION OF ELECTRIC & GAS (JENKINS, COLSON) RC  
JDJ

RE: DOCKET NO. 970410-EI - PROPOSAL TO EXTEND PLAN FOR  
RECORDING OF CERTAIN EXPENSES FOR YEARS 1998 AND 1999  
FOR FLORIDA POWER & LIGHT COMPANY

AGENDA: 09/23/97 - REGULAR AGENDA - MOTION FOR RECONSIDERATION  
PARTIES MAY PARTICIPATE IF REQUEST FOR ORAL ARGUMENT  
(ISSUE 1) IS GRANTED

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970410R.RCM

CASE BACKGROUND

In Docket No. 950359-EI, the Commission approved a proposal by Florida Power & Light Company (FPL) that resolved all of the identified issues regarding FPL's petition to establish a nuclear amortization schedule. By Order No. PSC-96-0461-FOF-EI, issued April 2, 1996, FPL was required (1) to book additional 1995 depreciation expense to the reserve deficiency in nuclear production; (2) to record, commencing in 1996, an annual \$30 million in nuclear amortization, subject to final determination by the Commission as to the accounts to which it is to be booked; and (3) to record an additional expense in 1996 and 1997 based on differences between actual and forecasted revenues, to be applied to specific items in a specific order.

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FPSC-RECORDS/REPORTING

This docket was opened to consider an extension of and modification to the plan to allow the recording of additional expenses in 1998 and 1999.

By Proposed Agency Action Order No. PSC-97-0499-FOF-EI, issued April 29, 1997, in this docket, the Commission approved staff's recommendation to extend and modify the plan. On May 20, 1997, AmeriSteel Corporation (hereinafter "AmeriSteel") timely filed a protest of the Proposed Agency Action. On June 10, 1997, FPL filed a Motion to Deny and Dismiss the Protest of AmeriSteel. FPL's motion was denied at the August 18, 1997 agenda conference. This matter is currently set for hearing on November 25 and 26, 1997.

On August 28, 1997, the prehearing officer issued Order No. PSC-97-1035-PCO-EI, establishing the procedure for this proceeding. On September 8, 1997, AmeriSteel filed a motion for reconsideration of Order No. PSC-97-1035-PCO-EI and a request for oral argument on the motion. On September 9, 1997, Florida Power & Light Company (FPL) filed a response opposing the motion for reconsideration and the request for Oral Argument. This recommendation addresses the motion for reconsideration and request for oral argument.

## DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant AmeriSteel's Request for Oral Argument on its Motion for Reconsideration?

**RECOMMENDATION:** No. (KEATING, ELIAS)

**STAFF ANALYSIS:** Oral Argument was requested by AmeriSteel to address its Motion for Reconsideration. No other request for Oral Argument was made. Rule 25-22.058, Florida Administrative Code requires a movant to show "...with particularity why Oral Argument would aid the Commission in comprehending and evaluating the issues before it."

In its request, AmeriSteel states: "Due to the fact that the Motion references various meetings along with the pleadings and argument presented at agenda conferences, it will assist the Commission to hear oral presentation in deciding the Motion for Reconsideration of Order Establishing Procedure." AmeriSteel's request does not offer any further elaboration as to why Oral Argument would assist the Commission in deciding the issues before it.

In its response to AmeriSteel's motion, FPL states: "There is no basis to grant oral argument to consider the matters raised in AmeriSteel's motion."

In the instant case, staff believes the issues, responses to, and legal arguments concerning AmeriSteel's Motion for Reconsideration are ably presented by the parties in their pleadings. The issues are clearly delineated in those pleadings, and in the record. Staff does not believe that oral argument would aid the Commission in comprehending and evaluating the issues before it. Therefore, staff recommends that AmeriSteel's Request for Oral Argument on its Motion for Reconsideration should be denied.

DOCKET NO. 970410-EI  
DATE: SEPTEMBER 11, 1997

**ISSUE 2:** Should the Commission grant AmeriSteel Corporation's Motion for Reconsideration of Order Establishing Procedure in this docket?

**RECOMMENDATION:** No. AmeriSteel's Motion for Reconsideration does not identify any point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Order Establishing Procedure. (KEATING, ELIAS)

**STAFF ANALYSIS:** The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that the Commission overlooked or failed to consider in rendering its order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.

In its motion, AmeriSteel argues that the hearing schedule set forth in Order No. PSC-97-1035-PCO-EI violates AmeriSteel's procedural due process rights on two grounds. First, AmeriSteel argues it should not be required to file direct testimony at the same time as FPL. AmeriSteel contends it does not carry the burden of proving the reasonableness and necessity of the plan. AmeriSteel also contends that, by requiring AmeriSteel to file direct testimony at the same time as FPL and before Staff files testimony, the Order requires AmeriSteel's witnesses to speculate regarding the proponents' testimony in support of the Plan. Second, AmeriSteel argues that the hearing schedule affords no meaningful opportunity for it to conduct discovery.

In its response, FPL argues that it is appropriate to require AmeriSteel to file testimony simultaneously with FPL because the hearing in this case is necessitated by AmeriSteel's protest. FPL contends that the prehearing officer has discretion to establish testimony filing dates and that it would have been equally appropriate to require AmeriSteel to file testimony first. FPL states that it is no novel occurrence for the Commission to require the protesting party to demonstrate that the action taken is inappropriate. FPL also points out that the procedural order specifically provides for rebuttal testimony from the parties. Further, FPL argues that AmeriSteel has already propounded discovery requests on both FPL and Staff and has the same

DOCKET NO. 970410-EI  
DATE: SEPTEMBER 11, 1997

opportunity to conduct discovery as any other party in this proceeding.

The direct testimony filed by the parties is to address the issues identified in the Order Establishing Procedure, and not the testimony offered by other parties. Staff notes that AmeriSteel will have the opportunity to file rebuttal testimony after any party files testimony in support of the plan.

In its motion, AmeriSteel argues that the scope of the proceeding is made unreasonably narrow by Order No. PSC-97-1035-PCO-EI. AmeriSteel identifies four issues from its proposed issues list that were not included as issues in the procedural order. AmeriSteel states that these issues are arguably encompassed by Issue 6 in the procedural order's issue list but requests that they be specified in the issue list because they raise core concerns relating to the Plan's effect on consumer interests.

In its response, FPL claims that AmeriSteel's motion merely reargues the proper scope of this proceeding. FPL states that the Commission has considered this subject during at least two extensive oral arguments and that there is no basis to again consider the matter.

Staff believes that AmeriSteel's motion fails to identify any point of fact or law that the Commission overlooked or did not consider in rendering Order No. PSC-97-1035-PCO-EI.

First, AmeriSteel presents no authority for its assertion that its due process rights are denied by the procedural order. Section 120.57(1)(b)(2), Florida Administrative Code, requires only 14 days notice for a hearing. The Order Establishing Procedure in this docket was issued on August 28, 1997, approximately three months before the hearing date. This is ample time for the parties to prepare for the hearing.

In addition, the prehearing officer is not required by any law to establish a testimony filing schedule that provides for intervenor's testimony to be filed after the utility's testimony. Prehearing officers are granted considerable discretion over the management of cases assigned to them. See Rule 25-22.038, Florida Administrative Code; Order No. PSC-97-0881-PCO-WS, issued August 27, 1992. The Commission has previously established testimony filing schedules similar to the one in this case in similar

DOCKET NO. 970410-EI  
DATE: SEPTEMBER 11, 1997

circumstances. See, e.g., Order No. PSC-96-0272-PCO-EI, issued February 26, 1996.

Further, AmeriSteel's claim that the hearing schedule denies it the opportunity to conduct meaningful discovery is without merit. Order No. PSC-97-1035-PCO-EI provides for an expedited discovery procedure, stating on page 1:

Due to the expedited time schedule for this proceeding, all discovery requests and responses shall be served either by next-day express or hand delivery. All discovery responses shall be served within twenty (20) days of receipt of the discovery request. There shall be no extra time for mailing.

Clearly, in rendering the procedural order, the prehearing officer considered the impact of the expedited hearing schedule on parties' ability to conduct discovery and, as a result, provided an expedited discovery procedure for the parties to employ. Staff notes that AmeriSteel could, during the nearly three months between the date the order establishing procedure was issued and the scheduled date for the hearing, propound at least three consecutive sets of Interrogatories.

As previously stated, AmeriSteel has the same opportunity to conduct discovery as any other party to this proceeding. In fact, AmeriSteel has already propounded discovery requests to FPL and Staff. Hearing in this docket is scheduled for November 25-26, 1997, roughly two and one-half months from the filing of AmeriSteel's motion for reconsideration. AmeriSteel has ample opportunity to pursue discovery under the schedule established in the procedural order.

Second, the Commission has already considered AmeriSteel's arguments concerning the scope of this proceeding. At its August 18, 1997, agenda conference, the Commission heard arguments from AmeriSteel concerning the scope of this proceeding and the issues presented by AmeriSteel in this motion. The Commission's decision on this matter is found in Order No. PSC-97-1070-PCO-EI, issued September 10, 1997:

The scope of this docket shall be limited to the consideration of whether to approve the proposal to extend and modify the 1996/1997 "plan", approved in Order

DOCKET NO. 970410-EI  
DATE: SEPTEMBER 11, 1997

No. PSC-96-0461-FOF-EI, for the years 1998 and 1999. This includes the examination of the appropriateness of the elements, and their related amortization periods, included in the proposal for 1998 and 1999 that was the subject of Order No. PSC-97-0499-FOF-EI.

Staff believes the issues identified in the Order Establishing Procedure fully and fairly reflect this decision of the Commission.

Based on the above analysis, staff believes that AmeriSteel has failed to demonstrate any point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the Order Establishing Procedure. Therefore, AmeriSteel's Motion for Reconsideration should be denied.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open pending resolution of AmeriSteel's protest of the Proposed Agency Action. (KEATING, ELIAS)

**STAFF ANALYSIS:** This matter is set for hearing on November 25 and 26, 1997. This docket should remain open pending resolution of AmeriSteel's protest of the Proposed Agency Action.