



# Public Service Commission

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RECORDS AND REPORTING

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** JUNE 18, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF ELECTRIC AND GAS (HAFB) <sup>TS</sup>  
DIVISION OF LEGAL SERVICES (JAYE) <sup>RUE RT</sup>

**RE:** DOCKET NO. 980652-EC - PETITION BY ALABAMA ELECTRIC COOPERATIVE, INC. FOR WAIVER OF RULE 25-22.071, F.A.C., SUBMISSION AND REVIEW OF TEN-YEAR SITE PLAN.

**AGENDA:** 06/30/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 08/11/98 - STATUTORY DEADLINE FOR DECISION

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980652.RCM

### CASE BACKGROUND

Alabama Electric Cooperative, Inc., (AEC) filed a petition on May 14, 1998, for a waiver of Rule 25-22.071, Florida Administrative Code, requiring electric utilities in Florida with a generating capacity of over 250 megawatts (mW) to file a Ten-Year Site Plan each year outlining their plans to build capacity or transmission facilities in Florida.

Rule 25-22.071, Florida Administrative Code provides in pertinent part that:

All electric utilities in the State of Florida with existing generating capacity of 250 megawatts (mW) or greater shall prepare a ten-year site plan, and submit 25 copies to the Florida Public Service Commission's Division of Records and Reporting on the first working day of April of each year, unless extended. The plan shall date from December 31, of the prior calendar year.

In Rule 25-22.070, Florida Administrative Code, electric utility is defined for the purposes of Rule 25-22.071, Florida Administrative Code, as:

. . . any municipal electric utility, investor-owned electric utility, rural electric cooperative, public utility district, joint operating agency, or combinations thereof, that owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

These Rules implement Section 186.801(1), Florida Statutes, which reads:

Beginning January 1, 1974, each electric utility shall submit to the Public Service Commission a 10-year site plan which shall estimate its power-generating needs and the general location of its proposed power plant sites.

When read together, the statute and the Rules show that the intent of the Ten-Year Site Plan is to track each electric utility's proposed planning. Staff believes that AEC is an electric utility as defined by Rule 25-22.070, Florida Administrative Code. While AEC has more capacity than the 250 mW threshold of Rule 25-22.071, Florida Administrative Code, its only generating unit in Florida is an 11 mW diesel turbine unit on Eglin Air Force Base in Walton County. AEC has only limited distribution in Florida. Its transmission in Florida is limited mainly to other electric cooperatives in the extreme northwest corner of the state.

Staff notes that one interpretation of the rule could exclude AEC from the filing requirement because it has less than 250 mW of generating capacity in the State of Florida. The rule can also reasonably be construed to apply to Florida utilities with 250 mW of capacity or more, without considering where the generating capacity is located. In an abundance of caution, staff suggested to AEC that a waiver request was appropriate.

Notice of AEC's Petition was published in the Florida Administrative Weekly on June 5, 1998. As of this date, no comments have been received.

DISCUSSION OF ISSUES

ISSUE 1: Should Alabama Electric Cooperative's Petition for Waiver of Rule 25-22.071, Florida Administrative Code, be granted?

RECOMMENDATION: Yes. The Commission should grant AEC's Petition for Waiver of Rule 25-22.071, Florida Administrative Code, until such time as AEC plans to add generation capacity in this state. [JAYE]

STAFF ANALYSIS: As stated in the case background, Alabama Electric Cooperative, Inc., (AEC) filed a petition on May 14, 1998, for a waiver of Rule 25-22.071, Florida Administrative Code, requiring electric utilities in Florida with a generating capacity greater than 250 mW to file a Ten-Year Site Plan with the Commission annually.

Section 120.542(1), 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).

I. THE PURPOSES OF THE UNDERLYING STATUTE

AEC states that the granting of a waiver of Rule 25-22.071, Florida Administrative Code would not interfere with the statutory requirement of Section 186.801, Florida Statutes, which mandates gathering information from electric utilities in Florida in order to plan for future generation, transmission and distribution needs in this state. Furthermore, AEC asserts that imposing Rule 25-22.071, Florida Administrative Code upon it would work a substantial hardship upon AEC by forcing it to file a specific set of data for its limited presence in Florida which is not required of it by Alabama or by the federal government.

In accordance with Section 120.542(1), Florida Statutes, staff believes that AEC has adequately demonstrated in its Petition that the purpose of the underlying statute, Section 186.801, Florida Statutes, will be achieved by granting this waiver. The underlying purpose of the statute is to provide sufficient information to the Commission to determine the suitability of long range (10 year) plans for siting generation and transmission facilities in Florida

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by electric utilities as defined in Rule 25-22.070, Florida Administrative Code.

AEC has a very limited presence in Florida and has stated in its petition that it does not intend to increase its presence by adding generation facilities, distribution facilities, or retail customers in this state. Because of AEC's minimal presence in Florida, staff believes that there is no need to include its information in reviewing the Ten-Year Site Plans until such time as AEC plans to add generating facilities in this state.

## II. SUBSTANTIAL HARDSHIP

Staff also believes that AEC has adequately demonstrated that complying with the Ten-Year Site Plan requirements of Rule 25-22.071, Florida Administrative Code, would be a substantial hardship upon it within the meaning of Section 120.542, Florida Statutes. AEC states in its Petition that preparation of a Ten-Year Site Plan for Florida would require the commitment of economic and personnel resources to prepare information for Florida in a format not otherwise required of AEC in its filings to federal or Alabama authorities. Staff believes that such an expenditure of resources constitutes an "economic hardship" within the meaning of Section 120.542, Florida Statutes.

Accordingly, because AEC has met the statutory requirements for the granting of a waiver, Staff recommends that the Company's request should be granted.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person, whose substantial interests are affected by the Commission's proposed agency action, timely files a protest within 21 days of the issuance of this order, this docket should be closed. [JAYE]

STAFF ANALYSIS: If no person, whose substantial interests are affected, files a timely request for a Section 120.57, Florida Statutes, hearing within 21 days of the issuance of this order, no further action will be required and this docket should be closed.