

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

DOCKET NO. 060001-EI

In re: Petition to recover natural gas storage project costs through fuel cost recovery clause, by Florida Power & Light Company.

DOCKET NO. 060362-EI

ORDER NO. PSC-06-0788-PCO-EI

ISSUED: September 21, 2006

ORDER CONSOLIDATING DOCKETS 060001-EI AND 060362-EI
FOR PURPOSES OF HEARING

On April 28, 2006, Florida Power & Light Company ("FPL") filed a Petition to Recover Natural Gas Storage Project Costs Through the Fuel Cost Recovery Clause ("Petition"). The Commission assigned the Petition Docket No. 060362-EI. The Petition seeks Commission approval to recover, through the fuel cost recovery ("Fuel Clause"), the costs that FPL must pay for access and use of the Gas Storage Facility that is to be built and operated by Falcon Gas Storage, Inc. ("MoBay"). FPL anticipates becoming an "anchor tenant" of MoBay in Mobile County, Alabama, where FPL would be entitled to store approximately five days of typical natural gas consumption. FPL asserts that this project would serve as a physical hedge against the risks of both price volatility and supply unavailability.

On August 3, 2006, our Staff filed its recommendation that the Commission grant the Petition with certain modifications. At the August 15, 2006 agenda conference, the Commission heard argument concerning the Petition. Several parties, including the Office of Public Counsel, the Attorney General's Office, the Florida Industrial Power Users Group, the Florida Retail Federation and the American Association of Retired Persons (AARP), objected to fuel clause recovery of some of the costs. The Commission determined that it needed more factual information and legal briefings on the issues raised during the discussion. Accordingly, the Commission moved to continue the item to a later agenda conference with directions that if the parties could not reach agreement on cost recovery, the docket be set for a future hearing. The Commission also requested that interested persons file briefs supporting their positions.

On August 29, 2006, FPL filed a Brief in Support of Petition to Recover Natural Gas Storage Project Costs and Motion to Approve Procedure for Final Decision on Petition ("Motion"). The Motion requested that the Commission hear FPL's Petition in the fuel proceeding, Docket No. 060001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. In support of its motion, FPL states that if the Commission proceeds on its present path toward making a proposed agency action (PAA) decision on the Petition at the September 19, 2006 agenda conference, it would likely be protested and proceed with a hearing process that realistically could not be completed by the end of December, 2006. FPL wishes to have a final decision by the Commission prior to December

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28, 2006, so that it may determine whether to go forward with the project or terminate the agreement.

The Petition and subsequent brief filed by FPL allege that FPL and MoBay entered into a Firm Storage Service Precedent Agreement (“Agreement”) wherein the contractual terms, pricing and termination rights are affirmed. One of the rights of termination by either party occurs if the Commission does not approve cost recovery of the project through the fuel clause by a date certain. The original date certain was May, 2006 and by mutual agreement of FPL and MoBay the date certain was extended to September 29, 2006. FPL was unsuccessful in obtaining a further extension. FPL contends that according to the terms of the Agreement, if the precedent condition does not occur before September 29, 2006, both parties have 90 days in which to decide whether to waive the condition or terminate the agreement. December 28, 2006 is the deadline by which both FPL and MoBay may consider exercising their termination rights.

The Commission will conduct its annual review of all costs recoverable through the fuel clauses for each investor owned utility in Docket No. 060001-EI. Among the many items considered each year at the fuel clause hearings are proposals by various utilities to recover project costs, as well as fuel costs. Issues involving capital expenditures and operation and maintenance expenditures have been considered and approved or denied in previous fuel hearings. FPL states that it is logical and reasonable to decide its Petition filed in Docket No. 060362-EI with Docket No. 060001-EI because the base gas costs and storage carrying costs are properly recoverable as hedging costs through the Fuel Clause. Hedging costs are an issue considered each year in the fuel docket.

Rule 28-106.108, Florida Administrative Code, states: “If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.” Docket Nos. 060001-EI and 060362-EI involve many of the same parties. The broad issue presented in Docket No. 060362-EI, recoverability of costs of natural gas storage through the fuel clause, is similar both factually and legally to the generic and specific issues of recoverability for other project costs at issue in Docket No. 060001-EI.

FPL confirms that it has contacted counsel for all parties to Docket Nos. 060001-EI and 060362-EI to determine if there were any objections to the Motion. FPL asserts that the Office of Public Counsel, Florida Industrial Power Users Group, AARP, the Federal Executive Agencies, Gulf Power Company, Progress Energy Florida and Tampa Electric Company do not object to the consolidation of Docket Nos. 060001-EI and 060362-EI. FPL has not received responses from the other parties. Staff has confirmed that Florida Retailers Federation has no objection to the dockets being consolidated. The Attorney General’s Office has not yet responded to staff, but has filed a Motion to Intervene in the fuel docket.

Upon consideration, it appears that the dockets involve similar issues of law or fact. The dockets involve many of the same parties and attorneys. As a result, holding separate hearings in these dockets will cause unnecessary duplication of time and resources, and consolidation of

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these dockets will promote the just, speedy, and inexpensive resolution of the proceedings. Accordingly, FPL's Motion is hereby granted and Docket Nos. 060001-EI and 060362-EI shall be consolidated for purposes of an evidentiary hearing only.

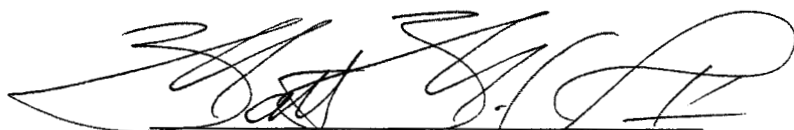
Order No. PSC-06-0207-PCO-EI, issued March 15, 2006, and subsequently amended by Order No. PSC-06-0710-PCO-EI, established the procedural schedule for Docket No. 060001-EI, and set the hearing in that docket for November 6-8, 2006. This procedural schedule shall also govern Docket No. 060362-EI. The parties to Docket No. 060362-EI, however, must file a separate preliminary statement for the issues raised in this docket, as well as a separate post-hearing brief, if no bench decision is made. The brief, if needed, must be filed no later than November 17, 2006. At the conclusion of the proceeding for both dockets, separate final orders shall be issued. As such, the controlling dates and requirements established in Order Nos. PSC-06-0207-PCO-EI and PSC-06-0710-PCO-EI are reaffirmed.

Based on the foregoing, it is

ORDERED by Commission Matthew M. Carter II, as Prehearing Officer, that Docket Nos. 060001-EI and 060362-EI are hereby consolidated for purposes of the evidentiary hearing only. It is further

ORDERED that Order No. PSC-06-0207-PCO-EI, as amended by Order No. PSC-06-0710-PCO-EI, issued in Docket No. 060001-EI on March 15, 2006, shall also govern Docket No. 060362-EI and the parties should file separate Prehearing statements for Docket No. 060362-EI.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 21st day of September, 2006.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(SEAL)

LCB/pz

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.