

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the rates and charges) DOCKET NO. 900038-EI
of Florida Power & Light Company.) ORDER NO. 22762
) ISSUED: 4-3-90
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

ORDER REQUIRING THE FILING OF
MINIMUM FILING REQUIREMENTS AND
HOLDING MONEY SUBJECT TO REFUND

BY THE COMMISSION:

On January 18, 1990, Commission Staff filed a recommendation that this body make the following findings: that a prima facie showing had been made that Florida Power & Light Company's (FPL) rates were unfair, unjust and unreasonable; that FPL should be required to hold \$56,754,000 subject to refund pending a review by the Commission of its rates and charges; that FPL be required to file a complete set of Minimum Filing Requirements (MFRs) using 1990 as the projected test year and that FPL be relieved of the requirement to file Modified Minimum Filing Requirements (MMFRs) contingent upon the filing of MFRs.

Pursuant to Section 366.06(2), Florida Statutes, when the Commission, upon a request made, or on its own motion, finds that the rates being charged by an electric utility "yield excessive compensation for services rendered", it "shall order and hold a public hearing . . . and shall thereafter determine just and reasonable rates to be thereafter charged." In the past, the Commission has taken such action when a prima facie case has been made that a utility is overearning, i.e., earning in excess of the top of the range of either its last allowed rate of return or of its last stipulated rate of return. In re: Request by Occidental Chemical Corporation for

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reduction of retail electric service rates charged by Florida Power Corporation (Occidental), 87 FPSC 6:36, 38; Order No. 17649, issued on June 3, 1987, at 2-3.

Such a finding has been made when data contained in Rate of Return Reports filed with this body has been adjusted for excess deferred income tax expense and current income tax expense related to the lowering of the federal income tax rates, by using a lower cost of equity than that approved in the utility's last rate case, by imputing revenues associated with sales growth which exceeded that forecast in the utility's last rate case, by the reduction of operation and maintenance expenses (O&M) in excess of the Commission's benchmark and by reductions to certain rate base items. 87 FPSC 6 at 37-38; In re: Investigation into United Telephone Company of Florida's authorized return on equity and earnings, Order No. 22205, issued on November 21, 1989 (Docket No. 891239-TL).

In the instant case, our Staff has made adjustments to annualize the increase in the nuclear decommissioning accrual which was effective on January 1, 1989, to reverse the amount of the revenue reduction booked for a potential refund of tax savings for 1989, to exclude the accumulated deferred costs associated with the Martin Reservoir and the Turkey Point steam generator repairs, to remove \$56,827,000 of operation and maintenance expenses of the \$238,655,000 in excess of the O&M benchmark calculation and to reduce the midpoint of the return on equity to 12.8% in accord with our decision in Docket No. 890319-EI.

Having reviewed these adjustments, we find that all are reasonable with the exception of the O&M benchmark adjustment. The appropriate adjustment is not the \$56,827,000 recommended by Staff, but rather \$30,288,000. Using the adjustments listed above and a \$30,288,000 O&M adjustment, the achieved return on equity of FPL is calculated to be 13.97%. The range of rate of return approved for FPL in Docket No. 890319-EI is 12.3% to 13.3%. Thus, FPL is currently overearning by .67% (or 67 basis points) annually.

Based upon this calculation, we find that a prima facie showing has been made that FPL is charging rates which result in excessive compensation. Having made this finding, we will require FPL to file a complete set of MFRs using 1990 as the

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test year by August 1, 1990. Pursuant to Section 366.06(4), Florida Statutes, we are required to take final agency action in a rate proceeding which we initiate within 12 months of the date upon which the order initiating the proceeding is issued. The August 1, 1990 filing date set above is conditioned upon FPL's agreement to extend this 12-month final agency action deadline by 60 days. Therefore, no later than 14 months of the date upon which this order is issued we will have conducted a full revenue requirements hearing and have rendered decisions on the appropriate rate of return, net operating income, rate base, and capital structure for FPL.

We note here that pursuant to recently enacted Section 366.06(3)(a), Florida Statutes, and Order No. 21840, issued on September 6, 1989, FPL is required to file MMFRs by March 30, 1990. The procedure contemplated by the statute and Order No. 21840 is a review of the data filed to determine if a rate review proceeding should be initiated. Since we are hereby initiating a full revenue requirements rate case, we find that FPL is relieved of its requirement to file MMFRs contingent upon the filing of a complete set of MFRs on or before August 1, 1990.

Having found that a prima facie case has been made, we further find that the estimated overearnings of FPL should be held subject to refund pursuant to Sections 366.06(2) and 366.06(4), Florida Statutes. We have consistently held that Section 366.071, Florida Statutes, (Interim Statute) is not the sole means of setting interim rates, but that Section 366.06(4) could be used for interim purposes where a compelling reason for its use could be demonstrated. In re: Petition of Gulf Power Company for an increase in its rates and charges, 84 FPSC 7:37, 38; Order No. 13494 at 1-2; In re: Petition of Gulf Power Company for a rate increase, Order No. 20603, issued on January 13, 1989, at 2-3.

Likewise, the Florida Supreme Court has upheld the award of interim rates under this section's predecessor, Section 366.06(3), Florida Statutes (1982), in Citizens v. PSC, 425 So.2d 534 (Fla. 1982). In accord, is United Telephone Co. v. Mann (United), 403 So.2d 962 (Fla. 1981), where the Court affirmed a Commission "reverse make whole" (rate reduction) proceeding where rates in excess of the last allowed rate of return were ordered collected subject to refund. Both of these Supreme Court cases were decided after July 1, 1980, the

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date upon which interim statutes were enacted for each respective industry.

We find several compelling reasons in this instance which would support the use of Sections 366.06(2) and (4) to hold money subject to refund. The most significant reason is the fact that it has been approximately five and one half years since FPL has had a full requirements rate case. This period of time has been one of unprecedented change in the electric utility industry and this change, as one would expect, has had a dramatic impact on FPL in numerous areas regulated by this body. Since FPL's last rate case, we have approved the represcription of depreciation rates for this utility, approved a new depreciation treatment for the nuclear decommissioning of certain of FPL's assets and approved the provision of new customer services, e.g., interruptible, CILC, and standby rates. In addition, federal tax rates have decreased, the equity market has changed, FPL has fully recovered its investment in oil-backout plant, FPL has changed its treatment of employee pension plans, FPL has added new plant capacity at the St. Johns River Power Park, and FPL has made extensive repairs to its Martin County plant site. Any one of these events has a significant impact on the regulatory posture of FPL; taken together they provide the compelling reason for the use of Section 366.06 to set money subject to refund.

We note here that we have taken similar action regarding United Telephone Company of Florida in In re: Investigation into United Telephone Company of Florida's authorized return on equity and earnings (United Telephone), Order No. 22377, issued on January 8, 1990 (Docket No. 891239-TL). As in this instance, no rate reduction was ordered but moneys computed to be in excess of the low end of the authorized rate of return were held subject to refund with interest pursuant to Section 364.14, Florida Statutes. Section 364.14 is the telephone equivalent of Sections 366.06(2) and (4). Order No. 22377 at 3-7. Also in accord with our decision in the United Telephone case, there will be no rate reduction made at this time pending the conclusion of the full rate proceeding. FPL's existing rates will continue to be collected subject to refund. The revenues held subject to refund in this order will be secured by a corporate undertaking with interest computed in accordance with the methodology found in Rule 25-6.109, Florida Administrative Code.

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Therefore, it is


ORDERED by the Florida Public Service Commission that a prima facie showing has been made that Florida Power & Light Company is earning excess annual revenues of approximately \$26,470,000. It is further

ORDERED that \$26,470,000 in annual revenues shall be held by Florida Power & Light Company subject to refund during the pendency of this rate review proceeding. Such refund will be subject to a corporate undertaking with interest calculated pursuant to Rule 25-6.109, Florida Administrative Code. It is further

ORDERED that Florida Power & Light Company is hereby required to file a complete set of Minimum Filing Requirements, using projected 1990 as the test year, on or before August 1, 1990 conditioned upon the agreement of Florida Power & Light Company to extend the 12 month final agency action decision requirement of Section 366.06(4), Florida Statutes, for an additional 60 days as discussed in the body of this order. It is further

ORDERED that Florida Power & Light Company is hereby relieved of the requirement to file Modified Minimum Filing Requirements on March 30, 1990 contingent upon its filing a full set of Minimum Filing Requirements on August 1, 1990.

By Order of the Florida Public Service Commission
 this 3rd day of April, 1990.


 STEVE TRIBBLE, Director
 Division of Records and Reporting

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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

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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.