

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 140001-EI

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

DOCKET NO. 150001-EI
ORDER NO. PSC-16-0328-FOF-EI
ISSUED: August 11, 2016

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman
LISA POLAK EDGAR
ART GRAHAM
RONALD A. BRISÉ
JIMMY PATRONIS

ORDER VACATING ORDER NO. PSC-15-0284-FOF-EI AND DISMISSING FLORIDA
POWER & LIGHT COMPANY'S JUNE 25, 2014 PETITION

BY THE COMMISSION:

BACKGROUND

On June 25, 2014, Florida Power & Light Company (FPL) filed a petition requesting approval of FPL's proposal to acquire an interest and cost recovery for a natural reserve project (Woodford Project). In the Petition, FPL further requested that we establish guidelines by which FPL could participate in future gas reserve projects without prior approval and recover the costs.

We bifurcated FPL's request to approve the Woodford Project from the portion of the petition requesting the guidelines. The Woodford Project and guidelines request were scheduled to be heard at separate agenda conferences.

On January 12, 2015, we issued Final Order No. PSC-15-0038-FOF-EI, approving the Woodford Project (Woodford Order). Florida Industrial Power Users Group (FIPUG) and the Office of Public Counsel (OPC) appealed the Woodford Order.

On July 14, 2015, we issued Final Order No. PSC-15-0284-FOF-EI, approving modified gas reserve guidelines for FPL (Guidelines Order). OPC and FIPUG appealed the Guidelines Order. The appeals were assigned Case Nos. SC15-1515 and SC15-1517. On September 25, 2015, the Court stayed the appeals of the Guidelines Order pending its decision on the Woodford Order.

In *Citizens of the State of Florida v. Graham*, 191 So. 3d 897, 902 (Fla. 2016) (Woodford Opinion), the Court reversed the Woodford Order. The Court held that we exceeded our statutory authority when approving cost recovery of FPL's costs and investment in the Woodford Project. *Id.*

Shortly after issuing the Woodford Opinion, the Court lifted the stay of the appeals of the Guidelines Order. On June 15, 2016, the Commission, OPC, FIPUG, and FPL filed a Joint Motion to Relinquish Jurisdiction with the Court, requesting that the Court give jurisdiction back to us, so that we could vacate the Guidelines Order in accordance with the Woodford Opinion. On June 28, 2016, the Court granted the Joint Motion to Relinquish Jurisdiction and gave us 90 days to reconsider the Guidelines Order.

DISCUSSION AND CONCLUSION

In the Woodford Opinion, the Court reversed the Woodford Order, holding that we exceeded our jurisdiction when we approved the Woodford natural gas reserves project. Accordingly, the Woodford Order has no force or effect. *See, e.g., Savery v. Savery*, 870 So. 2d 920, 921 (Fla. 4th DCA 2004) (holding that when a judgment is entirely reversed by the appellate court, it is as if the judgment had never been entered).

We approved FPL's petition to establish guidelines to allow FPL to participate in future gas reserves projects before the Court issued its opinion on the Woodford Order. The basis for our jurisdiction over the Woodford Order is the same basis for our jurisdiction over the Guidelines Order. In accordance with the Woodford Opinion, the Guidelines Order is hereby vacated, and we hereby dismiss FPL's Petition because we lack jurisdiction to approve the Woodford Project and implement guidelines for future gas reserve projects similar to the Woodford Project.

Because the effect of reversal is to treat orders as if they had never been entered, *Savery*, 870 So. 2d at 921, any costs that were allowed to be recovered based on the orders will need to be removed from rates. No projects were implemented pursuant to the Guidelines Order, so there are no costs associated with the Guidelines Order that need to be removed from rates. Any costs associated with the Woodford Order that need to be removed from rates will be addressed in Docket No. 160001-EI.

Based on the foregoing, it is

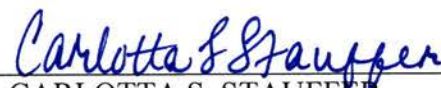
ORDERED by the Florida Public Service Commission that Order No. PSC-15-0284-FOF-EI is vacated. It is further

ORDERED that the Florida Power & Light Company's June 25, 2014 Petition is dismissed. It is further

ORDERED that Docket No. 140001-EI shall be closed. It is further

ORDERED that Docket No. 150001-EI shall remain open in litigation status because the appeals of Order No. PSC-15-0284-FOF-EI and another appeal in the docket unrelated to the Guidelines Order are still pending before the Court.

By ORDER of the Florida Public Service Commission this 11th day of August, 2016.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

AEH

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.

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, 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.