

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Progress
Energy Florida.

DOCKET NO. 090079-EI
ORDER NO. PSC-09-0143-PCO-EI
ISSUED: March 6, 2009

ORDER GRANTING REVISED MOTION ON PROCEDURE

On February 12, 2009, Progress Energy Florida, Inc. (PEF) filed its Test Year Letter, in anticipation of filing its request for a rate increase. PEF also filed a Petition for Emergency Variance or Waiver of the 60-Day Notice Requirement in Rule 25-6.140, Florida Administrative Code (F.A.C.). Rule 25-6.140, F.A.C. provides that a utility shall notify the Commission in writing of its selected test year and filing date at least 60 days prior to filing a petition for a general rate increase. PEF filed its test year letter on February 12, 2009. PEF wishes to file its petition on March 20, 2009, 36 days after filing its test year letter.

On February 13, 2009, the Commission gave notice of the Emergency Petition on its website and by electronic mail to the intervenors of record, the Office of Public Counsel (OPC) and the Attorney General's Office (AGO). The Commission also provided notice of the petition to the Department of State for publication in the first available issue of the Florida Administrative Weekly.

OPC and AGO filed a response objecting to PEF's Emergency Petition on February 16, 2009. The Florida Retail Federation (FRF) filed a response objecting to the Emergency Petition on February 18, 2009, the same day it filed its petition to intervene. Thereafter, after discussions with Commission staff, PEF, OPC, AGO, FRF, and PCS Phosphate, filed an Agreed Motion on Procedure on February 23, 2009, and then a Revised Agreed Motion on Procedure on February 27, 2009.

In the revised motion, PEF agreed to withdraw its petition for emergency rule waiver and the other parties agreed to withdraw their responses. The movants also agreed that any waiver of Rule 25-6.140, F.A.C., subject to the approval of the Commission, should be deemed granted by approval of the motion on procedure, with PEF to file its petition for a rate increase on or before March 20, 2009.

Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078, In re: Petition for rate increase by Progress Energy Florida, Inc., approved a stipulation and settlement agreement between PEF and several parties, including OPC, AGO, and FRF. The stipulation and settlement agreement provides that:

The Stipulation is effective for a term of four years – the first billing cycle in January 2006 (implementation date) through the last billing cycle in December 2009; however, PEF may extend the term of the Stipulation through the last billing cycle of June 2010, upon written notice to the parties to the Stipulation and to the Commission, on or before March 1, 2009.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

With the understanding that PEF must have new rates in effect by January 1, 2010, the Commission is currently in the process of scheduling a hearing for PEF this Fall, which will give parties ample opportunity to file briefs so that the Commission can make a final decision by December 1, 2009.

It is well established that the Commission is vested with the authority to interpret its own rules.¹ Rule 25-6.140(1), F.A.C. provides that a utility shall notify the Commission in writing of its selected test year and filing date at least 60 days prior to filing a petition for a general rate increase. Clear and unambiguous on face, the intent of the rule is to provide the Commission with notice of a pending rate case. Furthermore, the subject rule is procedural to the Commission for internal planning purposes only, and does not create or imply a procedural or substantive due process right for interested persons or parties.² Therefore, the discretion to grant or deny a variance to the subject rule is clearly within the authority of the Prehearing officer acting in the best interest of the Commission.

In the instant case, permitting PEF to file its rate petition and MFRs early will provide Commission staff and the parties with nearly three weeks of additional time to conduct the PEF rate case. Furthermore, in view of the number of complex cases scheduled for hearing through the fall, many of which involve the same intervenors, the parties have acknowledged the benefit of having additional time to prepare testimony and conduct discovery in this case.

In summary, the parties' Revised Agreed Motion on Procedure resolves their disagreement over PEF's emergency waiver petition, while ensuring that Commission staff and the parties will have additional time to process the PEF rate case. Therefore, the motion is granted.

Based on the foregoing, it is:

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Revised Agreed Motion on Procedure, filed February 27, 2009, is granted.

¹ Panda Energy Co. v. Florida Public Service Commission, 701 So. 2d 322, 327 (Fla. 1997) ("We give great deference to the Commission's interpretation of its own rules and will not disturb that interpretation unless the interpretation is shown to be clearly erroneous."). See also, Expedient Services, Inc. v. Weaver, 614 F.2d 56, 57 (5th Cir. 1980) (if an agency's interpretation of its own regulation is merely one of several reasonable alternatives, it must stand even though it may not appear as reasonable as some other alternative).

² In re: Application for a Rate Increase by United Telephone Company of Florida, 1991 Fla. PUC LEXIS 2177, at *2-3 (Docket No. 910980, Order No. 25484, issued Dec. 17, 1991) ("We do not find that Public Counsel is legally entitled to a 120.57(1) hearing on United's test year request, nor is it necessary or legally appropriate to hold an evidentiary hearing on the initial approval of United's proposed test year. The final decision which ultimately determines the adequacy of a chosen test year will not be made until the conclusion of the rate case. Although Public Counsel and others certainly have a substantial interest in the ultimate outcome of a rate proceeding, that interest does not entitle them to a separate hearing on every interim or procedural decision the Commission makes along the way.").

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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 6th day of
March, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(SEAL)

MCB

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 25-22.0376, 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.