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MEMORANDUM

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NOVEMBER 23, 1998

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (C. KEATING) *WCK RVE*

RE: DOCKET NO. 981064-EI - PETITION FOR WAIVER OF CERTAIN REQUIREMENTS OF RULE 25-6.0437, F.A.C., THAT ARE APPLICABLE TO THE GENERAL SERVICE NON-DEMAND RATE CLASS BY FLORIDA POWER & LIGHT COMPANY.

98-1573-FOF-EI

Attached is a NOTICE OF PROPOSED AGENCY ACTION - ORDER GRANTING PETITION FOR RULE WAIVER to be issued in the above-referenced docket. (Number of pages in order - *2/8*)

WCK/js
Attachment
cc: Division of Electric and Gas (Wheeler)
I:981064or.wck

2/1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of certain requirements of Rule 25-6.0437, F.A.C., that are applicable to the General Service Non-Demand Rate Class by Florida Power & Light Company.

DOCKET NO. 981064-EI
ORDER NO. PSC-98-1573-FOF-EI
ISSUED: November 23, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR RULE 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.

I. CASE BACKGROUND

On August 21, 1998, Florida Power & Light Company (FPL) submitted its proposed load research sampling plan for calendar year 1999 pursuant to Rule 25-6.0437, Florida Administrative Code. The rule requires the four major investor-owned electric utilities to file every two years for approval of a sampling plan that details the manner in which load research data will be collected for the next load research period. Load research results must be filed with this Commission every two years, and FPL's sampling plan will be used to collect load research data for the calendar year ended December 31, 1999. This Order addresses FPL's August 24, 1998, petition for waiver of certain requirements of the load research rule and for approval of its proposed sampling plan.

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE REPORTING

In its petition, FPL requests a waiver of two distinct requirements of Rule 25-6.0437, Florida Administrative Code. First, FPL seeks a waiver of that portion of subsection (3) of the rule which requires the use of a plus or minus 10% precision criterion in estimating the winter peak hour for the General Service Non-demand rate class. Second, FPL seeks a waiver of the portions of subsections (6) and (7) of the rule which require the replacement of load research samples every two years.

Pursuant to Section 120.542(6), Florida Statutes, notice of FPC's petition was submitted to the Secretary of State for publication in the September 25, 1998, Florida Administrative Weekly. No comments concerning the petition were filed in the 14-day comment period provided by Rule 28-104.003, Florida Administrative Code.

II. FPL'S REQUEST FOR WAIVER OF THE ACCURACY CRITERION IN RULE 25-6.0437(3), FLORIDA ADMINISTRATIVE CODE, FOR THE GENERAL SERVICE NON-DEMAND RATE CLASS

Rule 25-6.0437, Florida Administrative Code, addresses this Commission's requirements for cost of service load research. This load research is used to allocate costs to the rate classes in rate cases and in the capacity, environmental, and conservation cost recovery clauses. The rule requires that a load research sampling plan be filed for our approval every two years. The plan must be designed to achieve a minimum level of precision for estimates of each rate class' summer and winter peak demands, and for the average of their 12 monthly coincident peaks. Specifically, the rule requires that the estimates be within plus or minus 10% of the actual values at the 90% confidence level. The rule allows utilities to apply to this Commission for waiver of this requirement for any rate class.

FPL requests that the precision level required by the rule be relaxed for the estimate of the winter peak hour for its General Service Non-Demand (GS) rate class. It asks to be allowed to design its load research sampling plan such that the GS winter peak estimate is within 15% of the actual value at the 90% confidence level. FPL is asking for this waiver due to the excessive cost of installing and reading the additional sample meters needed to meet the 10% accuracy level. FPL estimates that an additional 554

ORDER NO. PSC-98-1573-FOF-EI
DOCKET NO. 981064-EI
PAGE 3

meters would be required to increase the GS winter peak precision from the proposed 15% level to the 10% level required by the rule. FPL estimates that the additional meters would result in removal and installation costs of \$120,000 and an increase in ongoing metering expenses of \$530,000 over the planned three-year life of the sample. The cost to purchase the additional meters would be approximately \$235,000.

We have approved FPL's requests for waiver of the rule with respect to the precision of the GS winter peak hour for FPL's last six filed sampling plans. In evaluating these waiver requests in the past, we have found that they should be granted if two conditions are met: (1) when the peak hour for the class in question does not occur within the season for which the waiver is requested; and (2) when this Commission is not currently using, for any utility, a cost of service methodology that allocates production plant costs based a single peak hour. The first condition ensures that the estimate of the class peak hour used to develop an allocation factor for distribution plant meets the precision requirement of the rule. The second condition ensures that the allocation factors developed for production plant used in rate cases and in the recovery clauses meet the accuracy requirements of the rule.

Here, both conditions are satisfied. FPL's GS class (non-coincident) peak demand for 1997 occurred in the summer, based on load research results that met the 10% precision criterion. In addition, no utility is currently using a production plant allocation method that relies on a single coincident peak hour.

Section 120.542, Florida Statutes, mandates threshold proofs and notice requirements for variances and waivers from agency rules. Subsection (2) of the statute states:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statutes will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the

person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

FPL asserts that application of the rule creates a substantial hardship. FPL further asserts that the purpose of the statutes underlying this rule will be achieved if the requested waiver is granted.

Rule 25-6.0437, Florida Administrative Code, implements several statutes, primarily those that authorize this Commission to require the filing of periodic reports, and to prescribe fair and reasonable rates and charges. Section 366.04(2)(f), Florida Statutes, grants this Commission the power to require utilities to "prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder." Section 366.05(1), Florida Statutes, grants us the power to "prescribe fair and reasonable rates and charges." Section 366.06(1), Florida Statutes, gives this Commission "the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service." This section also directs us, in fixing rates, to consider, to the extent practicable, "the cost of providing service to the class" and "the consumption and load characteristics of the various classes of customers." Rule 25-6.0437, Florida Administrative Code, implements the above statutes by requiring utilities to file load research data that allow us to allocate costs among the various rate classes, both in rate cases and through the various cost recovery clauses.

As discussed above, because the requested waiver affects the precision of the estimate of only the winter peak hour for the GS class, the use of load research results for rate setting purposes will not be affected. Therefore, we find that the purpose of the underlying statutes will continue to be achieved if the requested waiver is granted.

Further, as discussed above, requiring FPL to design its GS sample size to meet the plus or minus 10% requirement for the winter peak hour will result in an additional cost of approximately \$885,000. Therefore, we find FPL has demonstrated that application of the rule in this instance creates a substantial economic hardship.

In conclusion, we find that FPL's request for waiver of Rule 25-6.0437(3), Florida Administrative Code, with respect to the precision of the GS winter peak hour, should be granted. FPL has demonstrated that application of the rule creates a substantial hardship and that the purpose of the statutes underlying the rule will be achieved if the requested waiver is granted.

III. FPL'S REQUEST FOR WAIVER OF THE THOSE PORTIONS OF RULE 25-6.0437(6) AND (7), FLORIDA ADMINISTRATIVE CODE, WHICH REQUIRE A TWO-YEAR REPLACEMENT CYCLE FOR LOAD RESEARCH SAMPLES

In the sampling plan filed by FPL in 1994 to be used for calendar year 1995, FPL proposed to change its practice of replacing load research samples every two years to a program under which they replace the meters every three years. FPL sought a rule waiver to implement that change, and we granted FPL's waiver request in Order No. PSC-94-1501-FOF-EI, issued December 7, 1994. In 1996, FPL requested the same waiver for its sampling plan to be used for calendar year 1997, and we granted FPL's waiver request in Order No. PSC-97-0379-FOF-EI, issued April 7, 1997. Now, FPL again requests a rule waiver so that it may continue to replace its load research samples every three years. Under the requested waiver, FPL would continue to file its load research results and load research sampling plans with this Commission every two years, as required by the rule.

FPL requests this rule waiver for the same reasons cited in its two previously-approved waiver requests. First, FPL asserts that using the sample for three years instead of two years results in cost savings of approximately \$250,000 over a six-year period due to the elimination of approximately 1,100 installations and removals of sample metering. FPL also indicates that a three-year cycle results in a more balanced workload for its field metering personnel. Under the three-year cycle, FPL will install a new Residential sample for use in 1999, a new GS sample for 2000, and

a new General Service-Demand and General Service-Large Demand samples for 2001. Because application of the rule will require FPL to forego roughly \$250,000 in cost savings, we find FPL has demonstrated that application of the rule creates a substantial hardship for FPL.

Second, FPL asserts that the use of a three-year cycle in lieu of a two-year cycle should not impair the usefulness of the load research results reported because FPL's rate classes have remained relatively stable over the last several years. We agree. Therefore, we find FPL has demonstrated that the purpose of the underlying statutes, as discussed above, will continue to be achieved if the requested rule waiver is granted.

In conclusion, we find that FPL's request for waiver of Rule 25-6.0437(6) and (7), Florida Administrative Code, with respect to the required two-year sample replacement cycle, should be granted. FPL has demonstrated that application of the rule creates a substantial hardship and that the purpose of the statutes underlying the rule will be achieved if the requested waiver is granted.

IV. FPL'S PROPOSED LOAD RESEARCH SAMPLING PLAN

Upon review of FPL's proposed load research sampling plan for calendar year 1999, we find that FPL meets the requirements of Rule 25-6.0437, Florida Administrative Code, with the exception of the winter peak hour for the GS class and the replacement cycle for load research samples. Given our approval of FPL's rule waiver requests, as discussed above, we find that FPL's proposed sampling plan should be approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's request for waiver of that portion of Rule 25-6.0437(3), Florida Administrative Code, which requires the use of a plus or minus 10% precision criterion in estimating the winter peak hour for the General Service Non-demand rate class is granted. It is further

ORDER NO. PSC-98-1573-FOF-EI
DOCKET NO. 981064-EI
PAGE 7

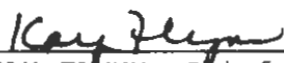
ORDERED that Florida Power & Light Company's request for waiver of those portions of Rule 25-6.0437(6) and (7), Florida Administrative Code, which require the replacement of load research samples every two years is granted. It is further

ORDERED that Florida Power & Light Company's proposed load research sampling plan for calendar year 1999 is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of November, 1998.



KAY FLYNN, Chief
Bureau of Records

(S E A L)

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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

ORDER NO. PSC-98-1573-FOF-EI
DOCKET NO. 981064-EI
PAGE 8

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.

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 Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 14, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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 9.300(a), Florida Rules of Appellate Procedure.