

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 080001-EI
ORDER NO. PSC-08-0316-PAA-EI
ISSUED: May 14, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER CLARIFYING ORDER NO. PSC-02-1484-FOF-EI, THE HEDGING ORDER,
ISSUED OCTOBER 30, 2002, IN DOCKET NO. 011605-EI

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On January 31, 2008, Florida Power & Light Company (FPL or the Company) filed a petition requesting that we approve FPL's proposed volatility mitigation mechanism, or VMM, as an alternative to FPL's financial and physical fuel price hedging programs. The current hedging policy is embodied in Order No. PSC-02-1484-FOF-EI (the Hedging Order), issued October 30, 2002, in Docket No. 011605-EI, In re: Review of investor-owned electric utilities' risk management policies and procedures, which approved a settlement by the parties to that docket.¹ If we do not approve the VMM as proposed, FPL requests two changes to the current hedging approach; (1) reduce the uncertainty associated with the current hedging program by approving a set of general and specific hedging guidelines, and (2) require Commission staff to conduct reviews of hedging results monthly.

FPL also requested the Commission to convene a workshop on its VMM proposal at the earliest opportunity in the interest of obtaining stakeholder consensus that would minimize the risk of a protest to proposed agency action approving the VMM. Our staff conducted a

¹ Florida Power & Light Company, Tampa Electric Company, Florida Power Corporation (now Progress Energy Florida, Inc.), Gulf Power Company, Office of Public Counsel, and Florida Industrial Power Users Group were parties to the docket and entered into the stipulation that was approved by the Hedging Order.

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workshop on March 11, 2008. All parties to the 2002 settlement attended and participated. Data requests were issued prior to the workshop, not only to FPL but to all parties to the 2002 hedging settlement. Additional data requests were issued to FPL after the workshop. All parties responded to the data requests in a timely fashion.

Our staff initiated two separate audits of the four largest investor-owned utilities' (IOUs) hedging programs following the conclusion of our 2007 fuel adjustment hearing, but prior to FPL's filing of its petition on the VMM. At the request of the Division of Economic Regulation (ECR), the Division of Competitive Markets and Enforcement (CMP) is conducting a hedging review which involves an assessment of FPL, Progress Energy Florida, Inc, Tampa Electric Company, and Gulf Power Company's fuel hedging program costs and benefits realized since the issuance of the Hedging Order. Also at the request of ECR, the Division of Regulatory Compliance and Consumer Assistance (RCA) is conducting an audit of the accounting treatment and results of each of the aforementioned utilities' 2007 hedging activities for consistency with the 2007 hedging plans filed by each IOU in 2006. The RCA audit is scheduled to be completed by May 7, 2008, and the CMP review is scheduled to be completed by June 30, 2008.

As a result of the responses to the data requests and informal meetings, our staff recommended that the original Hedging Order be clarified to require each of the four largest IOUs to file a Hedging Information Report by August 15 of each year detailing its hedging transactions during the months of January through July of that year. The Hedging Information Report should provide the same hedging information identified through July of the actual/estimated year (i.e. the current year) as is required for the final true-up year (i.e. the prior year) per Section 5 of the "Proposed Resolution of Issues" of the Hedging Order. This August 15 Hedging Information Report is in addition to the report filed in April for the final true-up year. By making this clarification to the Hedging Order, the information on each IOU's hedging results through July of the current year would be available to us for a prudence review at our November fuel cost recovery clause proceeding.

Our staff also recommended that we deny FPL's petition and alternative position, in part because it would be premature to make a decision prior to our review of the results of the audits by our RCA and CMP staff. FPL concurred with our staff that a Commission decision on FPL's petition would be premature. By letter, FPL requested that we defer any decision on its petition until later in the year. FPL suggested that we hold a workshop to consider improvements to our hedging process.

We have jurisdiction pursuant to Sections 366.04, 366.041, and 366.05, Florida Statutes.

Discussion

At our November 2007 fuel hearing, we determined that the prudence of current year hedging results would be considered at the November 2008 fuel hearing. FPL indicates in its petition that the deferral of the prudence determination of current year hedging results to a later fuel hearing represents an increase in the Company's regulatory risk and is one of the primary reasons for the Company's petition requesting the VMM. According to FPL, if the VMM were approved, FPL's regulatory risk would be reduced because the Company's hedging activities

would be eliminated. FPL's alternative proposal includes a request that we revise our hedging procedure so that we would be in a position to make a finding of prudence regarding hedging transactions for the twelve months ending September 30 of the current year. FPL contends that its alternative proposal would also reduce FPL's regulatory risk.

The Hedging Order authorized the four largest IOUs to develop and implement physical and financial hedging programs. This was done via a settlement known as a Proposed Resolution of Issues approved by the Hedging Order. According to the Hedging Order, "[t]he Proposed Resolution of Issues provides a framework and a direction for parties and the Commission to follow with respect to risk management for fuel procurement.... [I]n addition, it maintains flexibility for each IOU to create the type of risk management program for fuel procurement that it finds most appropriate, while allowing the Commission to retain the discretion to evaluate, and the parties the opportunity to address, the prudence of such programs at the appropriate time." See Hedging Order, Page 2 (emphasis added). It is the meaning of "appropriate time" that we now clarify.

The Hedging Order is unclear regarding the period of time to be included in hedging prudence reviews. The Hedging Order states that "[we] will review the prudence of IOUs' hedging transactions, including financial transactions, as part of [our] annual fuel and purchased power cost recovery proceedings. Prudence shall be determined under established legal standards." Again, it does not state with specificity the time period for which prudence will be established.

A review of prior fuel proceedings further illustrates the need to clarify the Hedging Order. Since the Hedging Order was issued in 2002, the timing of prudence reviews of hedging transactions has been variable. In the 2003 and 2007 fuel hearings, the timing of the prudence reviews was through December 31 of the prior year (2002 and 2006, respectively). The timing of the prudence reviews in the 2004 and 2005 hearings was not specifically addressed in any issue for the IOUs, except for Gulf in 2005, when its actions were found to be prudent through September 30 of that year. In the 2006 fuel hearing, the IOUs were found to have adequately mitigated price risk through September 1, 2006.

The Hedging Order requires prior year hedging information filed in April as part of each utility's final true-up testimony. Notably, the Hedging Order does not require utility filing of current year hedging information. The type of hedging information required to be filed for the prior year is identified in Section 5 of the "Proposed Resolution of Issues." The required hedging information includes volumes of fuel actually hedged using a fixed price contract or instrument, the types of hedging instruments the utility used, the volume and type of fuel associated with each hedging instrument, the average period of the hedge, and the actual total costs of hedging for each hedging instrument. This is the basic hedging information that allows our staff and parties to the fuel docket to initiate a prudence review.

The Hedging Order states that "[t]he Proposed Resolution of Issues appears to remove disincentives that may currently exist for IOUs to engage in hedging transactions that may create customer benefits by providing a cost recovery mechanism for prudently incurred hedging costs, gains and losses, and incremental operating and maintenance expenses associated with new and

expanded hedging programs.” Upon review, we find that deferring prudence determinations of hedging losses to a following year’s fuel proceeding may create a disincentive for utilities to engage in hedging. Current year hedging information shall be required to be filed in the fuel cost recovery clause for the purpose of allowing the IOUs to prove the prudence of their current year hedging transactions. This process will facilitate our prudence reviews and remove, at least in part, the aforementioned disincentive to hedge. Our staff will conduct reviews of the information filed and present its findings to us for a prudence determination at the annual fuel cost recovery hearing.

As stated above, our staff is currently conducting two comprehensive audits of the hedging programs. The reports from these audits are due in May and June of this year. The audits will examine transaction costs, 2003-2008 program performance, cost allocations, and hedging policies in other states. Upon completion of the hedging audits, our staff will assess the results, consider possible revisions to the currently stipulated hedging policy, and advise us accordingly. In a letter to the Commission, FPL agreed that a decision on its petition was premature because we are currently conducting these financial and management audits. FPL requested that we defer a decision on its petition until after the audits have been completed and reviewed. In addition, FPL suggested that we conduct a workshop with all the parties to address the necessity of further guidelines to the Hedging Order.

Decision

Upon consideration of the foregoing, we believe a clarification to the Hedging Order is appropriate. As written, the Hedging Order does not specify timing of the review of hedging results. We clarify the Hedging Order to allow for prudence reviews through July 31 of the current year. To facilitate this review, the four largest IOUs shall file current year hedging results by August 15th. The Hedging Information Report shall provide the same hedging information identified through July of the actual/estimated year (i.e. the current year) as is required for the final true-up year (i.e. the prior year) per Section 5 of the “Proposed Resolution of Issues” of the Hedging Order. These reports are in addition to the final year true-up reports required by the Hedging Order. We find that our clarification of the Hedging Order will, in part, address FPL’s concern regarding regulatory risk.

We defer our decision on FPL’s proposals as contained in its petition to a later Agenda Conference. We direct our staff to conduct an informal workshop in this docket to consider improvements to the existing hedging process. We defer our decision on FPL’s proposal so that the hedging audits currently underway may be completed and reviewed, and so that we may have the benefit of information gathered at the informal workshop.

Based on the foregoing, it is

ORDERED that the Hedging Order, Order No. PSC-02-1484-FOF-EI, issued October 30, 2002, in Docket No. 011605-EI, In re: Review of investor-owned electric utilities’ risk management policies and procedures, is clarified to require the four largest investor-owned utilities to file a Hedging Information Report by August 15 of each year, detailing their current year hedging transactions during the months of January through July of that current year. The

Hedging Information Report shall contain information as more specifically set forth in the body of this Order. It is further

ORDERED that the Hedging Order, Order No. PSC-02-1484-FOF-EI is reaffirmed in all other aspects. It is further

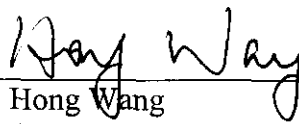
ORDERED that our staff conduct an informal workshop with the parties to this docket to consider improvements to our existing hedging process. It is further

ORDERED that this docket is an active and continuing docket and shall remain open. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto.

By ORDER of the Florida Public Service Commission this 14th day of May, 2008.

ANN COLE
Commission Clerk

By: 

Hong Wang
Office of Commission Clerk

(S E A L)

LCB

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 4, 2008.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.