

State of Florida



Public Service Commission  
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSIONER  
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**DATE:** OCTOBER 25, 2001

**TO:** DIRECTOR, DIVISION OF THE COMMISSION  
ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (STERN) *MKS RUC*  
DIVISION OF ECONOMIC REGULATION (LEE) *PSX RNT 129 DM*

**RE:** DOCKET NO. 011088-EI - PETITION FOR WAIVER OF DEPRECIATION  
STUDY FILING REQUIREMENT IN RULE 25-6.0436 (8) (a), F.A.C.,  
IN ORDER TO EXTEND TIME FOR FILING STUDY TO APRIL 30,  
2003, BY FLORIDA POWER & LIGHT COMPANY.

**AGENDA:** 11/06/01 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\011088R1.RCM

CASE BACKGROUND

On August 15, 2001, Florida Power & Light Company (FPL) filed a Petition for a Waiver of Rule 25-6.0436(8)(a), Florida Administrative Code. Pursuant to Section 120.542(6), Florida Statutes, notice of FPL's petition was submitted to the Secretary of State for publication in the September 7, 2001, Florida Administrative Weekly. No comments concerning the petition were filed within the 14 day comment period provided by Rule 28-104.003, Florida Administrative Code.

The Commission has jurisdiction over the subject matter under Sections 120.542, 350.115 and 366.06, Florida Statutes.

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**ISSUE 1:** Should FPL's Petition for a Waiver of Rule 25-6.0436(8) (a) be granted?

**RECOMMENDATION:** Yes. The Commission should approve FPL's request to extend the filing date of its next depreciation study until April 30, 2003, and its fossil dismantlement studies within one year thereafter. The requested waiver will serve the purposes of the underlying statutes, and FPL will experience substantial hardship if its Petition is denied. However, the filing date should be revisited if a settlement is reached in Docket No. 001148-EI.

**STAFF ANALYSIS:** Rule 25-6.0436(8) (a), Florida Administrative Code, requires investor-owned electric utilities to file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study, unless otherwise required by this Commission.

FPL filed its most recent depreciation study on December 26, 1997, with an effective date of January 1, 1998. Pursuant to the rule, FPL's next depreciation study was due by December 26, 2001. However, in February 2001, FPL requested that Rule 25-6.0436(8) (a) be waived and that FPL be given until April 30, 2002 to file the study. The Commission granted the waiver request. See Order No. PSC-01-1144-PAA-EI, issued May 21, 2001, in Docket No. 010261-EI. In its current Petition FPL claims that requiring the study to be filed in April 2002 would create a financial hardship and violate principles of fairness. FPL therefore requests that the filing time for its depreciation study be extended until April 30, 2003, and its fossil dismantlement studies within a year thereafter.

FPL claims that a heavy workload and staffing limitations compromise FPL's ability to file the depreciation study in 2002. FPL explains that by October 15, 2001, it is required to file Minimum Filing Requirements (MFRs) based on a 2002 projected test year. FPL expects that discovery and a hearing on the MFRs will follow. FPL further explains that the MFRs are prepared by the same individuals responsible for preparing the depreciation study, and that this staffing limitation makes it difficult to complete both projects by the existing deadlines.

FPL states that it hired an outside firm to help with MFR preparation but FPL still cannot complete a comprehensive depreciation study by April 30, 2002. FPL notes that hiring

another outside firm would be problematic with respect to cost and consistency in the method used to prepare the depreciation and dismantlement studies.

FPL submits that the above-described circumstances constitute a substantial hardship, and principles of fairness support FPL's request to extend the filing times of the depreciation and dismantlement studies. FPL states that if an early settlement is reached on the MFR filing, FPL may be in a position to file its depreciation and dismantlement studies earlier than the date requested above.

In its petition, FPL asserts that Rule 25-6.0436, Florida Administrative Code, implements a number of Florida Statutes including Sections 350.115 and 366.06(1). Section 350.115, Florida Statutes, gives this Commission authority to "prescribe by rule uniform systems and classification of accounts for each type of regulated company and approve or establish adequate fair and reasonable depreciation rates and charges". Section 366.06(1), Florida Statutes, gives this Commission authority to "investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and to keep a current record of the net investment of each public utility company, and such property which value, as determined by the Commission, shall be used for rate making purposes and shall be the money honestly and prudently invested by the public utility company in such property . . . less accrued depreciation . . . ." FPL contends that its requested rule waiver serves the purpose of these underlying statutes by providing the data required by the rule on a cost effective basis.

Section 120.542(2), Florida Statutes, provides that 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 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 the literal application of a

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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.

Staff believes that requiring FPL to file the depreciation study by April 2002, given its staffing limitations, would create a substantial hardship. Staff agrees with FPL's analysis of the statutes underlying Rule 25-6.0436(8)(a), and agrees that the purposes of the statutes will be served if the waiver is granted. For these reasons, staff recommends that the waiver be granted. However, in the event that an early settlement is reached on FPL's MFR filing, the filing date should be revisited.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action.

**STAFF ANALYSIS:** If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Consummating Order, this docket should be closed upon the issuance of the Consummating Order.