

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Recovery of Capacity ) DOCKET NO. 920887-EI  
Costs Associated with Florida ) ORDER NO. PSC-92-1145-PHO-EI  
Power and Light Company's St. ) ISSUED: 10/07/92  
John's River Power Park Contract )  
\_\_\_\_\_ )

Pursuant to Notice, a Prehearing Conference was held on October 5, 1992 in Tallahassee, Florida, before Commissioner Betty Easley, Prehearing Officer.

APPEARANCES:

MATTHEW M. CHILDS, Esquire, Steel Hector & Davis, 215 South Monroe, Suite 601, Tallahassee, Florida 32301-1804  
On behalf of Florida Power & Light Company.

JOHN W. MCWHIRTER, JR., McWhirter, Grandoff and Reeves, Post Office Box 3350, Tampa, Florida 33601, VICKI GORDON KAUFMAN, McWhirter, Grandoff and Reeves, 522 East Park Avenue, Suite 200, Tallahassee, Florida 32301  
On behalf of the Florida Industrial Power Users Group (FIPUG)

MARTHA CARTER BROWN, Esquire, 101 E. Gaines St., Tallahassee, Florida 32399-0863  
On behalf of the Staff of the Florida Public Service Commission.

PRENTICE P. PRUITT, Esquire, Office of the General Counsel, 101 East Gaines Street, Tallahassee, Florida, 32399-0861  
Counsel to the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

This matter was originally set to be heard at the Commission's August fuel hearing, but was removed to a separate docket with a separate hearing to allow more time to consider the case. Pursuant to Order No. PSC-92-0988-PCO-EI, the Order on Procedure in this case, a hearing is set for October 9, 1992 to resolve all relevant issues regarding Florida Power and Light Company's recovery of the capacity costs associated with its St. John's River Power Park contract.

DOCUMENT NUMBER-DATE

11715 OCT -7 1992

F-PSC-RECORDS/REPORTING

## II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not

subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

### III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

### IV. ORDER OF WITNESSES

The witness schedule is set forth below in order of appearance by the witness' name, subject matter, and the issues that will be covered by that witness' testimony.

Witnesses whose names are preceded by an asterisk have been excused. The parties have stipulated that the testimony of those witnesses will be inserted into the record as though read, and cross-examination will be waived.

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues #</u>
<u>Direct Testimony</u>		
<u>FPL</u>		
B. T. BIRKETT (STIPULATED)	Capacity factor calculation	1
S. S. WATERS (STIPULATED)	Prudence of capacity costs associated with SJRPP and the Blount Island Facility	1
K. M. DAVIS	Appropriateness for recovery through the Capacity Cost Recovery Clause	1
<u>FIPUG</u>		
Jeffrey Pollock	Inappropriateness of allowing recovery of St. Johns River Power Park capacity payments through capacity cost recovery clause	1
<u>STAFF</u>		
G. John E. Slemkewicz	Inappropriateness of recovery of St. Johns River Power Park capacity payments in both base rates and the capacity cost recovery clause	1
<u>Rebuttal Testimony</u>		
<u>FPL</u>		
K. M. Davis	Rebuts the testimony of G. John E. Slemkewicz and Jeffrey Pollock	

V. BASIC POSITIONS

FLORIDA POWER & LIGHT COMPANY (FPL):

The SJRPP capacity costs are reasonable and prudent. They were initiated in 1987, well after FPL's last rate case, and have never been authorized for recovery in base rates by the Commission. As a result, the SJRPP capacity costs meet the criteria established in Order Nos. 25773 and PSC-92-0414-FOF-EQ and FPL should be permitted to include them in its Capacity Cost Recovery Factor.

FLORIDA INDUSTRIAL POWER USERS GROUP (FIPUG):

FPL should not be permitted to include the St. Johns River Power Park (SJRPP) capacity payments in the capacity cost recovery clause because those costs have already been included in FPL's base rates in the 1988 tax savings refund docket. (Docket No. 890319-EI). Additionally these costs were factored into the Commission's consideration of FPL's MFR filing in Docket No. 900038-EI.

STAFF:

It is not appropriate to include Florida Power and Light Company's St. John's River Power Park (SJRPP) capacity charges in the capacity cost recovery clause. It would be double recovery if FPL were allowed to include the SJRPP capacity costs in the clause. SJRPP capacity costs were included in the tax savings calculation in FPL's tax savings docket. The 1988 tax savings refund would have increased from \$38,221,633 to \$103,430,238 if the SJRPP capacity costs were excluded from the calculation. The Commission ordered a permanent rate reduction for FPL in the tax savings docket and that reduction was based on the tax savings refund, adjusted for several items of expense.

VI. ISSUES AND POSITIONS

ISSUE 1: Are the capacity payments associated with St. Johns River Power Park (SJRPP) appropriate for recovery through the Capacity Cost Recovery Clause, as provided in Order No. 25773 and clarified in Order No. PSC-92-0414-FOF-EQ.

FPL: Yes. In Order No. 25773 the Commission expressed the criteria to be applied in identifying those purchase power capacity payments that would be recovered through the capacity cost recovery clause in addition to those previously included by authorization of Order No. 24840, stating:

We will permit utilities to include capacity related purchase power costs not currently being recovered through the fuel or oil backout charges in the calculation of a capacity recovery factor for contracts entered into since the utility's last rate case. Purchased power demand costs currently being recovered in base rates are to remain in base rates until the utility's next general rate case.

FPL makes capacity payments to JEA pursuant to a contract to purchase a portion of the St. John's River Power Park (SJRPP). FPL commenced its capacity payments to JEA for this capacity in 1987 which is after FPL's last full requirements rate case as referred to in Order No. 25773. The Commission has not authorized the recovery of these capacity payments through base rates or through any recovery clause mechanism. Therefore, the capacity payments to JEA for which FPL now seeks recovery satisfy the criteria for recovery stated by the Commission in Order No. 25773. Additionally, Order No. 25773 observed that FPL "currently has such a situation in its long term contract with Jacksonville Electric Authority" and, that FPL is not recovering the demand related portion of its payments to JEA "because the contract was initiated since their last rate case."

FPL wishes to point out that just as in the prior tax savings refund dockets, the rate reduction to reflect tax savings in Docket No. 890319-EI did consider FPL's estimated overall earned rate of return and assumed that with the rate reduction to reflect tax savings FPL's overall earned rate of return would be adequate. That conclusion does not mean that the SJRPP capacity costs were authorized for recovery in base rates.

In authorizing the current recovery of capacity payments in Order No. 25773, the Commission did not propose the application of an earnings test and certainly did not propose the type of retrospective earnings test the staff now suggests. Obviously, if considered relevant, the application of an earnings test in connection with the authorization to recover capacity payments can affect the result. Order No. 25773 did not contemplate such an earnings test application and FPL relied on Order No. 25773 in making its request to recover the capacity payments for SJRPP through the Capacity Cost Recovery Clause. (Davis)

The purchase of power equivalent to 30% of the capacity

of the SJRPP, which commenced in 1987, is a reasonable, prudent and necessary expense which benefits FPL's customers. On this basis, the capacity related expenses associated with this power purchase should be recovered through the capacity recovery factor approved by this Commission in Order No. 25733. (Waters)

**FIPUG:** No. FPL's base rates have already been adjusted to account for these capacity costs. In docket No. 890319-EI (1988 tax savings), FPL included the SJRPP capacity costs in its operating expenses and thus the refund FPL gave to customers was lower than it would have been had those costs been excluded. The Commission also included those costs in its base rates in its MFR filing in Docket No. 900038-EI. Thus, these costs are included in FPL's base rates and are not appropriate for recovery through the capacity cost recovery clause.

**STAFF:** No. SJRPP capacity costs of \$63,975,761 are currently included in FPL's base rates. If FPL is permitted to recover the SJRPP capacity costs through the clause, it would be recovering those costs twice.

VII. EXHIBIT LIST

Exhibit numbers for the hearing will be assigned at the start of the hearing.

<u>Witness</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct Testimony</u>		
<u>FPL</u>		
B. T. BIRKETT (STIPULATED)	<u>(BTB-1)</u>	Calculation of factors
S. S. WATERS (STIPULATED)	<u>(SSW-1)</u>	SJRPP Cost comparisons
<u>FIPUG</u>		
Jeffrey Pollock	<u>(JP-1)</u>	Qualifications

Jeffry Pollock	_____	Refund Computation in Docket No. 890139-EI
	(JP-2)	
Jeffry Pollock	_____	SJRPP Purchased Power Capacity Costs in MFR
	(JP-3)	
Jeffry Pollock	_____	Refund Assessment in Docket No. 890139-EI
	(JP-4)	

STAFF

G. John E. Slemkewicz	_____	FPL's Response to Staff's Interrogatory No. 1
	(GJES-1)	
G. John E. Slemkewicz	_____	FPL's Response to Staff's Interrogatory No. 2
	(GJES-2)	
G. John E. Slemkewicz	_____	FPL's Response to Staff's Interrogatory No. 3
	(GJES-3)	

Rebuttal Testimony

K. M. Davis	_____	Order No. 22334
	(KMD-1)	

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

The testimony and exhibits of B.T Birkett and S.S. Waters have been stipulated.

IX. MOTIONS

FIPUG's and FPL's Motions for Official Recognition are granted.

X. OTHER MATTERS

At the prehearing conference Florida Power and Light Company proposed a separate issue to be considered by the Commission concerning the reasonableness and prudence of the capacity payments associated with the St. John's River Power Park. The prehearing officer concluded that one issue could be framed to address all aspects of the appropriateness of FPL's recovery of those payments through the capacity cost recovery clause without separating them



into separate issues. The issue as worded above specifically contemplates the question of prudence of the capacity costs as one of the criteria that must be met to merit recovery.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that these proceedings shall be governed by this order unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 7th day of October, 1992.

  
BETTY EASLEY, Commissioner  
and Prehearing Officer

( S E A L )  
MCB:bmi

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 wastewater 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

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review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.