

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa
Electric Company.

DOCKET NO. 080317-EI
ORDER NO. PSC-08-0635-PCO-EI
ISSUED: September 30, 2008

ORDER GRANTING IN PART AND DENYING IN PART THE OFFICE OF PUBLIC
COUNSEL'S MOTION TO MODIFY THE HEARING DATES, PREHEARING DATE, AND
KEY ACTIVITY DATES, AND FIRST ORDER MODIFYING PROCEDURE

BY THE COMMISSION:

Background

On August 11, 2008, pursuant to Section 366.06, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, Florida Administrative Code (F.A.C.), Tampa Electric Company (TECO) filed a Petition for permanent increase in its base rates and miscellaneous service charges. On August 26, 2008, Order No. PSC-08-0557-PCO-EI (Order Establishing Procedure) was issued, scheduling this matter for an administrative hearing on January 20, 21, and 27 - 30, 2009. Order No. PSC-08-0538-PCO-EI, acknowledging the Office of Public Counsel's (OPC) intervention in this docket, was issued on August 18, 2008.

On September 5, 2008, OPC filed its Motion to Modify Hearing Date, Prehearing Date, and Key Activity Dates (Motion), requesting that the Prehearing Officer modify the dates controlling the submission of prefiled intervenor, staff and rebuttal testimony, the hearing date, the prehearing date, and the prehearing statements date in this docket. OPC represents in its Motion that the Florida Industrial Power Users Group (FIPUG) and Florida Retail Federation (FRF), who have both intervened in this matter, support OPC's Motion. TECO filed a Response in opposition to OPC's Motion on September 9, 2008.

OPC's Motion

In its Motion, OPC requested that the hearing and prehearing dates, as well as other key activity dates, be moved from January to the first week of March 2009, which are currently set aside for an administrative hearing for Tampa Electric's Peoples Gas division.¹ OPC alleges that the three months currently afforded by Order No. PSC-08-0557-PCO-EI are insufficient to review the extensive filings in this case, conduct meaningful discovery, and prepare full and complete testimony on behalf of the customers of TECO. OPC contends that with the 30 day response time for discovery, there is not sufficient time to conduct two rounds of discovery, especially if there are any delays in TECO responding to discovery. Given the "extremely truncated" timeframe set forth in the Order Establishing Procedure, OPC argues that it cannot thoroughly review and conduct the discovery necessary for OPC to be afforded the due process required to present its case before the Commission. Moreover, OPC states that it has engaged consultants to review TECO's filings and to file testimony in the base rate proceeding on behalf

¹ Order No. PSC-08-0555-PCO-GU, issued August 21, 2008, in Docket No. 080318-GU, In re: Petition for rate increase by Peoples Gas System.

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of the Citizens of the State of Florida, and that it has the obligation to thoroughly review and conduct discovery on the extensive amount of testimonies and documentation filed in this proceeding.

In the alternative, if the Commission decides that it will not accommodate the request for new hearing dates, OPC requested at a minimum that the key activities dates and prehearing date as currently scheduled be moved back. Specifically, OPC believes that intervenors should be given at least four months from the MFRs filing date before intervenor testimony becomes due, and that the prehearing and hearing dates be rescheduled to January 20 and January 27-30, 2009, respectively, in order to afford sufficient time for OPC to prepare its case.

Tampa Electric Company's Response

In its Response, TECO contends that the notice of filing for its rate case on August 11, 2008, was provided on June 12, 2008, with the filing of the test year letter. All interested parties have had an extended time to make plans for participation in this case and the schedule, which is governed by Section 366.06, F.S. A delay in the schedule as proposed by OPC would cause the Commission to violate the statutory time limits in Section 366.06, F.S. Moreover, in 2005, two major base rate proceedings for investor-owned electric utilities went to final hearing 131 days and 153 days,² after the utilities' initial petitions were filed, without any complaint from OPC. TECO's current case will not go to final hearing until 162 days after its initial petition was filed.

TECO also contends that OPC's alternative suggested change in the key dates is patently unreasonable and the unfairness of such a schedule is obvious on its face. TECO argues that OPC's proposal would allow OPC to have 135 days to file its testimony and 14 days for TECO to file its rebuttal testimony; consequently, TECO would have virtually no time to conduct meaningful discovery before the rebuttal testimony filing would be due.

Ruling and Revised Controlling Dates

The dates listed in the Order Establishing Procedure are structured to comply with Section 366.06, F.S., which provides that if the Commission withholds its consent to the petition for an increase in rates ". . . such consent shall not be withheld for a period longer than eight (8) months from the filing of the new schedule." Here, OPC's request that the hearing and prehearing dates as well as other key activities dates be moved from January to the first week of March 2009, would take this proceeding outside the eight months allotted by statute for this Commission to make a final determination on TECO's petition for a base rate increase. Thus, I find it appropriate to deny this portion of OPC's Motion, because to do otherwise would not allow sufficient time to conduct a hearing within the statutory timeframe. OPC's alternative request for relief is also of concern, in that the dates it suggests would adversely affect TECO and Commission staff's ability to meaningfully conduct discovery, prepare testimony, and fully evaluate the case.

² Docket No. 050045-EI, In re: Petition for rate increase by Florida Power & Light Company, and Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.

The current schedule comports with the applicable statutory time frames and is generally consistent with the timeframes allotted in similar proceedings at the Commission. However, it appears that the current schedule does afford some additional time for development of OPC's direct case, without, however, adversely impacting the ability of TECO or Commission staff to likewise prepare for hearing. Accordingly, the controlling dates established by the Order Establishing Procedure shall be revised as set forth below:

	<u>Existing Date</u>	<u>Modified Date</u>
Intervenor Testimony	November 14, 2008	November 26, 2008
Staff Testimony	November 21, 2008	December 3, 2008
Rebuttal Testimony	December 5, 2008	December 17, 2008

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Office of Public Counsel's Opposed Motion to Modify the Hearing Dates, Prehearing Date and Key Activity Dates is hereby granted in part and denied in part, as set forth herein. It is further

ORDERED that the controlling dates for filing intervenor, staff, and rebuttal testimony established in Order No. PSC-08-0557-PCO-EI are modified as set forth in this Order. It is further

ORDERED that Order No. PSC-08-0557-PCO-EI is reaffirmed in all other respects.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 30th day of September, 2008.



NATHAN A. SKOP

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 Office of Commission Clerk, 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.