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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20230115-EU

Proposed amendment of Rule 25-6.0131,
F.A.C., Regulatory Assessment Fees;
Investor-owned Electric Companies,
Municipal Electric Utilities, Rural
Electric Cooperatives.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 2

COMMISSIONERS
PARTICIPATING: CHAIRMAN ANDREW GILES FAY
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER MIKE LA ROSA
COMMISSIONER GABRIELLA PASSIDOMO

DATE: Tuesday, December 5, 2023

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
TALLAHASSEE, FLORIDA
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1 P R O C E E D I N G S

2 CHAIRMAN FAY: All right. Next we will move
3 into items for further discussion. We will begin
4 with Item No. 2. It looks like you are ready, Mr.
5 Rubin. Whenever you are ready, you can present the
6 item.

7 MR. RUBOTTOM: Good morning, Commissioners.
8 My name is Jon Rubottom with Commission legal
9 staff.

10 Item No. 2 is staff's recommendation regarding
11 the proposal of Draft Rule 25-6.0131, Florida
12 Administrative Code, which pertains to the
13 regulatory assessment fee, or RAF, the Commission
14 is required by statute to collect from electric
15 utilities.

16 The RAF's collected by the Commission are the
17 agency's only source of revenue. And the governing
18 statutes require that the RAF revenues collected
19 from each utilities -- each utility -- excuse me,
20 from -- collected from the utilities in each
21 industry be sufficient to cover the Commission's
22 cost of regulating the companies in that industry.

23 As explained more fully in the recommendation,
24 staff calculates a projected shortfall in
25 Commission revenue from the electric industry for

1 electric IOUs, and a projected surplus for
2 municipal utilities and rural cooperatives. Staff,
3 therefore, recommends that the Commission propose
4 the amendment of the rule to update the RAF rate
5 for both electric IOUs and the rate for municipal
6 utilities and rural cooperatives to more accurately
7 reflect the cost of regulation as required by
8 statute.

9 A representative of Florida Power & Light is
10 present and would like to address the Commission on
11 this item, and staff is available for questions.

12 CHAIRMAN FAY: Okay. Great. Thank you Mr.
13 Rubin.

14 What we will do, then, Mr. Wright, we will go
15 ahead and have you address the Commission with any
16 comments you have, and then our Commission may have
17 questions for either Mr. Rubottom or you at that
18 time.

19 You are recognized.

20 MR. WRIGHT: Thank you. Good morning,
21 Chairman and Commissioners. I appreciate the
22 opportunity to speak with you today. Christopher
23 Wright on behalf of Florida Power & Light.

24 First, I just want to state that Florida Power
25 & Light takes no position on the proposed

1 amendments to the rule, or the proposed RAF amount.
2 Our primary comments here are we are asking -- a
3 question and the clarification regarding the
4 effective date of the new RAF rule.

5 As set forth in the conclusion on Issue 2 of
6 the staff's recommendation, it indicates that the
7 -- if the rule is adopted here today and approved,
8 that it would be filed around January 9th, and it
9 would become effective on January 29th. However,
10 in the conclusion on Issue 1 of staff's
11 recommendation, it indicates that the new RAF would
12 apply to the entire six-month period in which the
13 rule becomes effective, meaning January 1 through
14 June 30th.

15 This appears to suggest that the new RAF
16 amount would become applicable prior to the
17 effective date of the rule. We question whether
18 that's appropriate, and moreover, are concerned
19 whether that's a violation of Section 120.54
20 subsection (3)(d)6 of the Administrative Procedures
21 Act, which requires that new rules and amendments
22 to rules become effective 20 days after they are
23 filed.

24 We've discussed this concern with your General
25 Counsel, and it seems to us that perhaps a

1 reasonable solution would be that the new RAF
2 amount become effective on the first billing cycle
3 in February, become effective February 1, or
4 whichever -- or the later date of the effective
5 date of the new rule, and that the current RAF
6 amount apply prior to that date, which would be
7 January, if it becomes January 29th.

8 Thank you.

9 CHAIRMAN FAY: Okay. Commissioners, any
10 questions or comments first for Mr. Wright?

11 COMMISSIONER CLARK: For Mr. Wright, no.

12 CHAIRMAN FAY: Okay. Showing none, then we
13 will take any questions or comments for Mr.
14 Rubottom at this time on Item No. 2.

15 Commissioner Clark, you are recognized.

16 COMMISSIONER CLARK: Thank you, Mr. Chairman.

17 I just want to make a couple of comments and
18 observations.

19 I know we have been working on this rule
20 amendment for some time, and this dates back for
21 the last couple of years as we've watched our,
22 basically our trust fund balances begin to erode,
23 having to -- the Commission, the Agency having to
24 take on some additional costs that have been
25 incurred over the last couple of years. And we see

1 where this is taking us over the next several
2 years, into a position where at our current RAF
3 rates, and at our current distribution levels, we
4 won't have the ability to cover our actual cost.
5 And it's something that has worried me and
6 concerned me for a number of years, and I have had
7 this discussion with our executive team for
8 actually a couple of years now as we've worked
9 through this, but --

10 And I appreciate -- I want to say I appreciate
11 the staff's work on this proposed amendment. I
12 have looked over -- I have been through all of the
13 scenarios and proposals under the new rates and the
14 new proposed rate structure in addition to looking
15 at what our future costs are, and I still have some
16 concerns, Mr. Chairman. There are some things that
17 I am still working through in my mind, and I think
18 that maybe we can solve Mr. Wright's issue as well
19 as alleviate a couple of my concerns.

20 Based on where we stand right now, I would
21 like the Commission's indulgence to have a 30-day
22 deferral of the item to give me just a little bit
23 more time to do some digestion. I think we can
24 figure out Mr. Wright's issue during that same --
25 that pretty much solves his issue, right, to begin

1 with, because there is no way we can meet that
2 deadline. I think that would solve his problem as
3 well. If we could, just a general consensus, Mr.
4 Chairman, or something that we give this another 30
5 days.

6 There is nothing absolutely critical about it
7 having to go in place by January 30th, or January
8 31st, February. We've got a little bit more time.
9 And I think it would do us good to buy this time
10 out and make a -- make a good, conscientious
11 decision when it comes time to vote on the item,
12 Mr. Chairman.

13 CHAIRMAN FAY: Okay. Great. Yeah. And,
14 Commissioner Clark, I, of course, always support
15 when my colleagues need additional time. We want
16 to get these right if it's something that
17 additional time would help. I am happy to
18 recognize and take up that deferral for approval.

19 I do just want to make sure I give my
20 colleagues an opportunity to opine on anything that
21 you would like to do in addition to that deferral,
22 or related to that deferral, before we formally
23 take that motion up.

24 So, Commissioner La Rosa, you are recognized,
25 and then Commissioner Graham or Commissioner

1 Passidomo, if you have anything, I will make sure I
2 go to you next.

3 COMMISSIONER LA ROSA: Thank you, Chairman.

4 And not necessarily anything to change, and I
5 do agree with what was just said by Commissioner
6 Clark. I definitely do believe that more time is
7 needed. This new issue that is brought by Mr.
8 Wright is obviously, you know, something also to
9 consider. This is certainly not an easy decision.
10 There is a few more moving parts internally. I
11 would also benefit from some additional time.

12 CHAIRMAN FAY: Okay. Great. So we have
13 additional support for that.

14 Commissioner Passidomo, any questions or
15 comments?

16 COMMISSIONER PASSIDOMO: Sure. Thank you, Mr.
17 Chairman.

18 I am generally supportive as well to
19 Commissioner Clark's proposal. I think it does us
20 good. I want to recognize, I think, with that, we
21 continue if we can, you know, encourage our
22 legislative team to pursue the permanent
23 legislative ratification exemptions. I think that
24 that, you know, giving that additional 30 days, we
25 are going to hit when legislative session starts,

1 and so that's going to be important to keep going
2 forward with that. So I want to make sure that we
3 are using this next 30 days really effectively.

4 I do also want to put just in the back of our
5 minds, as we think about in the next 30 days, that
6 when I was talking to staff about this item, it
7 came to my attention that it takes about 18 months
8 for us to see the RAF, the effects go into effect
9 to get those -- that money -- those increased
10 rates. So 30 days really isn't going to make much
11 of a difference when we are looking at, I think
12 it's Table 1.2 about when we are going to start
13 seeing that dropoff. But, you know, just kind of
14 keep that in mind so that hopefully we all use this
15 next 30 days effectively, and make sure that we are
16 not -- we are all progressing to make sure that
17 something actually comes out of it.

18 CHAIRMAN FAY: Great.

19 COMMISSIONER PASSIDOMO: Thank you.

20 CHAIRMAN FAY: Yeah. Thank you.

21 Commissioner Graham, you are recognized.

22 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

23 I have never had a problem at all by granting
24 somebody a deferral. I have been doing it for a
25 long time. I -- just two things.

1 Number one, I want to hear any comments from
2 the Executive Director on how this affects your
3 plan moving forward. And number two, if I can get
4 the rest of you to kind of opine on what it is you
5 are deferring for, because I know we can't talk
6 outside of this venue, so I would like to hear so
7 all us can look at what it is the problem is and
8 see if we can make some determination.

9 CHAIRMAN FAY: Sure. I think we can have
10 further discussion.

11 Mr. Baez, why don't we go to you first for
12 Commissioner Graham's question on the item, and
13 then we can take it up for further discussion.

14 MR. BAEZ: Thank you, Mr. Chairman.

15 Commissioner Graham, you asked about the
16 affect of the deferral going forward? I think one
17 of you -- one of your colleagues mentioned 30 days
18 not running up against any crucial deadlines, and I
19 would agree. I also appreciate Commissioner
20 Passidomo's encouragement to continue our efforts
21 for -- to seek the permanent exemption.

22 I think, judging the two separately for a
23 moment, that's a -- the permanent exemption,
24 obviously, would function into the future for what
25 you all are considering, or will consider today, or

1 shortly after. I don't have any concern myself. I
2 know I speak for the rest of the staff working on
3 this that 30 days is going to affect it if we can
4 use it, as Commissioner Passidomo suggested,
5 effectively, to address whatever additional
6 information, whatever additional perspective or
7 concerns there may be. And I also am very
8 confident that we can address Florida Power &
9 Light's timing concerns as well. That should not
10 be a problem.

11 We have spoken to the company off-line as well
12 when they made their concerns known to us, and I
13 think we immediately engaged in some kind of --
14 coming up with some kind of reasonable solution for
15 all involved.

16 So I don't know if that answers your question,
17 but --

18 COMMISSIONER GRAHAM: Well, that's fine. I
19 mean, once again, I --

20 MR. BAEZ: We are ready to accommodate it.

21 COMMISSIONER GRAHAM: -- I have no problem at
22 all by giving 30 days, because that's an easy one.
23 I was just more curiosity than anything else, and
24 when I was asking you, I am not trying to dig for
25 any secrets. I'm just, as we are processing all of

1 this for the next 30 days, I want to be able to
2 think through some of the things that you are
3 thinking about.

4 COMMISSIONER CLARK: And I will address that
5 in just a brief manner.

6 Any time you look at changing the RAF, I think
7 you have to look at how it affects customers, and
8 that's probably one of the things that I view more
9 intensely than anything else.

10 Anyway you look at it, in this cases, there
11 some customers going to win, some customers going
12 to lose. You have got -- actually, the proposal
13 showed that some of the costs went down for the
14 regulatory aspects of certain divisions of
15 customers and some went up.

16 And I have just always contended that the
17 worst time to do an increase is in your peak
18 months. You don't touch rates. You don't mess
19 with rates in January and June. Those are two bad
20 times. If you are going to make adjustments, do it
21 during the shoulder months. Look at April and
22 October. It's not as much of an effect on the
23 customer.

24 It's not a lot of money. I will -- let's look
25 at that right off the bat. You are talking a penny

1 or so. I think it was 01 -- the different between
2 01 or 02 cents per customer per month, and so it's
3 not a significant amount of money, but I think that
4 it's -- any time that you are looking at an
5 increase in cost to customers, I just would like a
6 little bit more time.

7 I have reviewed it a lot. I have spent a lot
8 of time on this, and I am just not at 100 percent.
9 I am at about 90 percent on it right now, and I
10 think I can get a few of my other questions
11 answered just a little more digging. That's me
12 personally.

13 CHAIRMAN FAY: Yeah, Commissioner La Rosa, you
14 are recognized.

15 COMMISSIONER LA ROSA: Thank you, Chairman.

16 And I want, obviously, the opportunity to also
17 address maybe where -- where, you know, my thoughts
18 in how we can use this time effective. When
19 introduced, you know, this kind of -- the cost of
20 regulation has to fall within the division, right,
21 of what's happening, and what we are doing here as
22 an agency. I would like to better understand the
23 cost of regulation. With that, I know that that's
24 not -- that's not consistent and across the board
25 all the time year after year.

1 With that said, I also want to emphasize the
2 importance of the legislation that our team is
3 working with the Legislature on. Those efforts
4 need to continue, and those efforts are vastly
5 important, and I think if there is anything we get
6 out of the practice of reading this --

7 And, Commissioner Clark, I have also read this
8 numerous times, and every time I put it down, I
9 say, man, I am confusing myself, because it does,
10 right? You know, the numbers don't lie. The
11 charts are accurate, and they are black and white.
12 There is a revenue shortfall. There is no
13 question, but understanding as that goes deeper is
14 important to me, and I think that lays emphasis on
15 why the future legislation that we are working on
16 is extremely important, because I know that this
17 will not be consistent long-term and, I know that
18 there will be changes as laws change, as
19 environments change, as just the effects of
20 everyday life and usage changes, as far as what we
21 do here as an agency.

22 And I would also like to understand more, or
23 deeper of how the revenue forecast works, and what
24 we are -- what we are focusing on, and what we are
25 looking at. Staff did a phenomenal job in the

1 briefing me, so hats off. Congrats, staff, in
2 explaining that to me. But I want to go a few
3 steps further and now look at some of the tools in
4 which we are using to make those forecasts.

5 So hopefully that's not too much in the weeds,
6 but that's kind of what I am thinking over the next
7 30 days. That's where I would like to spend my
8 time and my focus as we consider this, but I can't
9 say it enough, that I think that the efforts that
10 we are make downtown are extremely important, and I
11 think because of what we are doing here today, or
12 what we are looking at today, and possibly moving
13 on for 30 more days, it is important that we do --
14 that we have the ability to do this long-term so we
15 keep these -- we keep RAFs in line with where they
16 need to be.

17 CHAIRMAN FAY: Great. Thank you.

18 Any other comments?

19 Yeah, Commissioner Passidomo.

20 COMMISSIONER PASSIDOMO: I'm sorry, Mr. Chair.

21 I just wanted to also personally address
22 Commissioner Graham's assessment. I think that's a
23 good point, is that we should all kind of be, like
24 when I said using this time effectively.

25 I kind of am bridging, but I have had the

1 similar thoughts between both of my colleagues here
2 about what I am thinking about in the next 30 days,
3 what I want to do, again, as much as what
4 Commissioner La Rosa said, is pursuing that
5 legislative permanent exemption is really important
6 for ratification, and so that's really where a lot
7 of focus should be. But when those meetings are
8 happening going in as quick as possible to show the
9 Legislature we have -- we have looked at all
10 alternatives for cost cutting measures.

11 And so what I want as well -- so it's our
12 executive team, if they will indulge me, you know,
13 later on, is to we will sit down -- to sit down and
14 you can, you know, practice with me and tell me how
15 -- what we have done in those -- in the last years
16 to try to mitigate these costs, and then you will
17 hopefully create a stack of ammo that you can go
18 with to the Legislature and show them, look, this
19 is what we have done.

20 Because, like Commissioner Clark said, really,
21 the -- I mean, I agree again. It's a small amount
22 of money, but customers are the primary focus here,
23 and they are the ones who will be paying these
24 little -- these increases. We have to keep them in
25 mind, so showing we have done and looked at all

1 alternatives, and then this is where -- this is
2 what we are left with. So that's kind of my
3 thoughts.

4 CHAIRMAN FAY: Great. Yeah.

5 And I would just add on my end that I think
6 the legislative process is, of course, one reason
7 to kind of watch what we would do with this, but
8 the other is -- I mean, I look at the legal mandate
9 for the correlation of cost to regulation, the
10 categories that we are in, and, you know, that's an
11 obligation that we have to fulfill.

12 But the part that, you know, almost is a
13 unique challenge is that we've seen the Legislature
14 come forward in the past few years with support for
15 public service, for state employees, that the folks
16 we recognized today that do this role, and for four
17 agencies that are trust funded -- I believe it's
18 four, you know, subject to check, whatever agencies
19 are trust funded, that -- those -- that support and
20 those raise for those employees then impacts our
21 budget in a way that doesn't impact pretty much
22 most of the state. I mean, we are so unique in
23 that nature.

24 So I hope we will continue seeing that. But,
25 for example, we see it again this session, I mean,

1 these numbers just start to get more and more
2 challenging. And so I do want to make sure we are
3 able to be legally responsive, but also, you know,
4 financially responsive. So hopefully that time
5 will give us some additional information.

6 I think, unlike all of us, that you can read
7 until your eyes fall out on this stuff, because
8 rulemaking is sometimes very complex, but I think
9 for, you know, what's being proposed in this
10 recommendation, the end goal is fairly
11 straightforward, to make sure that, you know, we
12 don't get hung up. And I don't know the timing of
13 budget -- budget stuff, and so how all that would
14 be intertwined. I assume if we approve this
15 hypothetically in 30 days, there is still time for
16 implementation and publication, and all of that
17 kind of stuff, so I know it wouldn't be quick. And
18 I would presume during that time we could still
19 follow the Legislature, who I believe concludes at
20 the end of -- or beginning of March, does that
21 sound right, Mr. Baez?

22 MR. BAEZ: Yeah.

23 CHAIRMAN FAY: Okay. So we would know kind of
24 at that point. So I am also supportive of the
25 deferral to see kind of where we can get and make

1 sure everybody's questions are answered. But, you
2 know, I hope to see continued support for our State
3 employees, and I think we need to make sure if we
4 receive that support from the Legislature, we don't
5 fail to financially, you know, prepare for that, so
6 I appreciate this being brought forward.

7 And, Commissioners, I will take any other
8 questions before we approve.

9 Legal, I wasn't going to do a -- do we need a
10 formal motion for deferral or -- we are happy to do
11 it either way. I think Commissioner Clark has
12 insinuated he is happy to do it, so --

13 MS. HELTON: I think the record is clear.

14 CHAIRMAN FAY: Okay. Great. So then with the
15 deferral, we will formally defer Item No. 2,
16 Commissioners, and so that will address that item.

17 And then, Mr. Baez, did you have anything else
18 before we move on? I didn't want to cut you off.
19 I just --

20 MR. BAEZ: No. Merely to thank you all for
21 your thoughtfulness, and we look forward to working
22 with you all to answer whatever questions remain,
23 and to whatever -- to whatever level of detail we
24 will find -- will find you all comfortable with the
25 effort. And I do appreciate your supportive

1 comments as well, and your encouragement on the
2 legislative side.

3 CHAIRMAN FAY: Okay. Hopefully you didn't
4 have any holiday plans, Commissioner Baez, because
5 it sounds like you are going to be --

6 MR. BAEZ: I have made it a practice not to
7 have holiday plans. Thank you.

8 CHAIRMAN FAY: Okay. Great. Thank you.

9 All right. Commissioners, with that, that
10 will conclude Item No. 2.

11 (Agenda item concluded.)

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CERTIFICATE OF REPORTER


STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 18th day of December, 2023.


DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024