

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power Corporation to Recover Lost Revenues associated with Demand Side Management Programs)	DOCKET NO. 910955-EG
)	ORDER NO. 25560
)	ISSUED: 01/02/92
)	
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY

ORDER DENYING MOTION FOR INTERIM APPROVAL
AND DISMISSING PETITION

BY THE COMMISSION:

Florida Power Corporation (FPC) filed a petition on September 13, 1991 requesting approval of a mechanism to recover lost revenues associated with demand side management programs in order to qualify for sulfur dioxide emissions allowances under the Clean Air Act of 1990. On October 7, 1991 FPC filed a Motion For Interim Approval and Abeyance Of Proceeding. The Motion requests the Commission grant interim approval for the recovery of lost revenues associated with demand side management programs for purposes of qualifying for additional sulfur dioxide (SO₂) emission allowances under the Clean Air Act of 1990. An allowance entitles the holder to emit one ton of SO₂. FPC requested a January 1, 1992 effective date, with final approval subject to the outcome of the Commission's rule making on demand side management incentives in Docket No. 900834-EI, and to hold in abeyance any further action in this proceeding until the conclusion of that docket.

The Clean Air Act Amendments of 1990 authorizes SO₂ emission allowances which are available to electric utilities. The Department of Energy (DOE) will appoint an Administrator, who in conjunction with the Secretary of Energy will promulgate regulations identifying eligible conservation measures and renewable energy sources which may qualify for additional SO₂ allowances. The accrual period of eligible conservation program savings is between January 1, 1992 and December 31, 2000. Beginning on January 1, 1995 the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances over a ten year period, equivalent to 30,000 per year, allocated on a first-come-first-serve-basis.

DOCUMENT NUMBER-DATE

00011 JAN-2 1992

FPSC-RECORDS/REPORTING

ORDER NO. 25560
DOCKET NO. 910955-EG
PAGE 2

In order for utilities to qualify for these allowances, several important criteria must be met. One is that an electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy and renewable energy resources, in order to meet expected future demand at the lowest system cost. In its initial petition, FPC references its Integrated Resource Study filed in its most recent need determination docket; its most recent Annual Planning Hearing study; its most recent 10 year site plan; and its energy efficiency and conservation programs filing on February 12, 1990 as evidence it has implemented a least cost energy plan. Electric utilities subject to the jurisdiction of a State regulatory authority must receive approval of this least cost plan.

A second criteria is that the electric utility has established rates and charges which ensure that the net income of the electric utility after implementation of specific cost effective energy conservation measures is at least as high as it would have been absent implementation of these measures. In other words, rates must recover lost revenues due to increased conservation between rate cases. This is the subject of Docket No. 910834-EI (the so-called "economic incentive" rule).

A third criteria is that FPC must comply with as yet unpromulgated regulations of the Department of Energy implementing the amendments to the Clean Air Act. The draft version of these rules has a proposed effective date of January 1, 1993.

On October 7, 1991 the Office of Public Counsel (OPC) filed a Motion To Dismiss FPC's petition on the grounds that the petition is insufficient and deficient on its face as it does not establish a basis for the Commission to grant relief. OPC cites Commission Rule 25-22.036(7), Florida Administrative Code, "an initial pleading should contain a concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief..." OPC believes that FPC has failed to provide the basis for relief under Florida law or Commission rule.

OPC believes that FPC has not alleged any set of facts entitling them to Commission consideration of their petition. Specifically, OPC states that FPC has failed to establish how immediate action on its petition can benefit ratepayers, that hasty and cursory review will harm ratepayers if the Commission approves a scheme that does not comport with DOE regulations. OPC also questions the existence of lost revenues due to demand side management programs in a service territory which forecasts increasing energy sales due to increased population growth and increased energy consumption by residential and commercial customers.

ORDER NO. 25560
DOCKET NO. 910955-EG
PAGE 3

On October 21, 1991 FPC filed a Response In Opposition To Public Counsel's Motion To Dismiss. FPC's response does not cite any statute, rule or order of the Commission, or reported case supporting the commission's authority to consider the Petition. FPC states the Petition was prompted by timing concerns regarding the opportunity to secure additional benefits from the adoption of a lost revenue recovery mechanism prior to the April 4, 1992 Special Agenda for Docket No. 900834-EI. FPC's primary concern is to capture eligibility of a four month (January 1, 1992 - April 28, 1992) accrual period to earn additional emission allowances. Presumably, after the April 28, 1992 date, the Commission will have reached a final decision in the economic incentive proceeding which will address the criteria for net income neutrality.

Florida Power Corporation asks that the Commission "capture jurisdiction" as of January 1, 1992 over the lost revenues associated with its Demand Side Management programs to qualify for the emission allowances which may be available under the act. This action would necessarily require the Commission at some point in the future to "go back" to January 1, 1992 and make a determination of the dollar amount of lost revenues associated with the not yet approved demand side management programs. To meet the requirements of the act, the Commission would have to authorize the utility to retroactively collect this amount from the ratepayers. This is in contravention of Section 366.06 and 366.07, Florida Statutes. Section 366.06(2) states in pertinent part "...the commission shall order and hold a public hearing, giving notice to the public and to the public utility, and shall **thereafter** determine just and reasonable rates to be **thereafter** charged for such service..." (emphasis added). Accordingly, the Motion for Interim Approval and Abeyance of Proceeding should be denied.

Florida Power Corporation has failed to comply with Rule 25-22.036 (7), F.A.C. in that the Petition fails to indicate what statutes or rules of the Commission entitle it to the requested relief. Further, assuming all the well pled facts of the petition to be true, the legal framework for deciding the issues presented is still being developed.

FPC's Petition asks the Commission to "...issue an order, on or before December 31, 1991, approving the lost revenue recovery mechanism ... and determining that the Company's least cost planning methodology complies with the Clean Air Act criteria..." In its response to Public Counsel's Motion, FPC makes numerous factual allegations, but does not speak to the issue of what authority entitles it to the requested relief. Therefore, the Petition is deficient on its face. Any "lost revenue recovery mechanism" would have to comply with the rule being proposed in Docket No. 910834-EI. This rule will not be final until sometime in mid 1992. In its subsequent Motion for Interim Approval and

ORDER NO. 25560
DOCKET NO. 910955-EG
PAGE 4

Abeyance, the company did recede from its request, asking the Commission to defer further action in this proceeding until the conclusion of the rule making docket. The "clean air act criteria" referred to by the company are still being formulated in the Federal rule making proceeding. Hence, any approval of the company's "least cost plan" by the Commission is subject to compliance with as yet unknown guidelines. Since the only other requested action; ie. capturing jurisdiction over the lost revenues associated with Demand Side Management programs; is not within the Commission's authority, no Commission action on the Petition is possible. Accordingly, the Petition should be dismissed.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Interim Approval and Abeyance of Proceeding is DENIED. It is further

ORDERED that the Motion to Dismiss the Petition to Recover Lost Revenues associated with Demand Side Management Programs Is GRANTED. It is further

ORDERED that this docket shall be CLOSED.

By ORDER of the Florida Public Service Commission, this 2nd day of JANUARY, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RVE

ORDER NO. 25560
DOCKET NO. 910955-EG
PAGE 5

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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.