

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power )	DOCKET NO. 900001-EI
Cost Recovery Clause and )	ORDER NO. 23439
Generating Performance )	ISSUED: 9-5-90
Incentive Factor. )	
_____ )	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY

ORDER DETERMINING ISSUE FOR HEARING

BY THE COMMISSION:

Prior to the February, 1989 hearing in this docket, the Office of Public Counsel raised the issue of whether it is appropriate for Florida Power Corporation (FPC) to recover fuel procurement costs and a return on equity charged by Electric Fuels Corporation (EFC) or any other affiliates. The hearing on this issue was deferred until the August, 1989 hearing in this docket. Thereafter, we deferred our decision pending decision on the establishment of a market pricing methodology in Docket No. 860001-EI-G. On January 10, 1990 we issued Order No. 22401 in Docket No. 860001-EI-G, in which we determined that FPC is entitled to recover a reasonable rate of return on the equity investment in its affiliated-owned transportation services. The order further specified that the capital structure of the affiliate would be initially established in a separate hearing, with the appropriate return on equity for the affiliate to be a rate set equal to the midpoint of the utility's allowed range of return, whether set through a rate case, a stipulated agreement, or by Commission order.

In this docket, Public Counsel argued that with the implementation of market based pricing for fuel cost recovery purposes, recovery of an equity return should cease after March 31, 1989, but that rail ownership costs should be included in the cost of rail transportation to the extent that rail ownership costs would be incurred by FPC if the EFC rail cars were owned by FPC. Public Counsel further argued that administrative and general expenses incurred by EFC which are directly related to the waterborne transportation of FPC coal should be included in the total cost of water transportation and subjected to the market

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price methodology. Public Counsel believed no other administrative and general expenses, income taxes or fuel procurement costs should be recovered through the fuel clause, but to the extent that such costs are not duplicative of expenses currently incurred by FPC, FPC could seek recovery of such expenses through base rates.

FPC asserted that under the pricing methodology currently in effect, it is entitled to recover charges paid to EFC for costs incurred in procuring coal and a reasonable rate of return on the equity invested in its FPC business.

As to the appropriateness of the FPC recovering fuel procurement costs incurred by EFC, the Commission heard testimony from an FPC witness, Mr. Heinicka, who testified that EFC included general and administrative expenses, income taxes and a return on equity in its charges to FPC. These three components comprised approximately 3.5% of EFC's total charges to FPC.

Public Counsel contends that with the implementation of market pricing and the discontinuance of the equity return, there should not be any further charges of income taxes added at the EFC level after March 31, 1989. However, as we previously mentioned, we have allowed the recovery of a return on equity, and thus, taxes will continue to be included in the cost of coal recovered from FPC ratepayers. Nevertheless, there remains a question as to what is the appropriate method by which EFC is to allocate income taxes between utility and non-utility business.

Public Counsel questioned FPC's witness regarding how EFC determines its share of tax liability attributable to FPC business and included in the price of coal. It was revealed that FPC was billed for taxes based on the tax liability accruing from FPC business and any tax accruing from non-utility business was excluded from the billings to FPC. However, we have determined that there is insufficient information in the record to make a reasonable determination of the appropriate method to be used by EFC to allocate income taxes between utility and non-utility business. Since we have ordered another hearing to determine the capital structure of EFC, we will additionally consider methodologies for the appropriate allocation of income taxes at that time.

Public Counsel also questioned the appropriateness of FPC's recovery of administrative and general expenses incurred by EFC and

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billed to FPC in the cost of coal. While it is reasonable to assume that the procurement of coal by EFC requires that certain administrative costs be incurred, there is insufficient information in the record to provide any basis to establish whether the amount of general and administrative costs incurred are reasonable. Therefore, we will also consider during the upcoming hearing the appropriate methodologies for determining reasonable administrative and general expenses incurred by EFC in the procurement of coal for FPC.

RULINGS ON OFFICE OF PUBLIC COUNSEL'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing, pursuant to Section 120.57(1)(b)(4), Florida Statutes, and Rule 25-22.056, Florida Administrative Code, the Office of Public Counsel submitted 19 proposed findings of fact and two proposed conclusions of law for consideration by the Commission. As required by Section 120.59(2), Florida Statutes, the following rulings are made on the proposed findings.

Proposed Findings of Fact

- 1. The EFC/FPC coal supply and delivery agreements for Crystal River 1, 2, 4 and 5 are the mechanisms by which EFC bills FPC its overhead plus a return on investment (T.61).

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

- 2. The EFC/FPC coal supply agreements assign total coal procurement responsibility to EFC (T. 62).

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

- 3. EFC's billings to FPC for the period October 1, 1988 to March 31, 1989 included administrative and general expenses in the amount of \$2,236,000 (T. 67,103).

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

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4. EFC's billings to FPC for the period October 1, 1988 through March 31, 1989 included \$723,000 for income tax expense (T. 68-69, 103).

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

5. The EFC/FPC coal supply and delivery agreements do not expressly define cost nor do they provide criteria for FPC to monitor and evaluate the reasonableness of the cost of coal delivered to FPC (T. 79).

We reject this finding. This fact was taken out of context. Although FPC's witness, Mr. Wieland, agreed that the express language of the contract had not been amended to spell out in great detail how the billing was to be done, he further stated that FPC had very detailed procedures that outline the process (T. 79).

6. A 1985 contract compliance report prepared by FPC's internal audit department states that the contracts (between FPC and EFC) have not established criteria for FPC to monitor and evaluate the reasonableness of the cost of coal delivered. FPC has not introduced any evidence in this proceeding upon which the Commission can conclude that the statement is not also true today (T. 78-79).

We reject this finding. Although Mr. Wieland acknowledged that the statement was contained in the internal audit report, he stated it was his belief that the statement was an interpretation made by the auditors at the time. He stated procedures were in place that detailed how computations were to be made. Although he did not have a copy of the procedures with him, he offered to file them with the Commission if they hadn't already been filed. His offer was ignored (T. 78-80).

7. The contract compliance report prepared by FPC's internal audit department states that "without these criteria, either within the contract or elsewhere, FPC does not have a basis for analyzing coal costs to address the PSC's guidelines." FPC has not introduced any evidence in this proceeding upon which the Commission can conclude that the statement is not also true today (T. 80-81).

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We reject this finding. Mr. Wieland agreed that the statement was contained in the internal audit report. He stated that it was an opinion expressed by the auditors and that procedures had been developed by FPC. Mr. Wieland offered to file those procedures with the Commission but his offer was ignored (T. 80).

8. The contract compliance report prepared by FPC's internal audit department stated that "FPC relies on EFC's representations regarding the reasonableness of coal costs." FPC has not introduced any evidence in this proceedings upon which the Commission could conclude that the statement is not also true today (T. 81-83).

We reject this finding. Mr. Wieland agreed with Mr. Howe's representation of the statement contained in the audit report. Mr. Wieland disagreed that nothing had been done since 1985. He stated that there were some very specific measures that were taken as a result of the audit. He stated that policies and procedures were jointly developed by EFC and FPC's Fuels and Special Projects department (T. 81-83).

9. EFC's billings to FPC for the period October 1, 1988 through March 31, 1989 included \$2,103,000 for return on equity (T. 103).

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

10. The equity base on which the equity return of \$2,103,000 was calculated for the six-month true-up period October 1988 through March 1989 is \$27 million (T. 104).

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

11. The total amount of actual equity capital invested in EFC by or for FPC is \$9.6 million (T. 107).

We reject this finding. FPC's witness, Mr. Heinicka, agreed that, through 1986, the actual amount of equity invested in EFC by or for FPC is \$9.6 million (T. 107).



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12. EFC determines the level of equity investment to support FPC business from which EFC calculates the equity return billed to FPC (T. 127).

We reject this finding. Mr. Howe asked Mr. Heinicka who determines how much equity is associated with FPC business. Mr. Heinicka responded that it was done in conjunction with EFC's management, Florida Progress' management, and the Commission and Commission Staff when looking at Florida Power's capital structure (T.127).

13. EFC billed FPC \$1.5 million for income tax expense for the year ended December 31, 1986 as part of the cost of coal to FPC (T. 154).

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

14. EFC's total (current and deferred) income tax liability, on a stand-alone basis, in 1986 was \$850,000 (T. 154)

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

15. The amount of income tax expense billed to FPC by EFC is calculated as if FPC business was a separate corporation irrespective of any other income or expenses derived, or attributable to third party business (T. 155).

We accept this proposed finding, as it is supported by a preponderance of the evidence in the record of this proceeding.

16. In 1986, EFC collected \$659,000 from FPC for income tax expense over and above its actual total tax liability for that year. This \$659,000 is an additional profit to EFC shareholders from FPC over the then current allowed profit of 15.55% on equity (T. 156, 160).

17. For the calendar year 1985, EFC's liability on a total company stand-alone basis was (\$64,000). From that same year FPC paid EFC \$989,000 for income taxes as a part of the cost of coal.

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This was additional profit to EFC's (and FPC's) shareholders in the amount of \$1,053,000 in excess of the authorized equity return (T. 166).

We reject proposed findings number sixteen and seventeen. Because EFC calculates the income taxes associated with FPC business on a stand-alone basis without regard to the non-utility business, the amount of taxes billed to FPC is correct. There is no additional profit to EFC shareholders. This was done so that the Florida Power ratepayers are unaffected whatsoever by what happens in the non-Florida Power business. Mr. Heinicka further stated if the non-Florida Power business showed a profit, Florida Power would not pay more than its calculated income tax liability from utility business. (T. 157, 161).

18. EFC's actual total profit from supplying coal to FPC substantially exceeds the authorized equity return specified in the EFC/FPC coal supply and delivery agreements. These additional profits result from EFC's self dealings with FPC through EFC's coal suppliers, transportation and transloading companies, etc., plus additional charges at the EFC level for income taxes that will never be payable or paid to the IRS (T. 133-34, 159, 160, 166).

We reject this finding. This finding of fact reaches a conclusion based on the proposed findings of fact that we rejected. In addition, the authorized return only applies to FPC equity investment, not the return of other affiliated companies whose equity was provided by others.

19. The EFC/FPC coal supply and delivery agreements provide that all costs designated by EFC as being FPC-related, to supply coal to FPC, be passed to FPC (T. 62).

We reject this finding. Although the contracts do provide that all costs designated by EFC as being FPC related should be passed on to FPC, the billing process is reviewed both by FPC's Fuels Department and , on an annual basis, audited by FPC's Internal Audit Department (T. 59, 62).

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PROPOSED CONCLUSIONS OF LAW

1. FPC is the party seeking affirmative relief in this proceeding. As such, FPC has the burden to prove the reasonableness of all charges from EFC that FPC seeks to recover from its customers through its fuel cost recovery factor.

We adopt and incorporate this conclusion.

2. FPC has not provided evidence of sufficient quality for this Commission to determine that FPC's charges from EFC were prudently incurred and not in excess of costs FPC would have incurred dealing with nonaffiliates.

We decline to adopt this conclusion.

In consideration of the foregoing, it is

ORDERED that in the hearing to be scheduled, per Order No. 22401, the Commission will consider the methodology to be adopted by EFC for allocating income tax liability between utility and non-utility business. It is further

ORDERED that in the hearing to be scheduled, per Order No. 22401, the Commission will consider the methodology to be adopted for determining reasonable administrative and general expenses incurred by EFC in the procurement of coal for FPC. It is further

ORDERED that Proposed Findings of Facts Nos. 1, 2, 3, 4, 9, 10, 13, 14, and 15 are supported by competent and substantial evidence, and thus, accepted. It is further

ORDERED that Proposed Findings of Facts Nos. 5, 6, 7, 11, 12, 16, 17, 18, and 19 are not supported by competent and substantial evidence, and thus, are denied. It is further

ORDERED that Proposed Conclusion of Law No. 1 is accepted. It is further

ORDERED that Proposed Conclusion of Law No. 2 is rejected.



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By ORDER of the Florida Public Service Commission, this  
5th day of SEPTEMBER, 1990.

STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )  
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MER:bmi

by: Kay Flynn  
Chief, Bureau of Records

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.