



Public Service Commission

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RECORDS AND REPORTING

-Memorandum-

DATE: SEPTEMBER 14, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (SPRINGER) *DW*
DIVISION OF LEGAL SERVICES (WALKER) *RVE* *mas* *190*

RE: DOCKET NO. 000676-EI - PETITION FOR APPROVAL OF REVISIONS TO GENERAL RULES AND REGULATIONS FOR ELECTRIC SERVICE, AND FOR PARTIAL WAIVER OF RULE 25-6.105(5)(g), F.A.C., BY FLORIDA POWER & LIGHT COMPANY.

AGENDA: 08/29/00 - REGULAR AGENDA - PAA AND TARIFF FILING INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 90-DAY PERIOD PRESCRIBED BY SECTION 120.542, FLORIDA STATUTES (WAIVED) RUNS 8/30/00; 60-DAY SUSPENSION WAIVED.

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\000676.RCM

CASE BACKGROUND

On June 1, 2000, Florida Power & Light Company (FPL) filed a petition for a partial waiver of Rule 25-6.105(5)(g), Florida Administrative Code, pursuant to Section 120.542, Florida Statutes. The waiver is sought in connection with FPL's simultaneous request for approval of revisions to its tariff provisions regarding reconnection of service. Notice of FPL's Petition was published in the Florida Administrative Weekly on June 23, 2000. The comment period expired on July 14, 2000 and no comments were received.

Jurisdiction in this matter is vested in the Commission by Sections 366.04, 366.05 and 366.06, Florida Statutes, as well as in Section 120.542, Florida Statutes.

FPL asserts that in many instances, utility field personnel

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will arrive to disconnect for a delinquent bill (Bill No.1) at a time when the ensuing bill (Bill No. 2) has also become delinquent. This occurs when a backlog of accounts eligible for disconnection exists. The final notice for Bill No. 1 has already expired, so the disconnection for failure to pay this bill is permitted under Commission rules. Currently, FPL reconnects service for this delinquent customer if payment is made only for the amount due for Bill No. 1, even though Bill No. 2 is also delinquent. When the final notice expires on Bill No. 2, the customer becomes eligible for yet another disconnection within a relatively short time period. Since both bills are considered delinquent, FPL seeks permission to collect all delinquent amounts before reconnection of service even if the final notice has not yet expired for Bill No. 2. FPL asserts that this will reduce field visit expenses to the utility and its ratepayers.

DISCUSSION OF ISSUES

ISSUE 1: Should Florida Power & Light Company's Petition for a partial waiver of Rule 25-6.105(5)(g), Florida Administrative Code, be granted?

PRIMARY STAFF RECOMMENDATION: No. The Commission should deny Florida Power & Light Company's Petition for a partial waiver of Rule 25-6.105(5)(g), Florida Administrative Code, because the petition does not satisfy the statutory criteria for a rule waiver. [WALKER, SPRINGER]

ALTERNATIVE STAFF RECOMMENDATION: Yes. A customer whose service has been properly disconnected for nonpayment of a bill in these limited circumstances will have been afforded reasonable notice concerning the terms of service. The purpose of the underlying statute is being met. Application of Rule 25-6.105(5)(g), Florida Administrative Code, would create a substantial hardship. [ELIAS, WHEELER]

STAFF ANALYSIS: FPL is subject to Rule 25-6.101, Florida Administrative Code, that states "bills shall not be considered delinquent prior to the expiration of twenty (20) days from the date of mailing or the delivery by the utility." In addition, Rule 25-6.105(5), Florida Administrative Code, imposes an additional requirement to provide a non-paying customer at least five business days' notice prior to disconnecting service. FPL thus cannot disconnect service for nonpayment until the bill is considered delinquent, and the customer has had at least five business days' written notice of FPL's intention to disconnect service (i.e. a final notice).

PRIMARY STAFF ANALYSIS:

Rule 25-6.105(5)(g), Florida Administrative Code, provides that a utility may refuse or discontinue service for:

nonpayment of bills or compliance with the utility's rules and regulations, and only after there has been a diligent attempt to have the customer comply including at least 5 working days' written notice to the customer, such notice being separate and apart from any bill for service, provided that those customers who so desire may designate a third party in the company's service area to receive a copy of such delinquent notice.

In Rule 25-6.105(5)(g), Florida Administration Code, "working day" is defined for the purposes of Rule 25-6.105(5)(g), Florida

Administrative Code, as "... any day on which the utility's business office is open and the U.S. Mail is delivered."

I. Standard for Granting a Rule Waiver

Section 120.542(2), Florida Statutes, provides a two pronged test for determining when waivers and variances from agency rules 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 other means by the person and when application of the rule would create a substantial hardship For purposes of this section, "substantial hardship" means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. (Emphasis added).

II. FPL's Arguments

Section 1.5 of FPL's General Rules and Regulations provides, in pertinent part, the following:

The Company may refuse or discontinue service for failure to settle, in full, all prior indebtedness incurred by any Customer(s) for the same class of service at any one or more locations of such Customer(s) . . .

Even though FPL submits a rule waiver request, they assert that a waiver is not necessary because the above Section in its tariff allows it to refuse service to a customer when a customer fails to settle all prior debts with the Company. Staff respectfully disagrees because Rule 25-6.105(5)(g), Florida Administrative Code, specifically requires a five-day notice and therefore, within the meaning of the Rule, the bill cannot be considered a prior debt. Even if the bill is considered a prior debt, the tariff cannot supersede the rule.

Additionally, FPL argues that the purpose of the statute underlying the rule will be achieved if the petition is granted. FPL also asserts that application of the rule would create a substantial hardship for FPL and would violate principles of fairness. Staff disagrees.

III. The Purpose of the Underlying Statute

The statutory provisions underlying the Rule are Section 366.03 and subsection 366.05(1) of the Florida Statutes. Among other things, Subsection 366.05(1), Florida Statutes, authorizes

the Commission to prescribe "standards of quality and measurements, and service rules and regulations to be observed by each public utility." Section 366.03, Florida Statutes, states that each "public utility shall furnish...service upon terms as required by the Commission." Section 366.03, Florida Statutes, also provides that rates charged shall be fair and reasonable and that "no public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect."

FPL argues that approving the waiver will not foil the underlying purpose of these statutes, Section 366.03 and subsection 366.05(1), Florida Statutes, because customers will only have their service disconnected by FPL for non-payment of a delinquent bill upon expiration of a final notice relative to the delinquent amount. However, staff believes requiring customers to pay an additional delinquent amount for which the corresponding final notice may not yet have expired, prior to reconnection, is unreasonable within the meaning of this statute. Therefore, in accordance with Section 120.542(2), Florida Statutes, staff believes FPL has failed to adequately demonstrate that the purpose of the underlying statutes will be achieved by granting this waiver.

IV. Substantial Hardship

FPL estimates its average cost to disconnect and reconnect a customer is approximately \$10.50 and \$25.00, respectively. The current tariffed charge for reconnection is \$19.00, and there is no charge for disconnection. According to FPL, by the time the utility disconnects service, a customer often has a second delinquent bill. However, at the time a customer requests reconnection, a final notice may not yet have expired for the second delinquent bill. FPL asserts that if service must be restored without collection of the additional delinquent amount from the customer, the utility will be forced to make an additional field visit within a few days of reconnection to collect or disconnect service again with respect to the additional delinquent bill. FPL believes this imposes unnecessary costs on the utility and its customers and represents a hardship that could be avoided through the requested waiver.

The incremental cost associated with the 36,000 customers who were disconnected twice within thirty days in 1999, is estimated at \$594,000. The scenario for this petition requires disconnection for approximately a 5-15 day period. The field personnel disconnects service after Bill No. 2 becomes delinquent, but before the final notice expires on Bill No. 2. This is a very limited scenario that probably affects a small fraction of these 36,000 delinquent customers. It has been established that FPL disconnects

customers on a priority basis determined by credit, billing history and other pertinent factors. Therefore, the small number of customers affected by this scenario does not justify the request for the rule waiver and does not rise, in staff's opinion, to the "substantial hardship" required to be shown by the statute.

FPL's Revenue Protection

FPL has limited its delinquency risk by instituting a 1.5% monthly late payment fee. FPL also requires a security deposit equivalent to two months of an average electric bill based on historic usage. This deposit can be used to compensate the utility for unpaid bills. Deposit requirements may increase when a customer allows two final notices to expire during a 12 month period. This helps the utility to reduce its bad debt exposure. When disconnection occurs, the security deposit may be applied to settle outstanding bills.

According to information provided by FPL, it has approximately 100 field personnel that disconnect 246,000 unique delinquent customers each year. The constraints of this limited work force prevents field personnel from disconnecting delinquent customers on a timely basis. Therefore, the close proximity of disconnections is not determined by these delinquent customers, but by FPL's failure to dispatch field personnel on a timely basis.

Staff concludes that FPL is requesting a partial rule waiver to address problems which have been created by both insufficient reconnection fees and a limited work force.

Conclusion

Staff notes that urging FPL to disconnect delinquent customers as soon as the final notice for Bill No. 1 expires may have a compelling effect on the utility. However, this would prevent FPL from offending the underlying purpose of Section 366.03, Florida Statutes, which provides, ". . .that rates charged shall be fair and reasonable. . . ." Therefore, staff believes FPL has failed to adequately demonstrate that complying with Rule 25-6.105(5)(g), Florida Administrative Code, imposes a "substantial hardship" within the meaning of Section 120.542, Florida Statutes. Accordingly, because FPL has failed to meet the threshold statutory requirements for the granting of a partial waiver, Staff recommends that the Company's request be denied.

ALTERNATIVE STAFF ANALYSIS:

I. The Purpose of the Underlying Statute

The statutory provisions underlying the Rule are Sections 366.03 and 366.05(1), Florida Statutes. Among other things, Section 366.05(1), Florida Statutes, authorizes the Commission to prescribe "standards of quality and measurements, and service rules and regulations to be observed by each public utility." Section 366.03, Florida Statutes, states that each "public utility shall furnish . . . service upon terms as required by the Commission." Section 366.03, Florida Statutes, also provides that rates charged shall be fair and reasonable and that "no public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect."

The Proposed Tariff Revision

Under the current practice, extra cost is imposed on both the utility and the general body of ratepayers. FPL proposes the following additional tariff language to address the problem:

7.91 Reconnection After Violation of Rules. The Company shall not be required to restore a customer's service after being disconnected in accordance with Rule and Regulation Section 1.6 (Discontinuance of Service) and Section 8.3 (Tampering with Meters) until the Customer has complied with all applicable rules and regulations of the Company, the Company has been reimbursed for all amounts past due, and the Customer has paid the service charge for reconnection of service as specified in the applicable tariff sheet.

This proposed tariff revision eliminates the need for multiple field visits for disconnection within a short period of time. The tariff revision requires customers to pay all delinquent amounts before reconnection can take place, regardless of whether the 5-day notice has expired for bills subsequent to the initial bill. The costs to perform these field visits to the same premises in a short time period imposes additional costs on the utility. The following tables compare the difference between the current process and the proposed process concerning disconnection and reconnection:

The Current Process

May Billing Date	May's Bill Due Date	May's Final Notice Mailed	May's Final Notice Due	June's Billing Date	Field Eligible May Billing	June's Bill Due Date	June's Final Notice Mailed	Disconnected & Reconnected For May's Bill	June's Final Notice Due	Field Eligible June Billing	Disconnected & Reconnected For June's Bill
5/28	6/18	6/19	6/26	6/26	6/27	7/17	7/18	7/19	7/25	7/26	7/31

The Proposed Process

May Billing Date	May's Bill Due Date	May's Final Notice Mailed	May's Final Notice Due	June's Billing Date	Field Eligible May Billing	June's Bill Due Date	June's Final Notice Mailed	Disconnected For May's Bill	Reconnect for all past due (May & June)
5/28	6/18	6/19	6/26	6/26	6/27	7/17	7/18	7/19	7/19

It is important to note that the proposed tariff language does not eliminate the final notice requirement. The final notice will still be issued for every delinquent bill before disconnection. Rule 25-6.101, Florida Administrative Code states "bills shall not be considered delinquent prior to the expiration of twenty (20) days from the date of mailing or delivery by the utility." If a field visit occurs before a subsequent bill is delinquent, or after the expiration of a final notice, the proposed tariff language has no effect. The additional language primarily affects customers who receive a field visit after their second bill is delinquent, but before their second final notice expires. The customer would then be required to pay all delinquent amounts before reconnection. Therefore, it is important to note that the proposed change does not affect FPL's policy with regard to disconnection.

In accordance with Section 120.542(2), Florida Statutes, alternate staff believes FPL has adequately demonstrated that the purpose of the underlying statutes, Sections 366.03 and 366.05(1), Florida Statutes, will still be achieved if the waiver is granted. The underlying purpose of the statute is to assure that customers receive service pursuant to reasonable rates, terms and conditions and alternate staff believes requiring customers to pay all past due indebtedness, in these limited circumstances, is reasonable within the meaning of this statute.

II. Substantial Hardship

FPL estimates its average cost to disconnect and reconnect a customer is approximately \$10.50 and \$25.00, respectively. And, according to FPL, by the time the utility disconnects service, a customer often has a second delinquent bill. However, at the time

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a customer requests reconnection, a final notice may not yet have expired for the second delinquent bill. FPL asserts that if service must be restored without collection of the additional delinquent amount from the customer, the utility could be forced to make an additional field visit within a few days of reconnection to collect or disconnect service again with respect to the additional delinquent bill. FPL believes this imposes unnecessary costs on the utility and its customers and represents a hardship that could be avoided through the requested waiver.

The incremental cost associated with the 36,000 customers who were disconnected twice within thirty days in 1999 is estimated at \$594,000. While only a portion of this \$594,00 would be eliminated if the waiver and proposed tariff are approved, alternate staff believes this incremental cost is an "economic hardship" within the meaning of Section 120.542, Florida Statutes. Therefore, alternate staff believes FPL has adequately demonstrated that complying with Rule 25-6.105(5)(g), Florida Administrative Code, imposes a "substantial hardship" within the meaning of Section 120.542, Florida Statutes. Accordingly, alternate staff recommends that the Company's request be granted.

The additional language FPL proposes for the tariff revision is designed to reduce the number of disconnections due to lack of payment.

Conclusion

Based on the foregoing, alternate staff recommends that the Commission approve Florida Power & Light Company's proposed modification to its tariff provisions regarding reconnection of service. Alternate staff believes this is a reasonable policy based on an evaluation of the interests of the delinquent customers and the costs imposed on the utility and its general body of ratepayers.

ISSUE 2: Should the Commission approve Florida Power & Light Company's proposed modification to its tariff provisions regarding reconnection of service?

STAFF RECOMMENDATION: No, if the Primary Staff Recommendation is approved in Issue 1. However, if the Alternative Staff Recommendation for Issue 1 is approved, the Commission should approve the proposed tariff revision. [SPRINGER]

STAFF ANALYSIS: If the Commission approves the Primary Recommendation in Issue 1, then this issue is moot. The proposed tariff provisions are in conflict with the rule, so a partial rule waiver is required in order to approve the tariff changes. If the Commission approves the Alternative Recommendation in Issue 1, then it has concluded that the proposed tariff provisions meet the criteria for a partial rule waiver. The new tariff language would allow FPL to require payment of all delinquent amounts before electric service is reconnected. Through this change, FPL seeks to prevent frequent customer field visits that create additional costs that are not recovered by reconnection fees.

ISSUE 3: What is the appropriate effective date for the proposed tariff revisions?

RECOMMENDATION: If the Commission approves the Alternative Recommendation for Issue 1 and approves the tariff revisions addressed in Issue 2, FPL's proposed tariffs should become effective upon issuance of a Consummating Order for the waiver, if there is no timely protest filed to either the waiver or the tariff. [WALKER]

STAFF ANALYSIS: Since it would not be reasonable to have this tariff go into effect if the waiver portion of the Commission's order were protested, the tariff should be processed as a proposed agency action. If there is no protest by a substantially affected person to the portion of the order approving the tariff or the waiver, it should become effective upon the issuance of a consummating order for the waiver portion of the order.

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ISSUE 4: 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, this docket should be closed upon the issuance of a consummating order. [WALKER]

STAFF ANALYSIS: In order to process both the waiver request and the tariff filing simultaneously, we recommend that the proposed agency action process be utilized instead of the tariff process for the portion of the order approving the tariff. While both processes provide for a point of entry for protest under the tariff process, if there is a protest, the tariff would go into effect pending the outcome of the hearing; whereas under the proposed agency action process, if protested, the tariff would not go into effect as the proposed agency action order becomes a nullity. Since it would not be reasonable to have this tariff go into effect if the waiver portion of the Commission's order were protested, the tariff should be processed as proposed agency action. If there is no timely protest to either the waiver or tariff portion of the order by a person whose substantial interests are affected, the docket should be closed upon the issuance of a consummating order.