

## 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. 24108
	)	
	)	ISSUED: 2/14/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 BETTY EASLEY  
 FRANK S. MESSERSMITH

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

In its prehearing statement filed in advance of the February 1989 hearing in this docket, Public Counsel raised an issue regarding the reasonableness and appropriateness of including overhead and return on equity costs incurred by Electric Fuels Corporation ("EFC") in the price of coal charged to Florida Power Corporation's ("FPC's") ratepayers. The issue was deferred pending Commission decision on the establishment of a market pricing methodology in Docket No. 860001-EI-G, Phase I. Public Counsel then restated the issue in its prehearing statement for the August 1989 hearing. On July 31, 1990, Commission staff presented a recommendation to the Commission regarding the issue as well as proposed findings of fact and conclusions of law identified by Public Counsel. Our decision on staff's recommendation is reflected in Order No. 23439 issued September 5, 1990. On September 20, 1990, Public Counsel filed a request for oral argument and a motion for reconsideration of Order No. 23439, specifically requesting reconsideration of our rejection of Public Counsel's proposed findings of fact numbers 5 - 8, 11, and 16 - 18. The motion fails to establish a point which we overlooked or failed to consider when we rendered Order No. 23439, and we therefore deny the motion. The following discussion identifies each finding of fact and our reason for rejection of that fact.

5. The EFC/FPC coal supply and delivery agreements do not expressly define cost nor do they provide criteria for FPC to monitor and evaluate the reasonableness of the cost of coal delivered to FPC. (T. 79)

We reject this finding. This fact was taken out of context. Although FPC's witness, Mr. Wieland, agreed that the express language of the contract had not been amended to spell out in great detail how the billing was

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to be done, he further stated that FPC had very detailed procedures that outline the process. (T. 79)

Public Counsel argued that we failed to rule explicitly on the proposed finding of fact. Although Public Counsel may not agree with our explanation of the ruling, the statement, "We reject this finding", is an explicit ruling.

6. A 1985 contract compliance report prepared by FPC's internal audit department states that the contracts (between FPC and EFC) have not established criteria for FPC to monitor and evaluate the reasonableness of the cost of coal delivered. FPC has not introduced any evidence in this proceeding upon which the Commission can conclude that the statement is not also true today. (T. 78-79).

We reject this finding. Although Mr. Wieland acknowledged that the statement was contained in the internal audit report, he stated it was his belief the statement was an interpretation made by the auditors at the time. He stated procedures were in place that detailed how computations were to be made. Although he did not have a copy of the procedures with him, he offered to file them with the Commission if they hadn't already been filed. His offer was ignored. (T. 78-80).

Public Counsel argued that if FPC's procedures were relevant to the issue but not introduced, then FPC must not have offered evidence on the subject. However, Mr. Wieland testified under oath that procedures were in place that detailed how computations were to be made. The inclusion of his testimony is evidence that criteria have been established for FPC to monitor and evaluate the reasonableness of the cost of coal delivered.

7. The contract compliance report prepared by FPC's internal audit department states that "without these criteria, either within the contract or elsewhere, FPC does not have a basis for analyzing coal costs to address the PSC's guidelines." FPC has not introduced any evidence in this proceeding upon which the Commission can conclude that the statement is not also true today (T. 80-81).

We reject this finding. Mr. Wieland agreed that the statement was contained in the internal audit report. He stated that it was an opinion expressed by the auditors and that procedures had been developed by FPC. Mr. Wieland offered to file those procedures with the Commission but his offer was ignored. (T. 80)

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8. The contract compliance report prepared by FPC's internal audit department stated that "FPC relies on EFC's representations regarding the reasonableness of coal costs." FPC has not introduced any evidence in this proceeding upon which the Commission could conclude that the statement is not also true today.

We reject this finding. Mr. Wieland agreed with Mr. Howe's representation of the statement contained in the audit report. Mr. Wieland disagreed that nothing had been done since 1985. He stated that there were some very specific measures that were taken as a result of the audit. He stated that policies and procedures were jointly developed by EFC and FPC's Fuels and Special Projects department (T. 81-83).

Again, Public Counsel argued that no evidence was presented to refute the contract compliance audit findings or the fact that conditions as stated in the report were not true today. However, Mr. Wieland's testimony clearly stated that policies and procedures had been developed and implemented. Therefore, Public Counsel's assertion that the compliance report statements are still true today has been refuted by evidence presented by FPC.

11. The total amount of actual equity capital invested in EFC by or for FPC is \$9.6 million (T. 107).

We reject this finding. FPC's witness, Mr. Heinicka, agreed that, through 1986, the actual amount of equity invested in EFC by or for FPC is \$9.6 million (T. 107).

Public Counsel asserted that there is no evidence in the record that the amount of equity capital invested in EFC by or for FPC is anything other than \$9.6 million. The proposed finding states, without qualification, that \$9.6 million is the total investment of equity capital in EFC. However, the question posed by Public Counsel during the hearing specifically excluded retained earnings. Therefore, the total amount of equity capital invested, including equity capital in the form of retained earnings, is not \$9.6 million.

16. In 1986, EFC collected \$659,000 from FPC for income tax expense over and above its actual total tax liability for that year. This \$659,000 is an additional profit to EFC shareholders from FPC over the then current allowed profit of 15.55% on equity (T. 156, 160).

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17. For the calendar year 1985, EFC's liability on a total company stand-alone basis was (\$64,000). For that same year FPC paid EFC \$989,000 for income taxes as a part of the cost of coal. This was additional profit to EFC's (and FPC's) shareholders in the amount of \$1,053,000 in excess of the authorized equity return (T. 166).

We reject proposed findings number sixteen and seventeen. Because EFC calculates the income taxes associated with FPC business on a stand-alone basis without regard to the non-utility business, the amount of taxes billed to FPC is correct. There is no additional profit to EFC shareholders. This was done so that the Florida Power ratepayers are unaffected whatsoever by what happens in the non-Florida Power business. Mr. Heinicka further stated if the non-Florida Power business showed a profit, Florida Power would not pay more than its calculated income tax liability from utility business. (T. 157, 161).

In its motion, Public Counsel offered no additional information that would lead us to believe this finding of fact should be accepted. We believe that our stated reason for rejecting this finding of fact is correct and sufficient.

18. EFC's actual total profit from supplying coal to FPC substantially exceeds the authorized equity return specified in the EFC/FPC coal supply and delivery agreements. These additional profits result from EFC's self dealings with FPC through EFC's coal suppliers, transportation and transloading companies, etc., plus additional charges at the EFC level for income taxes that will never be payable or paid to the IRS (T. 133-34, 159, 160, 166).

We reject this finding. This finding of fact reaches a conclusion based on the proposed findings of fact that we rejected. In addition, the authorized return only applies to FPC equity investment, not the return of other affiliated companies whose equity was provided by others.

Public Counsel argued that we did not respond to the proposed finding. However, as stated above, our response was a specific rejection.

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It is therefore

ORDERED by the Florida Public Service Commission that Public Counsel's motion for reconsideration of Order No. 23439 is hereby denied.

By ORDER of the Florida Public Service Commission, this 14th  
day of FEBRUARY, 1991.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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.