

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for issuance of a storm recovery financing order, by Florida Power & Light Company.

DOCKET NO. 060038-EI
ORDER NO. PSC-06-0527-PCO-EI
ISSUED: June 22, 2006

ORDER GRANTING MOTION TO ACCEPT MOTION FOR RECONSIDERATION AND REQUEST FOR CLARIFICATION OF ORDER NO. PSC-06-0464-FOF-EI

I. Background

By Order No. PSC-06-0464-FOF-EI, issued May 30, 2006, the Commission, pursuant to section 366.8260, Florida Statutes, authorized Florida Power & Light Company (FPL or company) to issue storm-recovery bonds. Pursuant to section 366.8260(2)(b)1.b., parties had 5 days after the issuance date of Order No. PSC-06-0464-FOF-EI to file a motion for reconsideration. Thus, any motion for reconsideration in this proceeding was due on June 6, 2006.

On June 6, 2006, at 4:49 p.m., FPL electronically sent to the Commission Clerk its Motion for Reconsideration and Request for Clarification of Order No. PSC-06-0464-FOF-EI (Motion for Reconsideration). Also on June 6, 2006, at 4:50 p.m., FPL electronically sent to the Commission Clerk its Request for Oral Argument. The Request for Oral Augment specifically states that it is in support of its Motion for Reconsideration.

The Commission Clerk officially filed FPL's Motion for Reconsideration at 5:01 p.m. on June 6, 2006. The Commission Clerk officially filed FPL's Request for Oral Argument at 4:59 p.m. on June 6, 2006. The Commission Clerk date stamped FPL's Motion for Reconsideration with a June 6, 2006 filing date. The June 6, 2006 date was stricken, however, and the date of June 7, 2006, was penciled in by the Commission Clerk. The Commission Clerk date stamped FPL's Motion for Oral Argument with a June 6, 2006, filing date.

On June 16, 2006, FPL filed its Motion to Accept Motion for Reconsideration and Request for Clarification of Order No. PSC-06-0464-FOF-EI (Motion to Accept Motion for Reconsideration). Also on June 16, 2006, the Office of Public Counsel (OPC) filed its Joinder With Florida Power & Light Company's Motion to Accept Motion for Reconsideration.

II. FPL's Motion to Accept Motion for Reconsideration

In support of its motion, FPL states that it e-mailed its Motion for Reconsideration at 4:49 p.m. on June 6, 2006, and that it e-mailed its supporting Request for Oral Argument at 4:50 p.m. on June 6, 2006. It alleges that its records indicate that it usually takes between 0 to 5 minutes for FPL to receive an electronic certificate indicating that the Commission Clerk has received the

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company's filing. In this instance, however, it took 12 minutes for FPL to receive the electronic certificate.

FPL states that its Motion for Reconsideration should be accepted as timely. FPL states that, if the motion had been filed in person, the filing would have been accepted as timely because the Commission Clerk was open for business "as evidenced by the fact that the documents were physically date stamped on June 6, 2006." FPL states that "[t]he filing should not be treated differently simply because it was made electronically instead of in person."

FPL asserts that, even if the Motion for Reconsideration is untimely, the Commission has the authority to accept it because there would be no harm or prejudice to the other parties. FPL claims that section 120.68(7)(c), Florida Statutes, states that an agency action will not be reversed solely for failure to follow prescribed procedure. Moreover, it alleges that the Commission has the inherent authority and statutory duty to act on an order under its control and that the Commission has the power to modify its orders until a final order is appealed. Furthermore, FPL contends that the "harmless error rule" should apply.

FPL also argues that, under the doctrine of equitable tolling, FPL's Motion for Reconsideration should be accepted. It asserts that City of Hollywood v. Public Employees Relations Commission, 432 So. 2d 79 (Fla. 4th DCA 1983), which found that the Public Employees Relation Commission (PERC) did not have the authority to grant an extension of time for filing a motion for reconsideration, is not applicable in this instance because, unlike PERC, the Commission has the inherent authority to act in the public interest on an order under its control.

FPL points out that there is no question that its Request for Oral Argument was timely received. It states that the Request for Oral Argument was made in support of its Motion for Reconsideration.

III. OPC's Joinder With FPL's Motion

OPC states that it supports FPL's Motion to Accept Motion for Reconsideration. It further states that it takes no position, however, on the merits of the Motion for Reconsideration.


IV. Findings and Conclusion

Upon review of the facts of this case, I find that FPL's Motion for Reconsideration was timely filed on June 6, 2006. There is no question that FPL's Request for Oral Argument was timely filed on June 6, 2006. While the Request for Oral Argument may technically be a separate document, I find that it incorporates the Motion for Reconsideration. Indeed, the whole basis for the Request for Oral Argument is the underlying Motion for Reconsideration. Accordingly, FPL's Motion to Accept Motion for Reconsideration is granted. Because I have found that the Motion for Reconsideration was timely filed, it is not necessary to address FPL's legal arguments regarding untimely filed motions for reconsideration.

Therefore, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Florida Power & Light Company's Motion to Accept Motion for Reconsideration and Request for Clarification of Order No. PSC-06-0464-FOF-EI is granted.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 22nd day of June, 2006.


J. TERRY DEASON
Commissioner and Prehearing Officer

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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 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.