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RECORDS AND
REPORTING

July 20, 2000

Blanca S. Bayó, Director
Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-0850

**Re: Posthearing Comments of Florida Power
& Light Company in Docket No. 980643-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company (FPL) are the original and fifteen (15) copies of FPL's Posthearing Comments in Docket No. 980643-EI.

If you or your Staff have any questions regarding this filing, please contact me.

Very truly yours,



Charles A. Guyton

APP None
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COM _____ cc: Mary Anne Helton, Esq.
GTR _____ Parties of Record
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FLORIDA POWER & LIGHT COMPANY'S
POSTHEARING COMMENTS
DOCKET NO. 980643-EI
July 20, 2000

Introduction

Many parties have devoted substantial time to the development of the proposed rule, and the fruits of these efforts are readily apparent. The parties that have actively worked on language are almost in agreement.

FPL has only one continuing concern. It believes Staff has gone beyond the Commission's intent in a few subsections. That concern is addressed with more specificity in the following comments.

To ease the Hearing Officer's burden of comparing multiple drafts, we have limited our comments to three documents: revisions proposed by the Staff in Exhibit 2; revisions proposed by Staff in their June 29, 2000 revision, a copy of which is attached; and Exhibit 3, written comments and documents presented at the hearing.

Staff's Suggested Revisions

Exhibit 2

At the hearing Staff proposed several changes to the rule draft proposed by the Commission in Order No. PSC-00-0832-NOR-EI. These changes were introduced as Exhibit 2. Most of Staff's proposed changes were made in response to comments offered by the parties prior to the hearing.

For the most part, FPL agrees with and endorses the amendments to the proposed rule suggested by the Staff on Exhibit 2. In particular, agrees with the additional language suggested by the Staff for Rule 25-6.135(3)(a). See, Exhibit 2, p. 3, lines 12-18. FPL also agrees to the addition of the phrase "or market price" to the second and third sentences of Rule 25-6.135(3)(b). See, Ex. 2, p. 3, 1 23. Incremental cost should be the floor for a charge less than not only fully allocated cost but also market price.

However, FPL believes that Staff's proposed changes to the third sentence of Rule 25-6.135(3)(b) and sixth sentence of Rule 25-6.135(d)(d) of adding the language, "show that the transaction would have otherwise been forgone," should not be made for at least four reasons.

First, this language in both of these sentences change the sentences from mere notice provisions to requirements that the utility has to make an affirmative showing. This is inconsistent with what the Commission decided at the Agenda Conference where the rule was

proposed. There the Commission clearly stated it wanted a notice provision. They declined there to adopt Staff's suggestion that the utility be required to provide more than notice. This alternative has been previously considered and rejected by the Commission. (Exhibit 5.)

Second, the demonstration required by this language is not necessary. There is already the requirement in the preceding sentences of both rules that the utility maintain documentation to support and justify that this type of transaction "benefits regulated operations." This is a redundant requirement that is more demanding of utilities. Once again, the Commission has already stated that it is satisfied with the requirement that the utility maintain documentation to show benefits to regulated operations. Staff's recommendation goes beyond and is redundant to the protection the Commission has already found to be appropriate.

Third, the standard proposed by Staff - showing that a transaction would have been foregone - places the utility of having to prove a negative. It does not have to justify what it did, as contemplated by the Commission. It has to prove what would not have happened if a transaction which has occurred had not occurred.

Fourth, Staff's additional requirement contemplates but does not address how or when the utility would make an affirmative showing. This is much more costly to utilities. This is an unnecessary and unwarranted expense. It is not needed because the rule already requires the utility to maintain documentation. It is unwarranted because the Commission has already agreed that all that is necessary to protect customers is notice, not an affirmative showing.

Staff's June 2000 Revisions

In response to comments made at the hearing, Staff forwarded on June 29, 2000, another revision of the proposed rule. In that draft Staff offered comments to the proposed rules with which, for the most part, FPL agrees.

FPL disagrees, however, with the addition of the phrase "and that the transaction would have otherwise been foregone" in Rule 25-6.135(3)(b) and (d). (Staff's June 29, 2000 version at page 4, lines 1-2; page 4, line 25 - page 5, line 1; and page 5, lines 7 and 8.) Staff has simply moved the objectionable language from Exhibit 2 and placed it in a different sentence. The language does relieve utilities from a costly affirmative showing, but several problems remain.

First, the Commission has previously declined to require more than a notice and a documentation that a transaction benefits regulated operations. How a utility documents the benefits should be left to the utility, as the Commission originally envisioned.

Second, documenting that the transaction would have otherwise been foregone is not necessary if the utility is already documenting a benefit to regulated operations. The rule as proposed adequately protected customers without this addition.

Third, the standard requires the proof of a negative - something that would not have happened if what actually happened had not occurred. This will be difficult to document, and it is unnecessary if there is documentation that regulated operations benefit.

Exhibit 3

At the hearing the Refrigeration and Air Condition Contractors Association, Inc. (RACCA) and the Florida Independent Electrical Contractors (IEC) submitted Exhibit 3, although their representative acknowledged that the proposed rule does not impose any requirements on the members of those associations. Tr. 26-27. Given the associations' lack of legal interest in this proceeding, this exhibit should be disregarded, but since the Hearing Officer allowed post hearing comments on Exhibit 3 (Tr. 27), FPL offers the following observations.

Exhibit 3 really does not address the proposed rule. It offers no amendments to the proposed rule and the scope of the comments goes beyond the scope of the docket. There is legislative language proposed. Such language goes beyond the scope of the rule being proposed as well as the Commission's existing statutory authority. To be implemented, it would have to be passed by the Legislature, not the Commission. Exhibit 3 should be disregarded.

Conclusion

We are close to a consensus among the parties who have actively worked on the proposed rule amendments. This speaks well of the entire process. FPL's only continuing concern is being held to a documentation that requires FPL to prove a negative - that if what actually happened had not happened, then a transaction would not have happened at all. This is an unnecessary requirement because the utility must nonetheless document that a transaction benefits regulated operations.