

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of) DOCKET NO. 930424-EI
proposal for incentive return on) ORDER NO. PSC-94-1351-FOF-EI
demand-side management) ISSUED: November 4, 1994
investments by FLORIDA POWER)
CORPORATION.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING DEMAND-SIDE
MANAGEMENT INCENTIVE PROPOSALS

BY THE COMMISSION:

In its rate case (Docket No. 910890-EI), Florida Power Corporation (FPC) agreed to file a demand-side management (DSM) incentive proposal for the Commission's consideration within 60 days after conclusion of the case. The Company submitted its DSM incentives proposal on April 22, 1993. An alternate DSM incentives proposal was submitted by the Legal Environmental Assistance Foundation Inc. (LEAF). Hearings were held on January 19-20, 1994. At the March 22, 1994 Agenda, we deferred any decision on DSM incentives until after the June, 1994 conservation goals hearings.

We have the jurisdiction to approve FPC's proposed DSM incentive proposal. Section 366.075, Florida Statutes, authorizes us to approve rates on an experimental basis for any public utility, to encourage conservation, or to encourage efficiency. Section 366.81, Florida Statutes, which declares the legislative intent of FEECA (Sections 366.80-366.85, Florida Statutes), authorizes us to approve experimental rates, rate structures or programs. Section 366.81 also provides:

- That it is critical to utilize the most efficient and cost-effective energy conservation systems in order to protect the state and its citizens;

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FPSC-RECORDS/REPORTING

- That reduction in, and control of, the growth rates of electric consumption is of particular importance;
- That solutions to our energy problems are complex;
- That FEECA should be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption.

The Federal Energy Policy Act of 1992, at 16 U.S.C. 2601 section 111(d)(8), requires state public utility commissions to consider adopting policy to insure that utility investment in conservation is at least as profitable as other utility investments. Providing incentives to utilities to pursue DSM is one means of insuring that the profitability of DSM is comparable to that of other utility investments.

These state and federal statutes provide us with clear legal authority to adopt DSM incentives; but we choose not to adopt DSM incentives for FPC at this time. FPC's proposal would be too difficult to administer, too difficult to evaluate, and too difficult to measure.

Furthermore, there are already adequate incentives in place for FPC to pursue cost-effective DSM. The mechanism currently in place which allows direct recovery of all prudently incurred conservation expenses through the conservation cost recovery clause is an incentive. If further incentive is needed, the Commission could allow utilities to capitalize certain DSM expenditures, amortize them over a period of time, and allow the utility to earn a rate of return on them.

At the conservation hearing, FPC testified that it will continue to pursue only those programs that pass the RIM test, with or without decoupling and/or incentives (Tr. 69, 78). According to FPC's witness Mr. Wieland, FPC's objective has always been to use RIM as a primary test, because FPC is concerned about the rate impact of conservation programs on its customers. (Tr. 371).

The incentives proposed in this docket would reward shareholders, but inevitably would increase the cost of conservation to ratepayers. This increase in the cost of implementing cost-effective RIM DSM measures could render marginal RIM programs not cost-effective, and actually eliminate programs

from FPC's DSM portfolio. The type of DSM incentives proposed in this docket could thus have the unintended effect of reducing the level of DSM pursued by FPC.

In Order No. PSC-94-1313-FOF-EG, issued on October 25, 1994, we set numeric conservation goals for Florida's investor-owned electric utilities. In that order, we ruled that upon petition from a utility incentives will be considered on a case-by-case basis for measures such as solar water heating, photovoltaics, high efficiency on-site cogeneration, renewable resources, end-use natural gas, and commercial lighting, that pass the total resource cost test and result in large savings and small rate impacts. Pursuant to Order No. PSC-94-1313-FOF-EG, we invite FPC to petition for this type of incentive.

PROPOSED FINDINGS OF FACT

We make the following findings with regard to the proposed findings of fact submitted by the Florida Industrial Power Users Group in this docket.

1. As a prerequisite to approval and implementation, the benefits conferred by a conservation program must exceed the costs associated with implementing the program. (Tr. p. 78, 1. 6-14).

We reject this proposed finding of fact. This is not a finding of fact, but a conclusion of law.

2. Without a financial incentive in place, FPC aspires to and claims national leadership in the area of DSM activity. (Tr. p. 74, 1. 13-25; p. 75, 1. 1-2).

We accept this proposed finding of fact.

3. FPC's level of commitment to DSM is not dependent on the disposition by the Commission of FPC's proposal for a financial incentive. (Tr. p. 77, 1. 23-25; p. 78, 1. 1-5).

We reject this proposed finding of fact. This is not a fact, but an opinion. In addition, it is speculation.

4. FPC offered no evidence regarding the quantification of the incremental additional programs or installations, if any, that would result from approval of the proposed incentive. FPC has no idea of what the levels of performance would be with and without the incentive. For FPC to attempt to quantify the relationship would be to engage in sheer speculation. (Tr. p. 115, 1. 13-21; p. 116, 1. 5-8).

We reject this proposed finding of fact. It is immaterial, and not a finding of fact.

5. In 1981, the Commission authorized utilities to earn a return on investment in plant related to conservation efforts. (Ex. 1, WLB-3, p. 3).

We accept this proposed finding of fact.

6. FPC presently has placed investment in facilities related to load management programs in rate base and earns a return on those facilities, which FPC and the Commission have designated as conservation-related. (Tr. p. 86, 1. 14-25; p. 87, 1. 1-4).

We accept this proposed finding of fact with the substitution of the word "determined" rather than "designated."

7. FPC has no capital investment in any other conservation-related physical facilities. (Tr. p. 88, 1. 18-25; p. 89, 1. 1-11).

We accept this proposed finding of fact with the clarification that the word "other" refers to other than load management.

8. With respect to "supply-side" utility activities, FPC's investment in capital facilities earns a return, while outlays classified as expenses are recovered dollar-for-dollar. (Tr. p. 88, 1. 10-17).

We accept this proposed finding of fact, but would point out that what is classified as expense or capital facilities is often subject to dispute.

9. With respect to "demand-side" utility activities, FPC's investment in capital facilities earns a return, while outlays classified as expenses are recovered dollar-for-dollar. (Tr. p. 88, 1. 18-25; p. 89, 1. 1-11).

We accept this proposed finding of fact.

10. The Commission does not discriminate against DSM activities through its ratemaking treatment of DSM-related expenditures as compared to its ratemaking treatment of supply-related expenditures. (Tr. p. 88, 1. 10-25; p. 89, 1. 1-11).

We reject this proposed finding of fact as conclusory.

11. The item on which FPC proposes to earn a return consists of one-time rebates paid to customers who take part in programs and who may invest money in equipment that they would then own. (Tr. p. 90, 1. 7-25; p. 91, 1. 1-2).

We accept this proposed finding of fact with the substitution of the word "an" for "the" as the first word in the proposed finding of fact.

12. The Commission presently classifies such rebates as O&M expense and requires the utility to recover them on a current basis, dollar-for-dollar. (Tr. p. 89, 1. 12-17).

We accept this proposed finding of fact.

13. FPC presented no testimony challenging or disputing the Commission's current classification of such rebates as O&M expense. (Tr. p. 95, 1. 7-13).

We reject this proposed finding of fact as immaterial.

14. The financial incentive proposed to be paid to Florida Power Corporation constitutes an additional expense of implementing each program with which it would be associated. (Tr. p. 78, 1. 19-24; p. 81, 1. 13-17).

We accept this proposed finding of fact.

15. With respect to each application of a given program, adding the expense of a financial incentive would decrease the DSM benefits received by customers, relative to the benefits that would be realized without the payment of an incentive. (Tr. p. 82, l. 2-6).

We reject this proposed finding of fact as argumentative.

16. In order for FPC's proposed DSM incentive to result in an overall increase in DSM benefits realized by ratepayers, the incentive would have to lead to an additional increment of activity (programs and installations). Further, the additional DSM benefits derived from the additional increment of effort would have to exceed the total of reduced benefits derived from each individual application as a result of increasing costs by the amount of financial incentives paid to FPC. (Tr. p. 85, l. 23-25; p. 86, l. 1-6).

We accept the first sentence of this proposed finding of fact, and reject sentence two as conclusory and argumentative.

17. By rendering any marginal DSM programs non-cost-effective, the proposed financial incentive would reduce the universe of available DSM programs. (Tr. p. 132, l. 19-25; p. 133, l. 1-3).

We reject this proposed finding of fact as speculative.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that approval of the demand-side management incentives proposals submitted by Florida Power Corporation and the Legal Environmental Assistance Foundation are hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 4th day of November, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kary Flynn
Chief, Bureau of Records

(S E A L)

MAP

DISSENT

Commissioner Johnson dissents from the Commission's decision to deny the proposals for demand-side management incentives.

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.