

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 070001-EI
ORDER NO. PSC-07-0330-FOF-EI
ISSUED: April 16, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER GRANTING MOTION FOR CLARIFICATION;
AND DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

In its filing seeking cost recovery through the fuel and purchased power cost recovery clause during the pendency of Docket No. 060001-EI, Florida Power and Light Company (FPL) included costs associated with purchased power which it incurred during an extended outage of its Turkey Point Unit 3. The extended outage was due to the discovery of a drilled hole in the pressurized piping at the nuclear plant. The Office of Public Counsel (OPC) challenged FPL's recovery of those expenses and raised the following issue:

With respect to the outage extension at Turkey Point Unit 3 which was caused by a drilled hole in the pressurized piping, should customers of FPL be responsible for the additional fuel cost incurred as a result of the extension?

This issue was identified as Issue 16G during the prehearing process, but never included in the prehearing order.

Rather, at the prehearing conference on October 23, 2006, FPL argued and the Prehearing Officer agreed that Issue 16G be postponed until 2007 when a full evidentiary proceeding could be held.¹ At the November 2006 fuel hearing, FPL requested that it be allowed to collect its expenses associated with the outage, subject to refund. OPC argued that the refund should be recovered, if at all, after the 2007 evidentiary hearing. The Commission ruled: "the additional fuel cost incurred as a result of the outage extension at Turkey Point Unit 3 in March and April 2006 of \$6,163,000 shall be recovered by FPL in 2007, subject to refund with interest, with a prudence review by us in a subsequent fuel proceeding."² In so ruling, we incorrectly characterized OPC's argument as "OPC urged the Commission to disallow the costs associated

¹ Order No. PSC-06-0920-PHO-EI, issued November 2, 2006, in Docket No. 060001-EI, page 58.

² Order No. PSC-06-1057-FOF-EI, issued December 22, 2006, in Docket No. 060001-EI, page 8.

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with the outage and if the Commission were to later deem them prudent, FPL could collect the costs (including interest) from ratepayers in 2008.”³

OPC filed a timely Motion for Clarification and Reconsideration concerning the timing of the cost recovery for the extended outage, and also filed a Request for Oral Argument. OPC urges us to clarify Order No. PSC-06-1057-FOF-EI to acknowledge that we will not be limited in our review of Issue 16G during the 2007 fuel proceeding to a prudence standard. Rather OPC would like us to consider whether FPL’s rates are fair, just, and reasonable if those rates include the costs of an extended outage at Turkey Point Unit 3. OPC also urges us to reconsider our ruling allowing FPL’s recovery in 2007 of the costs associated with the outage extension. FPL responded in opposition to OPC’s motion.

We have jurisdiction pursuant to Sections 366.041, 366.05 and 366.06, Florida Statutes.

Clarification of Order No. PSC-06-1057-FOF-EI

OPC’s Position

OPC argues that Order No. PSC-06-1057-FOF-EI, by using the word “prudence,” limits the scope of our review of Issue 16G. OPC argues that its Issue 16G was much broader than a prudence review. According to OPC, the scope of review for the recoverability of fuel charges for the extended outage at Turkey Point Unit 3 is whether it is “fair, just and reasonable”⁴ to require ratepayers to bear the burden of the extended outage at Turkey Point Unit 3. OPC states that even if we determine FPL was not imprudent, it still would not be fair, just or reasonable, under the facts of this case, to require FPL’s rate payers to bear the costs of the extended outage. The risk, according to OPC, should be born by the shareholders and not the rate payers.

OPC urges that no party to the proceeding argued that we should limit the scope of our review of Issue 16G, nor did we discuss or decide anything about limiting the scope of the issue. Accordingly, OPC argues that Order No. PSC-06-1057-FOF-EI should be clarified to allow Issue 16G, as raised by OPC, to be heard by us in our 2007 fuel hearings, without limiting the scope of our review to a standard of prudence.

FPL’s Position

FPL argues that we did determine the scope of review of Issue 16G in Order No. PSC-06-1057-FOF-EI. FPL states that the Motion for Clarification is actually a Motion for Reconsideration since we specifically referred to “prudence review” at least five times in our ordering paragraph. FPL argues that OPC’s motion should be treated as a Motion for Reconsideration, and that OPC failed to meet the appropriate standard of review for reconsideration.⁵ FPL argues that we considered the arguments of both parties and determined

³ Id.

⁴ Sections 366.05, and 366.06, Florida Statutes.

⁵ Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981).

that the standard of review for the upcoming 2007 fuel hearing on Issue 16G is whether or not FPL acted prudently.

Analysis

The question to be determined is did we have Issue 16G before us at the time of our bench decision on November 8, 2006? If we did, then the final order does not need to be clarified because we intentionally limited our scope of review of the recoverability of costs associated with the outage at Turkey Point Unit 3 to a prudence review. If the issue was not before us, the order should be clarified to reflect that Issue 16G will be heard in the 2007 fuel proceedings. A review of the transcripts indicates that Issue 16G was not before us and there is a need to clarify Order No. PSC-06-1057-FOF-EI to the extent it could be read to limit the scope of our review of Issue 16G during the 2007 fuel proceeding.

During the prehearing conference, FPL asked that Issue 16G be deferred to a later date. The prehearing officer concurred, finding that “The Commission must make decisions based upon facts presented in the record. Because there are limited facts available to the Commission until the criminal investigation is complete, it is appropriate to defer the hearing on this issue until next year’s fuel hearing.”⁶ The prehearing officer further stated in his order, “[t]he question of *the timing of cost recovery*, if any is permitted, can be addressed by the Commission through Issues 2, 3, 5, 6 and 8.”⁷ (emphasis added).

When asked for its recommendation on FPL’s request to recover costs associated with the extended outage, our staff responded “staff recommends that the amount of money that is at question in this case be allowed to be recovered and be placed into the factors for 2007. We think that’s much more consistent with Commission history and the precedent that has been set in previous cases before this Commission. We think that the question of whether or not these costs are prudent or not cannot be factually determined until a later time, but we believe that certainly these costs are going to be subject to a true-up, *whether it’s put into rates now or put into rates later is the only thing that is in question.*” (emphasis added).

When making the motion to approve staff’s recommendation, Commissioner Deason stated: “So, I would agree with staff’s recommendation that more consistent with past policy would be to go ahead and to allow the recovery. There will be a full and complete investigation, and apparently there’s going to be an investigation into a number of issues that are probably even beyond the jurisdiction of this Commission, and hopefully to some extent we may have the benefit of that at some point in the future. So I guess that’s the long way of saying that I agree with staff’s recommendation, and if there are no other questions I would move approval of staff’s recommendation.”

Upon consideration, we find that our motion and vote was to allow FPL to recover the costs incurred for the extended outage of Turkey Point Unit 3, subject to refund with interest. We made no pronouncement concerning the scope of our review during the 2007 fuel

⁶ Order No. PSC-06-0920-PHO-EI, page 58.

⁷ Id.

proceeding. Therefore, we did not intend to limit the scope of our review of Issue 16G to a prudency review only. The motion for clarification is granted and Issue 16G will be heard without limitation in the 2007 fuel proceeding.

Motion for Reconsideration

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and 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. Sherwood v. State, 111 So.2d 96 (Fla. 3rd DCA 1959) citing State ex. rel. Jaytex Realty Co. v. Green, 105 So.2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315, 317 (Fla. 1974).

OPC's Motion

OPC cites Florida Power Corporation v. Cresse, 413 So. 2d 1187 (1982), as supporting its position that we should not allow FPL to collect for the outage subject to refund. Rather, according to OPC, it is the burden of the utility to prove prudence prior to collecting costs through the fuel adjustment clause. Because FPL did not meet its burden, OPC asserts, FPL should not be permitted to recover the costs associated with the extended outage at Turkey Point Unit 3.

FPL's Response

FPL argues that we considered Cresse in our determination to allow recovery subject to refund. According to FPL, OPC made the same argument in the November 2006 fuel hearing. FPL states that OPC pointed to nothing that we overlooked or failed to consider in our evaluation. OPC raised no new law or fact in its motion for reconsideration and, therefore, the motion for reconsideration should be denied.

Analysis

Under the applicable standard, OPC's motion does not identify a point of fact or law which was overlooked or which we failed to consider when rendering our order. In its motion for reconsideration, OPC argues that we erred and made a mistake of law by not following the precedent set-forth in Cresse. Specifically, OPC argues that a simple showing that extra costs were incurred as a result of the outage extension does not satisfy FPL's burden of proof to seek a refund from its customers. Moreover, argues OPC, we should not presume that customers will be responsible for damages resulting from someone drilling a hole in the pressurized piping at FPL's nuclear plant because the law does not presume that customers will be responsible.

OPC's arguments are the same arguments made during our fuel clause hearing on November 22, 2006. At the hearing, we denied OPC's request and allowed FPL to recover the monies spent pending the outcome of the 2007 fuel proceeding. We reviewed the relevant cases and orders, we listened to both sides as OPC and FPL presented their respective arguments, and we made an informed decision, which we found to be in the best interest of FPL's customers. Therefore, OPC's motion for reconsideration is denied because OPC did not identify a point of fact or law in its motion that was overlooked or which we failed to consider in rendering our Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the motion for clarification is granted as discussed above. It is further

ORDERED that the motion for reconsideration is denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 16th day of April, 2007.



ANN COLE
Commission Clerk

(S E A L)

LCB

NOTICE OF 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 the Commission's final action in this matter may request 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 by filing a notice of appeal with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.