

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company for approval of "Tax Savings" refund for 1988.) DOCKET NO. 890319-EI
) ORDER NO. 24660-A
) ISSUED: 9/12/91

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER
MICHAEL MCK. WILSON

AMENDATORY ORDER DENYING RECONSIDERATION

BY THE COMMISSION:

This Order shall supersede Order No. 24660, which is hereby withdrawn and which shall have no further force and effect. Our purpose in issuing this amendatory order is to accurately reflect the vote of Commissioners Easley, Gunter, and Wilson which took place at agenda conference on May 21, 1991.

This docket has a long and procedurally complex prehearing history. An extensive final hearing was held in this docket beginning on May 7, 1990. On August 24, 1990, Commission staff filed a final recommendation herein. A special agenda conference was held on September 7, 1990, during which we voted on the issues presented in prehearing Order No. 22891. The final order was issued on November 7, 1990. Thereafter, on November 26, 1990, Florida Power & Light Company filed a motion for reconsideration of Order No. 23727, to which the Office of Public Counsel responded on December 10, 1990. The utility's request for oral argument was denied in Order No. 24060, issued on February 4, 1991.

In its motion for reconsideration, FPL requested that we reconsider the parts of Order No. 23727 which set forth our decision on Issues 1, 2, 50 and 51 as set forth in Order No. 22891. We hereby deny the motion for the reasons set forth below.

Issues 1 and 2

Burden of Proof

FPL requested reconsideration of that part of Order No. 23737 which set forth the Commission's decision on Issues 1 and 2:

DOCUMENT NUMBER-DATE

09075 SEP 12 1991

FPSC-RECORDS/REPORTING

Consistent with our recent decision in Docket No. 890324-EI, Gulf Power Company's 1988 tax savings docket, we find that FPL's O&M expenses may be adjusted under Rule 24-14.003,

F.A.C. We further find that the utility has the burden of proof herein, and must establish a prima facie case that its expenses are reasonable, utility-related, and prudently incurred.

Order No. 23727 at 3.

FPL argued that this portion of the order fails to recognize the context in which the issues arose and were addressed by the parties in this proceeding, fails to recognize the consequences of deciding Issues 1 and 2 as stated, does not accurately reflect the Commission's vote at the agenda conference on these issues, and does not describe the intervenors' burden of proof in proceedings before the Commission. After consideration of the arguments raised in FPL's motion, we will not reconsider and expand our decision on Issues 1 and 2 as requested by FPL. Order No. 23727 accurately and succinctly reflects our vote on the issues. We therefore adhere to the original language of Order No. 23727 as set forth above.

O&M Benchmark

FPL also argued that the order must be modified because it incorrectly states that our action is "consistent with" its decision in Gulf Power Company's 1988 tax savings docket. According to FPL, no adjustments to FPL's expenses were made to reflect application of an O&M benchmark, but Gulf's expenses were so adjusted, and therefore the portion of Order No. 23727 which describes the decisions as consistent is incorrect. FPL points to our decision to delete reference to "application of the O&M benchmark" in Issue 1 as further proof of inconsistency. We believe that the order correctly describes our decisions.

As set forth in staff's January 24, 1991 recommendation on Gulf's motion for reconsideration in its tax savings docket, which we approved on February 5, 1991, expense disallowances did not reflect "application of an O&M benchmark" as claimed by FPL herein. Rather, the expenses were disallowed because Gulf did not meet its burden of proof. We adjusted per books O&M expenses in both dockets. Similarly, in both dockets the O&M benchmark level was used as a cut-off point, below which the utility was generally not required to meet its burden of proving that claimed expenses were reasonable, utility-related, and prudently incurred. In neither docket did we deny recovery of an expense simply because it was

above the benchmark level. We therefore disagree with FPL that our resolution of the issues in controversy in this proceeding is not consistent with our decision in Gulf's case.

Issues 50 and 51

In its motion for reconsideration, FPL relied in part upon an internal Commission memorandum and factual assertions not contained in the record of the proceedings herein to bolster its assertion that we improperly disallowed certain sales expenses. Because they are not included in the record, we have not considered the memorandum or factual assertions in connection with the motion.

Rule 25-17.001(2), Florida Administrative Code, sets forth the Commission's policy with regard to conservation goals and related matters:

(2) The Florida Energy Efficiency and Conservation Act [FEECA] requires increasing the efficiency of the electric and natural gas systems of Florida and the end use of these sources of energy by reducing weather sensitive peak demand, oil consumption and kilowatt hour consumption to the extent cost effective.

The rule refers to Section 366.80 et seq. Florida Statutes. Section 366.81 sets forth the legislative intent of the act, which is, in part, reduction and control of electric consumption:

Reduction in, and control of, the growth rates of electric consumption and of weather-sensitive peak demand are of particular importance.

That section also states that the act should be liberally construed:

The Legislature further finds and declares that ss. 366.80 - 366.85 and 403.519 are to be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption and reducing the growth rates of weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; encouraging further development of cogeneration

facilities; and conserving expensive resources, particularly petroleum fuels.

FPL's witness, Mr. J.T. Petillo, admitted that the sales programs in question, which involve promotion of increased use of electricity for night lighting, increased FPL's fuel consumption:

Any sales program, any program that addresses increased sales, would cause us to burn more fuel, yes.

[T. 879] His testimony also indicated that the programs increase off-peak kWh consumption.

Public Counsel's witness, Mr. Hugh Larkin, testified that the sales programs in question are contrary to the provisions of FEECA:

...such utility activities, which promote the additional use of electricity, whether on-peak or off-peak, are contrary to the provisions of the Florida Energy Efficiency and Conservation Act. Therefore, I am of the opinion that O&M benchmark excess is unjustified and should be disallowed.

[T. 1123]

Mr. Larkin testified that the utility did not justify the expenses in question. It is difficult to see how FPL could show the prudence of expenditures which were incurred in pursuit of policies contrary to the specific intent of statutory law. The programs increase, rather than reduce, kilowatt hour and fuel consumption. We therefore find the disallowance of these sales expenses justified on the grounds that FPL has failed to meet its burden of proof to show that these expenses were necessarily and prudently incurred in the provision of utility service.

After considering the arguments raised by FPL in its motion for reconsideration, we decline to grant reconsideration.

It is therefore

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's motion for reconsideration is denied.

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By ORDER of the Florida Public Service Commission, this 12th
day of SEPTEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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FPLRECON.MER

by: Kay Higon
Chief, Bureau of Records

NOTICE OF 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 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.