

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Generic Investigation of) DOCKET NO. 910794-EQ
Proper Recovery of Purchased)
Power Capacity Cost by) ORDER NO. PSC-92-0414-FOF-EQ
Investor-Owned Electric Utilities))
_____) ISSUED: 05/27/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

CLARIFYING ORDER

BY THE COMMISSION:

On February 24, 1992, we concluded our generic investigation of the proper recovery of purchased power capacity costs by investor-owned electric utilities and issued proposed agency action Order No. 25773. The order required utilities to implement a capacity payment charge to recover demand related capacity costs that had previously been recovered through the Fuel or Oil Backout adjustment factors. The order also permitted utilities to recover capacity related purchased power costs that had not previously been recovered either through the fuel clause or through base rates.

The order said:

We will permit utilities to include capacity related purchased power costs not currently being recovered through the fuel or oil backout charges in the calculation of a capacity recover[sic] factor for contracts entered into since the utility's last rate case. Purchased power demand costs currently being recovered in base rates are to remain in base rates until the utility's next general rate case.

Order No. 25773, p. 5.

Florida Industrial Power User's Group (FIPUG) filed a Motion for Clarification of the paragraph of Order No. 25773 quoted above. FIPUG claims that that language:

might be read to mean that the capacity related costs of such long term contracts will automatically flow through the capacity cost recovery clause without the appropriate justification for such purchase by the utility, without a prudence review by this Commission, and/or without the opportunity for interested parties to challenge a particular utility purchase as unnecessary or not cost-effective.

In the alternative, if we declined to clarify the portion of Order No. 25773 FIPUG questioned, FIPUG requested a hearing on the issue of how the Commission will review the prudence of the capacity costs of long-term contracts.

Florida Power and Light Company (FPL) filed a response to FIPUG's motion in which it stated that it did not believe that Order No. 25773 could be interpreted to permit utilities to automatically pass purchased power costs through to ratepayers without Commission review. FPL went on to state, however, that it did not object to the request for clarification and it believed that the matter could be resolved without a hearing. No other utility objected to FIPUG's motion.

The Commission is obligated by statute and fundamental principles of utility regulation to allow utilities to recover from ratepayers only those expenses reasonably and prudently incurred in the provision of utility service to the public. Where there is any ambiguity in a Commission rule or order, that ambiguity must always be resolved in a manner consistent with the law. Thus the paragraph in question in Order No. 25773 could never be interpreted to allow automatic recovery of purchased power costs without a review of the reasonableness of those costs.

It was certainly the Commission's intent to make the costs associated with purchased power subject to a prudence review before they are recovered from utilities' ratepayers through the newly established capacity cost recovery factor.

It does no harm to the substantive decisions we made in Order 25773 to confirm that all purchased capacity costs are subject to a review of their reasonableness and therefore we issue the following clarification. In Order No. 25773 we fully intended that all capacity related purchased power costs for which recovery is sought under the capacity cost recovery factor be subject to a review of their reasonableness and prudence in the same manner as other costs recovered through the fuel adjustment clause. It is therefore,

ORDERED that Order 25773 is hereby clarified in the manner set forth above. It is further

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ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 27th
day of May, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

MCB:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.