

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.

DOCKET NO. 080677-EI

In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.

DOCKET NO. 090130-EI

ORDER NO. PSC-09-0311-PCO-EI

ISSUED: May 7, 2009

ORDER GRANTING MOTION TO CONSOLIDATE AND GRANTING IN PART MOTION TO MODIFY LIMITS ON DISCOVERY

Background

On November 17, 2008, Florida Power & Light Company (FPL) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition in the Spring of 2009 for an increase in rates effective January 1, 2010. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., FPL filed the petition for an increase in rates on March 18, 2009, in Docket No. 080677-EI (rate case). By Order No. PSC-08-0815-PCO-EI, issued December 18, 2008, the Commission acknowledged intervention by the Office of Public Counsel (OPC). On March 20, 2009, procedural guidelines and controlling dates were established for FPL's rate case by Order No. PSC-09-0159-PCO-EI (OEP).

On March 17, 2009, FPL filed its 2009 depreciation and dismantlement study in Docket No. 090130-EI (depreciation study). The Commission acknowledged intervention by OPC by Order No. PSC-09-0175-PCO-EI, issued March 25, 2009.

On April 14 and April 20, 2009, respectively, OPC filed a Motion to Modify Limits on Discovery in FPL's rate case and a Motion to Consolidate the rate case and depreciation study dockets. On April 20, 2009, FPL filed its Response in Opposition to OPC's Motion to Modify Limits on Discovery and Response to OPC's Motion to Consolidate.

Consolidation

In its Motion to Consolidate, OPC asserts that the separate matters currently pending before the Commission involve inextricably related subjects, because FPL has incorporated the proposed increase in annual depreciation expense from the depreciation study into its base rate request in the rate case. OPC maintains that the depreciation study will require an evidentiary proceeding involving substantial factual disputes and competing policy considerations, all of which have the potential to significantly affect the determination of FPL's revenue requirements in the rate case. OPC contends that considerations of administrative efficiency and due process require consolidation of the two dockets for purposes of a single evidentiary hearing. In its

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Response to OPC's Motion to Consolidate, FPL states that it supports the consolidation of these dockets.

Analysis & Ruling

Rule 25-22.035(2), F.A.C., provides that if there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party. Applying the criteria set forth in Rule 25-22.035(2), F.A.C., it is appropriate to consolidate the rate case docket with the depreciation study docket. Both dockets involve similar issues of law or fact. Specifically, the findings in the depreciation study will directly affect the Commission's determination of FPL's revenue requirements in the rate case. In addition, consolidation of the two dockets will promote the just, speedy, and inexpensive resolution of the two proceedings and will not unduly prejudice the rights of a party. Also, no parties have opposed consolidation.

Accordingly, OPC's Motion to Consolidate is granted; specifically, Docket Nos. 080677-EI and 090130-EI shall be consolidated for purposes of a single evidentiary hearing. However, in the interest of administrative efficiency, both dockets shall retain their existing docket numbers. OPC's footnote regarding discovery needs pertaining to the depreciation study has been considered in the following ruling with respect to OPC's separate motion on discovery limits.

Modification of Discovery Limits

On March 20, 2009, the OEP was issued in the rate case docket by Order No. PSC-09-0159-PCO-EI. Among other things, the OEP identified hearing dates, established deadlines for prefiled testimony, and limited each party to 500 interrogatories and 500 requests for documents. At this time, no procedural order has been issued for the depreciation study. Since the depreciation study is now consolidated with the rate case, the OEP established in the rate case shall govern the consolidated rate case and depreciation study proceeding, as modified herein. Accordingly, all parties must adhere to the controlling dates and guidelines set forth in the OEP unless subsequently modified by the Commission.

OPC's Motion to Modify Limits on Discovery

OPC requests the amendment of Section V of the OEP to increase the limits on the number of interrogatories and requests for production of documents from 500 to 1,000. In support of its motion, OPC states that additional discovery is necessary to adequately evaluate the three test years under consideration, namely, the 2009 Minimum Filing Requirement (MFR) schedules, the 2010 MFR schedules for the test year approved by the Commission on an interim basis, and financial schedules for 2011 related to FPL's request for an additional base rate increase of \$247.4 million per year beginning in January, 2011. OPC also argues that greater discovery is warranted because it has a relatively short time frame within which to prepare

testimony. Finally, OPC asserts that revising the discovery limits in this complex rate proceeding will allow it to prepare its case more thoroughly, thus better serving FPL's customers.

FPL's Response in Opposition

FPL states that the discovery limits established by the OEP should not be revised. FPL asserts that allowing such a high limit on discovery requests in this proceeding would be unreasonable and inconsistent with limits established in prior rate cases. FPL also claims that OPC has failed to demonstrate a need for propounding such a large amount of discovery. In the alternative, FPL submits that if discovery limits are ultimately increased, they should not exceed 700 each. According to FPL, this Commission has only once exceeded a 500 limit, allowing 700 discovery requests in FPL's last rate case because it was consolidated with its depreciation study docket.

Analysis & Ruling

OPC's Motion to Modify Limits on Discovery is granted in part. Unless subsequently modified, the following shall apply:

- ≈ Interrogatories, including all subparts, shall be limited to 850.
- ≈ Requests for production of documents, including all subparts, shall be limited to 850.

Discovery limits pertain to the consolidated dockets, and parties may choose to issue discovery on matters related to the base rate request or the depreciation study as they see fit up to the limits above. Each discovery request shall be filed under the corresponding docket number for ease of reference; therefore, discovery requests related to depreciation shall continue to be filed under Docket No. 090130-EI.

In allowing what may be the highest discovery limit the Commission has afforded parties in similar proceedings thus far, I note the Citizens' statement that it is "mindful that additional discovery can result in additional rate case expense which will be ultimately borne by customers." The Citizens add that "any additional expense for discovery caused by additional interrogatories and requests for documents is *de minimis* compared to the amount of money at stake in this proceeding." The base rate request at issue is substantial, and FPL customers should have confidence in the Commission's process for vetting the request. Given the totality of the circumstances, OPC's request to increase the discovery limits is granted in part.

Parties serving discovery are directed to fine tune their requests so that helpful information is produced in the most cost-effective manner, thus avoiding unnecessary rate case expense. Likewise, parties responding to discovery requests are directed to produce helpful information that will minimize the need for costly follow-up requests.

Except as modified herein or subsequently by the Commission, the provisions of the OEP shall apply to this consolidated rate case and depreciation study proceeding. Order No. PSC-09-0159-PCO-EI is hereby reaffirmed in all other respects.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrin, as Prehearing Officer, that Docket Nos. 090130-EI and 080677-EI are hereby consolidated for purposes of a single evidentiary hearing. It is further

ORDERED that Order No. PSC-09-0159-PCO-EI, issued March 20, 2009, is revised as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-09-0159-PCO-EI is reaffirmed in all other respects. It is further

ORDERED that the provisions of Order No. PSC-09-0159-PCO-EI, except as modified by this Order, shall apply to this consolidated rate case and depreciation study proceeding.

By ORDER of Commissioner Katrina J. McMurrin, as Prehearing Officer, this 7th day of May, 2009.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(SEAL)

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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 25-22.0376, 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.