

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost	)	DOCKET NO. 910001-EI
Recovery Clause and Generating	)	
Performance Incentive Factor	)	ORDER NO. 24088
_____	)	ISSUED: 2/8/91

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
THOMAS M. BEARD

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

The Office of Public Counsel moved for reconsideration of several parts of the Commission's ruling in Order No. 23232, issued on July 20, 1990 in Docket No. 900001-EI:

- A. the Commission's factual conclusion that Florida Power & Light Company ("FPL") could reasonably have been expected to take its Turkey Point nuclear generating unit No. 3 off line on April 1, 1989 even if it had not done so on March 29, 1989;
- B. the Commission's decision to reduce the utility's recovery of replacement fuel costs by less than the amount actually incurred because part of the outage time period was included in a period in which the utility was penalized for not meeting its Generating Performance Target;
- C. the Commission's rejection of certain proposed findings of fact and conclusions of law.

In its motion, Public Counsel reargued factual issues which were fully considered by the Commission and which were resolved contrary to the position taken by Public Counsel. The motion fails to state a proper ground for reconsideration in that it fails to point out any matter of fact or law which the Commission failed to consider or overlooked and does not assert a mistake or

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misapprehension which, if viewed correctly, would have led the Commission to reach a different result. It must therefore be denied. Each of the above grounds will be separately discussed.

A. Factual Conclusion Regarding Turkey Point Unit 3 Down Time

Public Counsel argued that contrary to the conclusion reached by the Commission, Turkey Point Unit 3 would not have been removed from service on April 1, 1989, even if it had not been shut down on March 29. The motion merely restates Public Counsel's earlier arguments in this cause. The record evidence related to this issue is complex and detailed. Public Counsel ably argued this point in its post-hearing brief. The purpose of a motion for reconsideration is to point out some matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. 1 DCA 1981). It is not an appropriate avenue for rehashing stale arguments which have already been fully considered by the Commission.

B. Reduction of Replacement Fuel Costs

In its primary recommendation on the issue of replacement fuel cost recovery for the 1989 Turkey Point outages, Commission Staff recommended that FPL recover all such costs because the utility "went beyond what is required for safety and should not be further penalized. (The Company has already been penalized \$2,774,583 pursuant to the Commission's Generating Performance [Incentive] Factor.)" Alternatively, Staff recommended that replacement fuel costs in the amount of \$656,100 be disallowed for the period March 29, 1989 through April 1, 1989. We determined that neither approach was appropriate. Instead, we determined that FPL should recover all replacement fuel costs except for the March 29 - April 1 period, which would be treated separately. The time period from March 29 through March 31 was included in a Generating Performance Incentive Factor ("GPIF") performance period in which the utility had already been penalized because it did not meet its generating performance target (in part due to the outage in question). We determined that only replacement fuel costs for the remaining time should be disallowed.

Public Counsel argued that the failure to disallow all of the utility's replacement fuel costs for the March 29 - April 1 period (which it characterizes as a GPIF adjustment) constitutes "a nonrule policy decision, inconsistent with precedent, that is

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devoid of record support." Public Counsel is correct that no rule specifically provides for offsetting a replacement fuel cost disallowance with a GPIF penalty. However, we do not agree with Public Counsel's characterization of the disallowance process as a GPIF adjustment. We determined that some amount of management imprudence led to a portion of Unit 3's outage. Having made this decision, we next considered the appropriate remedy, and determined it was appropriate to disallow only a portion of the replacement fuel costs from the outage period March 29 - April 1. Public Counsel has asserted no ground which would justify reconsideration on this matter.

C. Rejection of Certain Proposed Findings of Fact and Conclusions of Law

Public Counsel's next argued that the Commission erroneously rejected certain proposed findings of fact and conclusions of law. Proposed finding of fact No. 3 concerned whether the outage at Turkey Point Unit 3 that began on March 29, 1989 was avoidable. Public Counsel contended that the outage was avoidable and urged the Commission to so find.

In Order No. 23232 we noted that the use of the word "avoidable" during cross-examination of FPL's witness, Mr. Hays, was ambiguous and required interpretation or definition in the context in which it was used. Mr. Hays was asked in pertinent part, "Was the outage that began on March 29, 1989, unavoidable?" He answered that, "Well under the circumstances that existed at the time no, I don't believe it was." Tr. 123. Mr. Hays explained later that the circumstances surrounding the requalification process made it hard for FPL to predict and react effectively to the enhanced training requirements of the new examination format, Tr. 83, 171-176 (Hays). This is not consistent with a finding that the outage was avoidable in the sense of having been imprudent as contended by Public Counsel. Due to the ambiguity in the record, our finding that the term avoidable required further definition was correct. We properly rejected Public Counsel's simplistic assertion that the March 29, 1989 outage was avoidable.

In its proposed finding of fact No. 10 Public Counsel contended that FPL did not establish the date on which the April 21, 1989 verbal restart authorization from the Nuclear Regulatory Commission ("NRC") was effective. This proposed finding was rejected as being conclusory, but as FPL pointed out in its response to Public Counsel's motion, it is also contrary to the

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only evidence of record on the subject. Mr. Hays testified that FPL was obligated for three weeks not to restart the Turkey Point nuclear units as a result of FPL's commitment to the NRC. Since the commitment to the NRC was made on March 29, 1989, Mr. Hays' testimony is consistent with the position that authority to restart was effective April 21, 1989. It is not consistent with Public Counsel's contention that authorization was not effective until the NRC's May 4, 1989 confirmatory letter.

In its proposed finding of fact No. 14 Public Counsel contended that FPL never reported to the NRC or this Commission any reasons for the March 29, 1989 - May 5, 1989 outage other than the requalification examination failures. This proposed finding was rejected on the grounds that while there is no evidence of any prior report by FPL, there was testimony in the record that there was a planned outage for Unit 3 beginning April 1, 1989. The testimony itself, submitted in this docket, constitutes a report of the reasons for the March 29, 1989-May 5, 1989 outage. In any event, as FPL correctly pointed out in its response to Public Counsel's motion, this proposed finding is irrelevant to the Commission's decision in this docket.

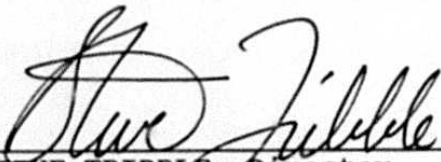
In its proposed finding No. 24 Public Counsel asserted that FPL did not present sufficient evidence to conclude that Unit 3 would have been taken off line on April 1, 1989. We rejected this finding, stating that it constitutes, to some extent, a conclusion of law rather than a finding of fact. In its response to Public Counsel's motion, FPL argued that proposed finding No. 24 should be rejected because it is patently wrong. There is ample evidentiary basis for rejecting this finding (Tr. 142-43, 204-5, Hays). The Commission is certainly entitled to weigh the evidence, and find that Mr. Hays' testimony as to the rescheduling is sufficient evidence. We could, even in the absence of any prior plan to take the unit down, allow the replacement fuel costs because the utility performed prudent and necessary repairs when it was down. It is thus clear that with regard to proposed finding No. 24, Public Counsel failed to demonstrate any mistake or misapprehension that, it viewed correctly, would have led us to reach a different result. As such, Public Counsel has asserted no legitimate basis for reconsideration on this issue.

It is therefore

ORDERED by the Florida Public Service Commission that the motion for reconsideration of Order No. 23232 is hereby denied.

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By ORDER of the Florida Public Service Commission, this 8th  
day of FEBRUARY, 1991.

  
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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 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.