

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (King) *ak*
Division of Economics (DiPietro, Higgins) *SMC*
WON *QSH*

RE: Docket No. 20180230-GU – Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company.

AGENDA: 02/05/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/26/19 (date by which the petition must be ruled upon pursuant to Section 120.542, F.S.)

SPECIAL INSTRUCTIONS: None

Case Background

On December 26, 2018, Florida Public Utilities Company (FPUC) filed a petition to temporarily waive Rule 25-7.045(4)(a), Florida Administrative Code (F.A.C.).¹ The rule requires natural gas distribution utilities to file a depreciation study at least once every five years. FPUC's next study was due January 14, 2019. FPUC is requesting that it be permitted to submit its study no later than March 4, 2019. It also requests that subsequent due dates be based on the March filing date.

Notice of FPUC's petition was published in the January 4, 2019, edition of the Florida Administrative Register, Vol. 45, No. 3, as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the petition within the 14-day comment period provided by Rule

¹ FPUC cites paragraph (8)(a) of Rule 25-7.045, F.A.C., but that paragraph no longer exists. It was renumbered as paragraph (4)(a) when the rule was amended in 2016.

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28-104.003, F.A.C. In accordance with section 120.542(8), F.S., the petition is deemed approved if the Commission does not approve or deny it by March 26, 2019.

The Commission has jurisdiction under Sections 120.542, 350.115, 366.04, .05, and .06, F.S.

Discussion of Issues

Issue 1: Should the Commission grant FPUC's request for a temporary waiver from Rule 25-7.045(4)(a), F.A.C.?

Recommendation: Yes. The Commission should grant FPUC's petition and require that FPUC file its depreciation study no later than March 4, 2019. The Commission should also order that FPUC's next depreciation study will be due within five years from the date that it files its March 2019 depreciation study. (King, DiPietro)

Staff Analysis: FPUC is requesting that the Commission grant it a temporary waiver of Rule 25-7.045(4)(a), F.A.C. Pursuant to the rule, FPUC was required to file a depreciation study by January 14, 2019.

Legal Standard for Rule Waivers

Pursuant to Section 120.542(2), F.S., the Commission is required to grant waivers and variances from its rules "when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness." The section defines a "substantial hardship" as a "demonstrated economic, technological, legal, or other type of hardship."

Under Rule 25-7.045(4)(a), F.A.C., natural gas distribution utilities are required to submit a depreciation study for Commission review at least once every five years. The rule implements several statutes. Section 350.115, F.S., allows the Commission to "approve or establish adequate, fair, and reasonable depreciation rates and charges." Section 366.06(1), F.S., requires the Commission to "investigate and determine the actual legitimate costs of the property of each utility company, . . . less accrued depreciation." To accomplish these tasks, the Commission is permitted under Section 366.04(2)(f), F.S., to "prescribe and require the filing of periodic reports and other data as may be reasonably available."

FPUC's Petition

FPUC's current depreciation study was due on January 14, 2019, but it claims that preparing the study would create a substantial hardship. FPUC states that it was severely affected by Hurricane Michael, which wreaked havoc in several counties it serves in the Florida panhandle. FPUC argues that due to the effects of Hurricane Michael, its "plant accounting [personnel] have been faced with an unusually increased workload, some of which is outside the scope of their typical tasks." FPUC claims that preparing the depreciation study is a "time-consuming, difficult task" under ordinary circumstances, but marshalling its already strained resources to complete the study before the recently passed deadline under current circumstances would have resulted in an undue hardship.

FPUC also argues that the purpose of the underlying statutes will still be fulfilled should the Commission grant the waiver. FPUC will still furnish the Commission with the required data, albeit slightly delayed.

FPUC has asked that it be permitted to submit its study on or before March 4, 2019. FPUC has also requested that its next depreciation study be due within five years of the extended March 2019 filing date.

Conclusion

The Commission has previously determined that staffing limitations can create substantial hardships in the timely filing of depreciation studies.² The Commission has also recently granted FPUC a waiver from the rule requiring it to send out monthly billing statements under Rule 25-6.100(1), F.A.C., based on the effects of Hurricane Michael.³ Staff believes a staffing limitation caused by Hurricane Michael constitutes a substantial hardship under the statute.

Section 366.04(2)(f), F.S., allows the Commission to require a utility to periodically file depreciation studies in order to facilitate the Commission's duty under Sections 350.115 and 366.06(1), F.S., to determine accurate depreciation costs for the utility. The short delay will not affect the Commission's ability to establish adequate, fair, and reasonable depreciation rates and charges. FPUC has not submitted any customer rate requests to the Commission on or since January 14, 2019, nor has it submitted a test year notification letter under Rule 25-7.140, F.A.C. For these reasons, the purpose of the statute will still be achieved if FPUC is granted a seven-week extension to submit its study.

Staff believes that FPUC's request to file its study on or before March 4, 2019, is reasonable and that FPUC should be granted a temporary rule waiver until this date. Moreover, the Commission should order that FPUC's next depreciation study will be due within five years from the date that it files its March 2019 depreciation study.

² Order No. PSC-02-0242-PAA-EI, issued Feb. 25, 2002, in Docket No. 011611-EI, *In Re: Petition for Waiver of Depreciation Study Filing Requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corporation.*

³ Order No. PSC-2018-0529-PAA-EI, Nov. 8, 2018, in Docket No. 20180195-EI, *In re: Petition for temporary waiver of Rule 25-6.100, F.A.C., by Florida Public Utilities Company.*

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed.

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued and this docket should be closed. (King)