

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C., to file for prudence review of Florida Power & Light Company storm costs related to Hurricane Isaias and Tropical Storm Eta, and for prudence review and recovery of Gulf Power Company storm costs related to Hurricane Sally and Hurricane Zeta.

DOCKET NO. 20210128-EI  
ORDER NO. PSC-2021-0361-PAA-EI  
ISSUED: September 16, 2021

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING TEMPORARY RULE VARIANCE OR WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

I. Background

On August 3, 2021, Florida Power & Light Company (FPL) filed a petition for a temporary waiver from or variance of Rule 25-6.0143(1)(g), Florida Administrative Code (F.A.C.) (Petition). Investor-owned electric utilities are required to maintain their accounts and records in conformity with the Uniform System of Accounts for Public Utilities and Licensees.<sup>1</sup> Rule 25-6.0143, F.A.C., addresses electric utilities' use of accumulated provision accounts 228.1, 228.2, and 228.4. Paragraph (1)(g) of Rule 25-6.0143 requires that under the Incremental Cost and Capitalization Approach methodology for determining the allowable costs to be charged to cover storm-related damages, certain costs may be charged to Account 228.1 only after we review and approve them. Before we make this determination, the costs may be deferred if they were incurred prior to June 1 of the year following the storm event.

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<sup>1</sup> Rule 25-6.014(1), F.A.C.

Paragraph (1)(g) of the rule further requires that:

By September 30 a utility must file a petition for the disposition of any costs deferred prior to June 1 of the year following the storm event giving rise to the deferred costs.

FPL is asking for a temporary variance from or waiver of the September 30 filing requirement. FPL asks that it be allowed until December 31, 2021, to file its paragraph (1)(g) petition concerning deferred storm costs related to Hurricane Isaias and Tropical Storm Eta and for Gulf Power Company (Gulf) to file its petition concerning deferred storm costs related to Hurricane Sally and Hurricane Zeta.

Notice of FPL's Petition was published in the August 5, 2021, edition of the Florida Administrative Register, Vol. 47, No. 151 as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the Petition within the 14-day comment period provided by Rule 28-104.003, F.A.C. We have jurisdiction under Sections 120.542, 350.115, 366.04, .05, and .06, F.S.

## II. Legal Standard for Rule Waivers

Pursuant to Section 120.542(2), F.S., we are required to grant waivers and variances from our rules "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 a rule would create a substantial hardship or would violate principles of fairness." A "substantial hardship" is defined by statute as a "demonstrated economic, technological, legal, or other type of hardship."

Rule 25-6.0143, F.A.C., implements Section 350.115, F.S., which allows us to prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges. The rule also implements Section 366.04(2)(a), F.S., which gives us power over electric utilities to prescribe uniform systems and classifications of accounts

## III. FPL's Petition for Temporary Variance

FPL states that preparation and filing of the petitions for deferred costs related to the four named storms no later than September 30, 2021, will create a substantial hardship. FPL states that FPL and Gulf are engaged in the litigation of and preparations for a number of proceedings, including the hearing in the FPL rate case in Docket No. 20210015-EI and clause proceedings scheduled for final hearings on November 2 through November 4, 2021. FPL explains that its Power Delivery Business Unit provides much of the information and data necessary to the preparations and filing of the referenced storm dockets and also is responsible for maintaining the grid, preparing for and responding to tropical storms and hurricanes, and stands ready to assist other utilities whose service territories are impacted by natural disasters and other emergency events. FPL alleges that requiring the preparation and filing of the identified storm

cost proceedings will necessarily detract from and adversely impact FPL's and the Power Delivery Business Unit's "ability to devote its full attention and resources to these critical tasks."

FPL also states that no anticipated party to the proceedings and no customers will be prejudiced by granting its Petition for temporary variance or waiver. Further, FPL alleges that the requested temporary variance or waiver does not contravene the rule's implementing statutes.

FPL represents that the Office of Public Counsel has no objection to the relief requested in the Petition for temporary variance or waiver and asks that we expedite consideration of the Petition and consider it at the September 2021 Commission Conference.

#### IV. Analysis and Conclusion

##### A. The Purpose of the Underlying Statutes Will Be Achieved by Granting the Extension of Time for Filing the Petitions.

Sections 350.115 and 366.04(2)(a), F.S., give us power to prescribe by rule uniform systems and classifications of accounts and to approve or establish adequate, fair, and reasonable depreciation rates and charges for electric utilities. The purpose of the September 30 filing date is to facilitate a timely review of storm restoration costs and afford us adequate oversight on the use of Commission-approved storm reserves (Account 228.1). Often the initial filings made pursuant to Rule 25-6.0143, F.A.C., reflect estimated costs used to implement an interim cost recovery mechanism. As such, we conclude that the purpose of Sections 350.115 and 366.04(2), F.S., will be unaffected by granting the requested temporary variance or waiver.

Further, no anticipated party to any proceedings and no customers will be prejudiced or adversely affected by granting FPL's Petition for temporary variance or waiver. For these reasons, the purpose of the statutes will still be achieved as required by Section 120.542, F.S., if FPL's Petition for temporary variance or waiver is granted.

##### B. Application of the Rule's September 30 Filing Deadline Would Create a Substantial Hardship.

We have previously granted petitions for variance or waiver on the basis that application of a rule's filing deadline created substantial hardship because of utility staffing limitations caused by the specific circumstances alleged in those petitions.<sup>2</sup> We believe that the essence of FPL's substantial hardship allegations is that under the specific circumstances alleged, FPL is

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<sup>2</sup> Order No. PSC-2019-0067-GU, issued February 22, 2019, in Docket No. 20180230-GU, *In re: Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company*; Order No. PSC-12-0354-PAA-GU, issued July 9, 2012, in Docket No. 20120081-GU, *In re: Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by August 17, 2012, by Florida Division of Chesapeake Utilities Corporation*; Order No. PSC-2002-0242-PAA-EI, issued February 25, 2002, in Docket No. 20011611-EI, *In Re: Petition for Waiver of Depreciation Study Filing Requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corporation*; Order No. PSC-01-2376-PAA-EI, issued December 10, 2001, in Docket No. 20011088-EI, *In re: Florida Power & Light Company*.

experiencing staffing limitations caused by the number of dockets FPL's Power Delivery Business Unit is currently involved in, which is in addition to the unit's regular responsibilities concerning maintaining the grid and preparing for and responding to named storms. Under the specific facts presented, we conclude that FPL has demonstrated substantial hardship under Section 120.542, F.S.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Petition for temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C., is hereby granted. It is further

ORDERED that the provisions of this order issued as a proposed agency action, will become final and effective upon issuance of a Consummating Order unless an appropriate petition in the form provided by Rule 25-106.201, F.A.C., is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings," which appears below. It is further

ORDERED that if no timely protest is received to the proposed agency action, a Consummating Order shall be issued upon the expiration of the protest period, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 16th day of September, 2021.



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ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

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

KGWC

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 7, 2021.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.