

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for waiver of depreciation study
filing requirement in Rule 25-6.0436(4)(a),
F.A.C., by Florida Public Utilities Company.

DOCKET NO. 20190130-EI
ORDER NO. PSC-2019-0322-PAA-EI
ISSUED: August 7, 2019

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
DONALD J. POLMANN
GARY F. CLARK
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING FLORIDA PUBLIC UTILITIES COMPANY'S
PETITION FOR A TEMPORARY WAIVER OF RULE 25-6.0436(4)(a), F.A.C.

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 June 17, 2019, Florida Public Utilities Company (FPUC) filed a petition to temporarily waive Rule 25-6.0436(4)(a), F.A.C., which requires all electric public utilities to file a depreciation study at least once every four years from the submission date of the previous study or as specified in a Commission order. FPUC filed its last depreciation study on July 1, 2015. Therefore, pursuant to Rule 25-6.0436(4)(a), FPUC's next study was due July 1, 2019. FPUC requests that it be permitted to submit its study no later than September 3, 2019. It also requests that subsequent due dates be based on the September filing date.

Notice of FPUC's petition was published in the June 20, 2019, edition of the Florida Administrative Register, Vol. 45, No. 120, as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the petition. We have jurisdiction under Sections 120.542, 350.115, 366.04, and 366.06, 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.” The section defines a “substantial hardship” as a “demonstrated economic, technological, legal, or other type of hardship.”

Under Rule 25-6.0436(4)(a), F.A.C., electric public utilities are required to submit a depreciation study for our review at least once every four years. The rule implements several statutes. Section 350.115, F.S., allows us to “approve or establish adequate, fair, and reasonable depreciation rates and charges.” As part of establishing those rates, Section 366.06(1), F.S., requires us to “investigate and determine the actual legitimate costs of the property of each utility company, . . . less accrued depreciation.” In order to accurately determine the legitimate costs of property and accrued depreciation, we are permitted under Section 366.04(2)(f), F.S., to “prescribe and require the filing of periodic reports and other data as may be reasonably available.”

III. FPUC’s Petition

FPUC’s current depreciation study was due on July 1, 2019, but it asserts that preparing the study by that date would create a substantial hardship. FPUC states that it continues to be hindered by constrained resources due to the impact of Hurricane Michael on its Northwest Division. FPUC states that preparing the depreciation study is a time-consuming, difficult task under ordinary circumstances, but under current circumstances it has not been able to finalize the figures reflecting the full impact of Hurricane Michael on the Northwest Division’s plant. FPUC has asked that it be permitted to submit its study on or before September 3, 2019. FPUC has also requested that its next depreciation study be due within four years of the extended September 2019 filing date.

FPUC states that the purpose of the underlying statutes, Section 350.115 and 366.06, F.S., will still be fulfilled should we grant the waiver. FPUC will provide us with the required depreciation study by September, 3, 2019, which is only nine weeks after the current due date.

IV. Conclusion

We find that FPUC has met the statutory requirements and is therefore entitled to a temporary waiver of Rule 25-6.0436(4)(a), F.A.C. FPUC has demonstrated that complying with the rule would cause a substantial hardship. We recently granted FPUC a waiver from the rule requiring it to send out monthly billing statements under Rule 25-6.100(1), F.A.C., based on the effects of Hurricane Michael.¹ We also granted FPUC a temporary waiver to extend the time for

¹ Order No. PSC-2018-0529-PAA-EI, issued Nov. 8, 2018, in Docket No. 20180195-EI, *In re: Petition for temporary waiver of Rule 25-6.100, F.A.C., by Florida Public Utilities Company.*

filing its natural gas depreciation study based on the impacts of Hurricane Michael.² Likewise, we find that it would have been a substantial hardship for FPUC to file its depreciation study by July 1, 2019, given its constrained resources caused by impacts of Hurricane Michael.

We further find that the purpose of the underlying statutes will still be achieved if FPUC is granted a nine-week extension of its original deadline to submit its depreciation study. Section 366.04(2)(f), F.S., allows us to require a utility to periodically file depreciation studies in order to facilitate our duty under Sections 350.115 and 366.06(1), F.S., to determine accurate depreciation costs for the utility. The short delay will not affect our ability to establish adequate, fair, and reasonable depreciation rates and charges. Therefore, the purpose of the statute will still be achieved if FPUC is granted a nine-week extension to submit its depreciation study.

FPUC is hereby granted a temporary rule waiver until September 3, 2019. Pursuant to Rule 25-6.0436(4)(a), F.A.C., FPUC's next depreciation study will be due within four years from the date that it files its September 2019 depreciation study.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Public Utilities Company's request for temporary waiver of Rule 25-6.0436(4)(a), Florida Administrative Code, is granted. Florida Public Utilities Company shall submit its depreciation study on or before September 3, 2019. It is further

ORDERED that Florida Public Utilities Company's next depreciation study shall be due within four years from the date it files the depreciation study that is now due on September 3, 2019. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of the Commission Clerk, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. 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.

² Order No. PSC-2019-0067-PAA-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.*

By ORDER of the Florida Public Service Commission this 7th day of August, 2019.



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 August 28, 2019.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.