

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20190001-EI
ORDER NO. PSC-2019-0400-PCO-EI
ISSUED: October 7, 2019

ORDER ESTABLISHING ISSUES

On September 26, 2019, a noticed Status Conference was held in this docket to determine the wording of issues raised by the parties in this docket. The Office of Public Counsel (OPC) proposed issues that eliminated “appropriate” and substituted “reasonable,” “prudent,” or “correct.” Alternatively, OPC suggested that all descriptive adjectives be eliminated and the questions be posed in the form “What is the amount of _____ that should be allowed for the period _____ to _____?” OPC argued that “appropriate” was a very broad term that lacked any level of precision. The Florida Industrial Power Users Group (FIPUG) and PCS Phosphate White Springs (PCS) agreed with OPC stating that the use of the term “reasonable” was a better choice since it references the statutory language of Section 366.05(1)(a), Florida Statutes (F.S.), granting this Commission the authority to set “fair and reasonable rates and charges.”

Commission staff, Florida Power & Light Company (FPL), Florida Public Utilities Company (FPUC), Gulf Power Company (Gulf), and Tampa Electric Company (TECO) supported keeping the adjective “appropriate,” the term used in the Commission staff’s proposed issue list. These parties and Commission staff argued that this language has been consistently used for at least the last thirty years and its meaning is clearly understood by all parties to the docket. TECO and FPUC also argued that they were concerned about potential unintended consequences on established appellate rights if the language was changed. Duke Energy Florida, LLC (DEF) stated that it was indifferent regarding the proposed change in wording.

Commission staff has used “prudent” in this docket when the amount to be determined is connected with a discrete, fully complete event in which discovery is capable of being effectively conducted by all parties, i.e., Issues 1B, 1D, 2L (Bartow and St. Lucie plant outage issues) and 1A, 4A, 5A (hedging issues). Commission staff has used “reasonable” when a tariff is at issue consistent with the language used for setting rates in Section 366.05(1)(a), F.S., i.e., Issues 2K, 2N, 35. For all other issues Commission staff has used the word “appropriate.” “Appropriate” is defined as “suitable for a particular person, condition, occasion or place: proper, fitting.”¹ “Reasonable” is defined as “governed by or in accordance with reason or sound thinking.”² Staff considers “appropriate” to be the best choice in a large group of “reasonable” choices.

The fuel clause first came into existence as a regulatory tool in the mid-1970’s as a means of allowing investor-owned electric utilities (IOUs) the ability to recover and adjust fuel costs quickly to respond to the rapidly changing international fuel market created by the 1973 Oil

¹ American Heritage Dictionary, Second College Edition, 1991.

² Id.

Embargo.³ The “quid pro quo” for the recovery of fuel costs by the IOUs through a fuel clause, rather than through base rates, was the understanding that all of the costs (projected, projected/actual, and true-up/actual costs) set in the fuel clause were subject to adjustment at a later date as more information became available.⁴ As time progressed, when issues were raised concerning fuel and replacement power costs associated with specific, fully completed events the term “prudent” was used to indicate that administrative finality would attach to those amounts. All parties to this docket agree that the only time that any cost is determined to be “prudent” with administrative finality attached to that cost in the fuel docket is when “prudent” is used in the wording of the issue and the issue is ripe to be fully litigated by the parties.⁵

Unlike the Environmental Cost Recovery Clause (ECRC),⁶ the Nuclear Cost Recovery Clause (NCRC),⁷ and the Storm Protection Plan Cost Recovery Clause (SPPCRC),⁸ the Fuel Cost Recovery Clause was not created by statute but is based on the Commission’s broad regulatory authority set forth in Sections 366.05 and 366.06, F.S. Nor is there a rule that discusses the operation of the fuel clause. On the contrary, Section 120.80(13)(a), F.S., specifically states that “[a]gency statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to chapter 366, relating to public utilities, are exempt from the provisions of s. 120.54(1)(a),” i.e., rulemaking.

The fuel clause has been governed by a series of Commission orders and Florida Attorney General Opinions issued since its creation in the mid-1970’s.

In Order No. 12645, issued on November 3, 1983,⁹ the Commission stated:

The question of whether we may review the prudence of expenditures made during prior true-up periods is governed by whether the prudence regarding of [*sic*] expenditures has been adjudicated. *The issuance of a true-up order does not adjudicate the question of prudence per se.* As pointed out by staff, the true-up hearings have never been relied upon by the Commission or any other party as the point at which prudence is actually reviewed. With rare exception, prudence has not been alleged, proven nor ruled upon during those proceedings. *An actual adjudication of prudence depends on whether an allegation of prudence was made, evidence was presented thereon and a ruling made. Where an expenditure has been disputed and its prudence examined on the record, a ruling in favor of prudence should be inferred even if none is explicitly made.*

[Emphasis added.]

³ Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, *In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million.*

⁴ Order No. PSC-07-0816-FOF-EI at p. 8.

⁵ Order No. 12645, issued November 3, 1983, in Docket No. 830001-EU, *In re: Investigation of Fuel Adjustment Clauses of Electric Utilities*, at p. 9.

⁶ Section 366.8255, F.S.

⁷ Section 366.93, F.S.

⁸ Section 366.96, F.S.

⁹ Order No. 12645, at p. 10.

The standard for prudence review of amounts set in the fuel clause was further discussed in the 1984 Maxine Mine¹⁰ case where the Commission found that the prices paid by Gulf to the Alabama By-Products Corporation's Maxine Mine during 1980, 1981 and 1982 were excessive and unreasonable requiring a refund of \$2,679,088 plus interest. In response to Gulf's argument that the Maxine Mine coal costs had already been approved in past true-up orders and could not be revisited, the Commission stated as follows:

Any approach to reviewing the prudence of contract decisions must recognize the propriety of looking at past actions, otherwise the natural lag in our ability to detect procurement problems will preclude us from acting on them. An approach that limits the review of prudence to contemporaneous events fails to recognize the duty of this Commission to protect the ratepayers interest and the fact that utilities are not entitled to recover expenses imprudently incurred. On the other hand, the use of pure hindsight in assessing the prudence of past action is patently unfair. . . .*Contract administration must be viewed at a point in time which takes into consideration the facts which were known or which should have been known at the time the contract is entered into or amended.*¹¹

[Emphasis added.]

The issue of whether the Commission has the authority to revisit fuel costs previously approved in the fuel clause was also litigated by Progress Energy Florida, Inc. (PEF), the predecessor to DEF in 2007. In the PEF coal case¹² OPC argued that PEF did not burn the blend of coal Crystal River Units 4 and 5 were designed for, 50 percent Powder River Basin coal and 50 percent bituminous coal, but instead purchased only bituminous coal and synfuel from affiliated companies for the units from 1996 until 2005. OPC calculated the excess fuel cost over the period 1996 through 2005 to be \$134.5 million. Order No. PSC-07-0816-FOF-EI required a \$134.5 million refund and gives a very detailed history of both Commission and Florida Supreme Court decisions upholding the ability of the Commission to review past fuel cost decisions and the circumstances in which a decision in this docket constitutes a prudence decision to which administrative finality attaches. After this extensive discussion, the following conclusion is stated:

In fuel cost recovery proceedings we have specifically reserved for future decisions issues of prudence regarding the costs that were true-up in the fuel clause hearings. As stated in Order 12645, the fuel clause is a comparison of a utility's projected fuel costs to the costs actually expended. It is not a prudence review. *We will consider prudence of fuel expenditures when the issue is brought*

¹⁰ Order No. 13452, issued June 22, 1984, in Docket No. 820001-EU-A, *In re: Investigation of Fuel Cost Recovery Clauses of Electric Utilities (Gulf Power Company – Maxine Mine)*.

¹¹ *Id.* at p. 10.

¹² Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, *In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million.*

*to us by the parties, but the issue of prudence of particular fuel costs will only be final when we have specifically addressed the issue.*¹³

[Emphasis added.]

Having reviewed these decisions and heard argument from the parties, I am not persuaded that changing the wording of issues as OPC has suggested will, or should, change our treatment of costs set in this docket for administrative finality purposes. “Administrative,” “reasonable,” and “prudent” have been used in the fuel clause dockets for the last 30 years, with the wording of a substantial number of issues using “appropriate” in this 2019 fuel clause docket identical to the wording used at least 30 years ago. The reasons that supported the use of these adjectives then are the same today. Nothing has changed. For these reasons, I deny OPC’s request to modify the issues as stated on Attachment A to the Notice of Status Conference issued on September 20, 2019, and approve the issues as stated on Attachment 1 to this Order, which shall be used by all parties in preparing their Prehearing Statements.

Based on the foregoing, it is

ORDERED that the Office of Public Counsel’s request to change the wording of the issues in this docket to conform with that of Attachment A to the Notice of Status Conference issued on September 20, 2019, is hereby denied. It is further

ORDERED that the issues as stated on Attachment 1 to this Order are hereby approved and shall be used by all parties in their Prehearing Statements to be filed on October 1, 2019.

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 7th day of October, 2019.



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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.

SBr

¹³ Order No. PSC-07-0816-FOF-EI at p. 15.

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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.

DOCKET NO. 201900001-EI
PRELIMINARY ISSUES
SEPTEMBER 26, 2019

I. FUEL ISSUES

Duke Energy Florida, LLC.

ISSUE 1A: Should the Commission approve as prudent DEF's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in DEF's April 2019 and August 2019 hedging reports?

ISSUE 1B: Was DEF prudent in its actions and decisions leading up to and in restoring the unit to service after the February 2017 forced outage at the Bartow plant and, if not, what action should the Commission take with respect to replacement power costs?

ISSUE 1C: Has DEF made prudent adjustments, if any are needed, to account for replacement power costs associated with any impacts related to the de-rating of the Bartow plant? If adjustments are needed and have not been made, what adjustment(s) should be made?

Florida Power & Light Company

ISSUE 2A: What is the appropriate revised SoBRA factor for the 2017 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

ISSUE 2B: What is the appropriate revised SoBRA factor for the 2018 projects to reflect actual construction costs that are less than the projected costs used to develop the initial SoBRA factor?

ISSUE 2C: What is the appropriate total gain under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL may recover for the period January 2018 through December 2018, and how should that gain to be shared between FPL and customers?

ISSUE 2D: What is the appropriate amount of Incremental Optimization Costs under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for Personnel, Software, and Hardware costs for the period January 2018 through December 2018?

ISSUE 2E: What is the appropriate amount of Variable Power Plant O&M Attributable to Off-System Sales under FPL's Incentive Mechanism approved by Order No.

PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2018 through December 2018?

ISSUE 2F: What is the appropriate amount of Variable Power Plant O&M Avoided due to Economy Purchases under FPL's Incentive Mechanism approved by Order No. PSC-2016-0560-AS-EI that FPL should be allowed to recover through the fuel clause for the period January 2018 through December 2018?

ISSUE 2G: If the Commission approves the FPL Solar Together Program and Tariff, what is the appropriate total FPL SolarTogether Credit amount to be recovered through the fuel cost recovery clause for the period January 2020 through December 2020?

ISSUE 2H: Are the 2020 SoBRA projects (Hibiscus, Okeechobee, Southfork, and Echo River) proposed by FPL cost effective?

ISSUE 2I: What are the revenue requirements associated with the 2020 SoBRA projects?

ISSUE 2J: What is the appropriate base rate percentage increase to be effective when all of the 2020 SoBRA projects are in service, currently projected to be May 1, 2020?

ISSUE 2K: Should the Commission approve revised tariffs for FPL, reflecting the base rate percentage increase for the 2020 SoBRA projects, determined to be reasonable in this proceeding?

ISSUE 2L: Has FPL made prudent adjustments, if any are needed, to account for replacement costs associated with the April 2019 forced outage at Saint Lucie Unit 1 generating station? If adjustments are needed and have not been made, what adjustment(s) should be made? (DEFERRED)

ISSUE 2M: What is the appropriate base rate percentage decrease associated with the true-up of the 2017 SoBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be effective January 1, 2020?

ISSUE 2N: Should the Commission approve revised tariffs for FPL to be effective January 1, 2020, reflecting the base rate percentage decrease for the true-up of the 2017 SoBRA projects determined to be reasonable in this proceeding?

Florida Public Utilities Company

No company-specific fuel issues for Florida Public Utilities Company have been identified at this time. If such issues are identified, they shall be numbered 3A, 3B, 3C, and so forth, as appropriate.

Gulf Power Company

ISSUE 4A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2019 and August 2019 hedging reports?

Tampa Electric Company

ISSUE 5A: Should the Commission approve as prudent TECO's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in TECO's April 2019 hedging report?

ISSUE 5B What was the total gain under TECO's Optimization Mechanism approved by Order No. PSC-2017-0456-S-EI that TECO may recover for the period January 2018 through December 2018, and how should that gain be shared between TECO and customers?

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 6: What are the appropriate actual benchmark levels for calendar year 2019 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

ISSUE 7: What are the appropriate estimated benchmark levels for calendar year 2020 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

ISSUE 8: What are the appropriate final fuel adjustment true-up amounts for the period January 2018 through December 2018?

ISSUE 9: What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2019 through December 2019?

ISSUE 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2020 through December 2020?

ISSUE 11: What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2020 through December 2020?

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR (GPIF) ISSUES

Duke Energy Florida, LLC.

No company-specific GPIF issues for Duke Energy Florida, Inc. have been identified at this time. If such issues are identified, they shall be numbered 12A, 12B, 12C, and so forth, as appropriate.

Florida Power & Light Company

No company-specific GPIF issues for Florida Power and Light Company have been identified at this time. If such issues are identified, they shall be numbered 13A, 13B, 13C, and so forth, as appropriate.

Gulf Power Company

No company-specific GPIF issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 14A, 14B, 14C, and so forth, as appropriate.

Tampa Electric Company

No company-specific GPIF issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 15A, 15B, 15C, and so forth, as appropriate.

GENERIC GPIF ISSUES

ISSUE 16: What is the appropriate generation performance incentive factor (GPIF) reward or penalty for performance achieved during the period January 2018 through December 2018 for each investor-owned electric utility subject to the GPIF?

ISSUE 17: What should the GPIF targets/ranges be for the period January 2020 through December 2020 for each investor-owned electric utility subject to the GPIF?

FUEL FACTOR CALCULATION ISSUES

ISSUE 18: What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2020 through December 2020?

ISSUE 19: **What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2020 through December 2020?**

ISSUE 20: What are the appropriate levelized fuel cost recovery factors for the period January 2020 through December 2020?

ISSUE 21: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

ISSUE 22: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

II. CAPACITY ISSUES

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Duke Energy Florida, LLC.

ISSUE 23: What amount has DEF included in the capacity cost recovery clause for nuclear cost recovery?

Florida Power & Light Company

ISSUE 24A: What amount has FPL included in the capacity cost recovery clause for nuclear cost recovery?

ISSUE 24B: What is the appropriate true-up adjustment amount associated with the 2017 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2020?

ISSUE 24C: What is the appropriate true-up amount associated with the 2018 SOBRA projects approved by Order No. PSC-2018-0028-FOF-EI to be refunded through the capacity clause in 2020? (DEFERRED)

ISSUE 24D: What are the appropriate Indiantown non-fuel based revenue requirements to be recovered through the Capacity Clause pursuant to the Commission's approval of the Indiantown transaction in Docket No. 160154-EI for 2020?

Gulf Power Company

No company-specific capacity cost recovery factor issues for Gulf Power Company have been identified at this time. If such issues are identified, they shall be numbered 25A, 25B, 25C, and so forth, as appropriate.

Tampa Electric Company

No company-specific capacity cost recovery factor issues for Tampa Electric Company have been identified at this time. If such issues are identified, they shall be numbered 26A, 26B, 26C, and so forth, as appropriate.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

- ISSUE 27:** What are the appropriate final capacity cost recovery true-up amounts for the period January 2018 through December 2018?
- ISSUE 28:** What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2019 through December 2019?
- ISSUE 29:** What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2020 through December 2020?
- ISSUE 30:** What are the appropriate projected total capacity cost recovery amounts for the period January 2020 through December 2020?
- ISSUE 31:** What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2020 through December 2020?
- ISSUE 32:** What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2020 through December 2020?
- ISSUE 33:** What are the appropriate capacity cost recovery factors for the period January 2020 through December 2020?

III. EFFECTIVE DATE

- ISSUE 34:** What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?
- ISSUE 35:** Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be reasonable in this proceeding?

IV. MISCELLANEOUS ISSUES

- ISSUE 36:** Should the Joint Motion to Modify Order No. PSC-2012-0425-PAA-EU Regarding Weighted Average Cost of Capital Methodology be approved?
- ISSUE 37:** Should this docket be closed?

CONTESTED ISSUES

ISSUE 1E: Should the Commission hold a separate “spin-off” hearing to determine the cause of the Bartow outage and the prudence of DEF’s decisions on all factors related to the cause(s) and duration of any outages and the de-rating of the Bartow plant?