

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposal to extend plan
for recording of certain
expenses for years 1998 and 1999
for Florida Power & Light
Company.

DOCKET NO. 970410-EI
ORDER NO. PSC-97-1267-PCO-EI
ISSUED: October 15, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER DENYING MOTION FOR RECONSIDERATION
AND REQUEST FOR ORAL ARGUMENT

BY THE COMMISSION:

In Docket No. 950359-EI, the Commission approved a proposal by Florida Power & Light Company (FPL) that resolved all of the identified issues regarding FPL's petition to establish a nuclear amortization schedule. By Order No. PSC-96-0461-FOF-EI, issued April 2, 1996, FPL was required (1) to book additional 1995 depreciation expense to the reserve deficiency in nuclear production; (2) to record, commencing in 1996, an annual \$30 million in nuclear amortization, subject to final determination by the Commission as to the accounts to which it is to be booked; and (3) to record an additional expense in 1996 and 1997 based on differences between actual and forecasted revenues, to be applied to specific items in a specific order.

This docket was opened to consider an extension of and modification to the plan to allow the recording of additional expenses in 1998 and 1999.

By Proposed Agency Action Order No. PSC-97-0499-FOF-EI, issued April 29, 1997, in this docket, we approved staff's recommendation to extend and modify the plan. On May 20, 1997, AmeriSteel

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Corporation (hereinafter "AmeriSteel") timely filed a protest of the Proposed Agency Action. On June 10, 1997, FPL filed a Motion to Deny and Dismiss the Protest of AmeriSteel. FPL's motion was denied at the August 18, 1997 agenda conference. This matter is currently set for hearing on November 25 and 26, 1997.

On August 28, 1997, the prehearing officer issued Order No. PSC-97-1035-PCO-EI, establishing the procedure for this proceeding. On September 8, 1997, AmeriSteel filed a motion for reconsideration of Order No. PSC-97-1035-PCO-EI and a request for oral argument on the motion. On September 9, 1997, Florida Power & Light Company (FPL) filed a response opposing the motion for reconsideration and the request for Oral Argument. Upon consideration, we deny AmeriSteel's request for oral argument and motion for reconsideration.

REQUEST FOR ORAL ARGUMENT

Oral Argument was requested by AmeriSteel to address its Motion for Reconsideration. No other request for Oral Argument was made. Rule 25-22.058, Florida Administrative Code requires a movant to show "...with particularity why Oral Argument would aid the Commission in comprehending and evaluating the issues before it."

In its request, AmeriSteel states: "Due to the fact that the Motion references various meetings along with the pleadings and argument presented at agenda conferences, it will assist the Commission to hear oral presentation in deciding the Motion for Reconsideration of Order Establishing Procedure." AmeriSteel's request does not offer any further elaboration as to why Oral Argument would assist the Commission in deciding the issues before it.

In its response to AmeriSteel's motion, FPL states: "There is no basis to grant oral argument to consider the matters raised in AmeriSteel's motion."

We find that the issues, responses to, and legal arguments concerning AmeriSteel's Motion for Reconsideration are ably presented by the parties in their pleadings. The issues are clearly delineated in those pleadings, and in the record. We do not believe that oral argument would aid the Commission in comprehending and evaluating the issues before it. Therefore,

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AmeriSteel's Request for Oral Argument on its Motion for Reconsideration is denied.

MOTION FOR RECONSIDERATION

The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that the prehearing officer overlooked or failed to consider in rendering its order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.

In its motion, AmeriSteel argues that the hearing schedule set forth in Order No. PSC-97-1035-PCO-EI violates AmeriSteel's procedural due process rights on two grounds. First, AmeriSteel argues it should not be required to file direct testimony at the same time as FPL. AmeriSteel contends it does not carry the burden of proving the reasonableness and necessity of the plan. AmeriSteel also contends that, by requiring AmeriSteel to file direct testimony at the same time as FPL and before Staff files testimony, the Order requires AmeriSteel's witnesses to speculate regarding the proponents' testimony in support of the Plan. Second, AmeriSteel argues that the hearing schedule affords no meaningful opportunity for it to conduct discovery.

In its response, FPL argues that it is appropriate to require AmeriSteel to file testimony simultaneously with FPL because the hearing in this case is necessitated by AmeriSteel's protest. FPL contends that the prehearing officer has discretion to establish testimony filing dates and that it would have been equally appropriate to require AmeriSteel to file testimony first. FPL states that it is no novel occurrence for the Commission to require the protesting party to demonstrate that the action taken is inappropriate. FPL also points out that the procedural order specifically provides for rebuttal testimony from the parties. Further, FPL argues that AmeriSteel has already propounded discovery requests on both FPL and Staff and has the same opportunity to conduct discovery as any other party in this proceeding.

We note that the direct testimony filed by the parties is to address the issues identified in the Order Establishing Procedure, and not the testimony offered by other parties. Further,

AmeriSteel will have the opportunity to file rebuttal testimony after any party files testimony in support of the plan.

In its motion, AmeriSteel argues that the scope of the proceeding is made unreasonably narrow by Order No. PSC-97-1035-PCO-EI. AmeriSteel identifies four issues from its proposed issues list that were not included as issues in the procedural order. AmeriSteel states that these issues are arguably encompassed by Issue 6 in the procedural order's issue list but requests that they be specified in the issue list because they raise core concerns relating to the Plan's effect on consumer interests.

In its response, FPL claims that AmeriSteel's motion merely reargues the proper scope of this proceeding. FPL states that the Commission has considered this subject during at least two extensive oral arguments and that there is no basis to again consider the matter.

We find that AmeriSteel has failed to demonstrate any point of fact or law that the prehearing officer overlooked or failed to consider in rendering the Order Establishing Procedure. Therefore, we deny AmeriSteel's Motion for Reconsideration.

First, AmeriSteel presents no authority for its assertion that its due process rights are denied by the procedural order. Section 120.57(1)(b)(2), Florida Administrative Code, requires only 14 days notice for a hearing. The Order Establishing Procedure in this docket was issued on August 28, 1997, approximately three months before the hearing date. This is ample time for the parties to prepare for the hearing.

In addition, the prehearing officer is not required by any law to establish a testimony filing schedule that provides for intervenor's testimony to be filed after the utility's testimony. Prehearing officers are granted considerable discretion over the management of cases assigned to them. See Rule 25-22.038, Florida Administrative Code; Order No. PSC-97-0881-PCO-WS, issued August 27, 1992. The Commission has previously established testimony filing schedules similar to the one in this case in similar circumstances. See, e.g., Order No. PSC-96-0272-PCO-EI, issued February 26, 1996.

Further, AmeriSteel's claim that the hearing schedule denies it the opportunity to conduct meaningful discovery is without

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merit. Order No. PSC-97-1035-PCO-EI provides for an expedited discovery procedure, stating on page 1:

Due to the expedited time schedule for this proceeding, all discovery requests and responses shall be served either by next-day express or hand delivery. All discovery responses shall be served within twenty (20) days of receipt of the discovery request. There shall be no extra time for mailing.

Clearly, in rendering the procedural order, the prehearing officer considered the impact of the expedited hearing schedule on parties' ability to conduct discovery and, as a result, provided an expedited discovery procedure for the parties to employ. We note that AmeriSteel could, during the nearly three months between the date the order establishing procedure was issued and the scheduled date for the hearing, propound at least three consecutive sets of Interrogatories.

As previously stated, AmeriSteel has the same opportunity to conduct discovery as any other party to this proceeding. In fact, AmeriSteel has already propounded discovery requests to FPL and Staff. Hearing in this docket is scheduled for November 25-26, 1997, roughly two and one-half months from the filing of AmeriSteel's motion for reconsideration. AmeriSteel has ample opportunity to pursue discovery under the schedule established in the procedural order.

Second, this Commission has already considered AmeriSteel's arguments concerning the scope of this proceeding. At the August 18, 1997, agenda conference, we heard arguments from AmeriSteel concerning the scope of this proceeding and the issues presented by AmeriSteel in this motion. Our decision on this matter is found in Order No. PSC-97-1070-PCO-EI, issued September 10, 1997:

The scope of this docket shall be limited to the consideration of whether to approve the proposal to extend and modify the 1996/1997 "plan", approved in Order No. PSC-96-0461-FOF-EI, for the years 1998 and 1999. This includes the examination of the appropriateness of the elements, and their related amortization periods, included in the proposal for 1998 and 1999 that was the subject of Order No. PSC-97-0499-FOF-EI.

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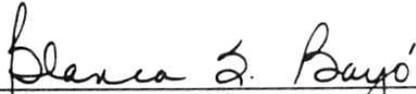
We find that the issues identified in the Order Establishing Procedure fully and fairly reflect our decision.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AmeriSteel Corporation's Motion for Reconsideration and Request for Oral Argument are denied. It is further

ORDERED that this docket shall remain open pending resolution of AmeriSteel Corporation's Petition on Proposed Agency Action.

By ORDER of the Florida Public Service Commission this 15th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 Records and Reporting, 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.