BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and purchased power cost recovery clause and generating performance incentive factor	)	DOCKET NO. 970001-EI ORDER NO. PSC-97-0608-FOF-EI ISSUED: May 28, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On March 31, 1997, Order No. PSC-97-0359-FOF-EI, Docket No. 970001-EI, was issued approving fuel adjustment factors for all investor-owned electric utilities. Florida Power Corporation (FPC), was authorized to recover, on a preliminary basis, a portion of the replacement fuel costs associated with the extended outage at Crystal River No. 3 nuclear unit. A separate docket has been opened to consider the prudence of FPC's actions concerning the outage.

On April 2, 1997, the Office of Public Counsel (OPC) filed a motion for reconsideration of that portion of Order No. PSC-97-0359-FOF-EI, Docket No. 970001-EI that authorizes recovery of FPC's replacement fuel costs. The substance of OPC's motion is an alleged absence of substantial competent evidence in the record to support FPC's replacement fuel costs request arising out of the nuclear unit outage.

The Florida Industrial Power Users Group (FIPUG) joined in OPC's motion for reconsideration and adopted and incorporated its' rationale. FPC filed a Response In Opposition to OPC's motion. The substance of FPC's Response In Opposition is that OPC's Motion misapprehends the point at which proof of prudence is required in fuel adjustment proceedings. In addition, FPC asserts that OPC's motion contains "nothing but a reargument of points fully considered by the Commission in reaching its decision at the February 19th hearing....Public Counsel does not even allege any oversight or mistake on the part of the Commission." Response, paragraph 1.

The Office of Public Counsel's Motion For Reconsideration of Order No. PSC-97-0359-FOF-EI, Docket No. 970001-EI, does not identify a matter of fact or law which was overlooked or not considered when the Order was rendered. The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law which was overlooked or which we failed to consider in rendering our order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981).

A brief discussion of the fuel adjustment clause is helpful in understanding OPC's motion.

When setting "just, reasonable, and compensatory" rates and charges, we must "investigate and determine the actual legitimate costs of the property of each utility company." Sections 366.041 and 366.06, Florida Statutes (1995). Thus, utilities are entitled to recover the actual cost of fuel purchased to generate electricity. In Florida, the procedure by which utilities recover fuel costs has evolved from allowing recovery through rates set in a rate case to a continuous rate adjustment proceeding. Gulf Power Company v. Florida Public Service Commission, 487 So. 2d 1036, 1037 (Fla. 1986) (Fuel adjustment charges are set in a continuous proceeding to ensure utilities are compensated for the fluctuating cost of fuel.)

Utilities benefit because the fuel adjustment proceeding eliminates regulatory lag. Id. The current procedure eliminates "the difference between the actual cost of fuel for an electric utility and the amount allocated for fuel in the utility's current general rate structure." Citizens of State of Florida v. Florida Public Service Commission, 403 So. 2d 1322, 1333 (Fla. 1981). Ratepayers also benefit because the procedure "is designed to produce credits for consumers should fuel costs decrease." Id. In addition, the practice provides more rate stability and thus less confusion for ratepayers over the fuel adjustment charge. See In Re: General investigation of fuel cost recovery clause, Order No. 9273, 80 F.P.S.C. 3:6, 7 (1980) Finally, "[a]djustment clauses were developed to protect the customer in the case of sharp decreases in fuel or commodity costs, and the utility in cases of sharp increases." Pinellas County v. Mayo, 218 So. 2d 749, 750 (Fla. 1969).

The fuel adjustment procedure allows utilities to recover fuel costs near the time they are incurred; however, this practice does not prohibit us from reviewing the prudence of fuel costs at a later date. Gulf Power, 487 So. 2d at 1037. This is because the true-up provision operates as an adjustment to the amount initially

projected and recovered and a prudence review can be conducted at the time of true-up. In re: General investigation, 80 F.P.S.C. at 3:14. In addition, because of the continuing nature of the clause, the Florida Supreme Court has sanctioned our authority to go back several years to review the prudence of costs. Gulf Power, 487 So. 2d at 1037.

In its motion, OPC states:

> [t]he principal factor upon which FPC relied in its request for an increased fuel cost recovery is the outage of Crystal River No. 3 nuclear generating unit which was taken out of service on September 2, 1996 and is expected by FPC to remain out of service for much of 1997; yet FPC brought no evidence to the commission in this docket explaining whether, or to what extent FPC [sic] the replacement fuel costs were prudently, or reasonably incurred;

Motion, paragraph 3.

In its response, FPC states:

> In contending that the Commission lacks sufficient evidence of prudence, Public Counsel fails to recognize that the Commission has made no final decision with respect to the recovery of replacement fuel costs associated with the extended outage at Florida Power's Crystal River nuclear plant.

Response, paragraph 3.

The evidence to be adduced for prospective fuel cost recovery is the reasonableness of the utilities' cost projections. The standard for approval of projected fuel costs is a showing that the projections are reasonable in amount. What is required is a showing that the projected kilowatt-hour sales and projected costs for fuel are reasonable. As evidenced by the record, FPC proffered its Schedule E1-B which establishes its fuel cost of system net generation for the period of October 1996 through March 1997. (Ex. 4) Included in this amount are replacement fuel costs due to the outage of Crystal River No. 3 nuclear unit as discussed by witness Wieland in his direct prefiled testimony. (Tr. pg. 212) Therefore, there is adequate evidence in the record to sustain our finding of the reasonableness of FPC's projected fuel costs. No party offered any evidence that FPC's projections for kilowatt-hour sales and fuel costs were not reasonable in amount.

Docket No. 970261-EI will address the prudence of the nuclear outage that gave rise to the request in the first instance. If, at the conclusion of those proceedings, it is determined that the nuclear outage was not prudent, a refund to the ratepayers with interest, will be ordered. Florida Power Corporation v. Creese, 413 So. 2d 1187 (Fla. 1982).

At the time Order No. PSC-97-0359-FOF-EI, Docket No. 970001-EI was rendered, we did not have the issue of the prudence of the nuclear outage before us. Those proceedings are set for hearing on June 26 and 27, 1997. Thus, OPC's assertion in its motion that the lack of evidence regarding the prudence of the outage is a basis for reconsideration is misplaced. As stated by FPC in its response, "Public Counsel's Motion...fundamentally misapprehends the nature of the fuel adjustment procedure." To require proof of prudently incurred expenses is appropriate in a final decision on cost recovery, but "is simply inapplicable to a proceeding, such as the general rate case or the fuel adjustment, in which the Commission allows interim cost recovery subject to refund." Response, paragraph 2. In short, because we have not yet determined whether the nuclear related expenditures were prudent, evidence thereon is not required.

We recognized the preliminary nature of our approval in our order authorizing recovery of these costs:

> If we permit recovery now, we can later order a refund of these costs, with interest, if we determine the costs were imprudently incurred. We may also deny recovery at this time, until we have investigated the outage and assessed the reasonableness of management's actions, both before and after the outage occurred. If we delay recovery of these costs until it is determined that all or a significant portion were prudently incurred, however, we may be putting a significant burden on customers at some future period. That burden will be heightened by interest which will accumulate on the unrecovered costs. Under FPC's proposal, this burden will be mitigated to some extent because FPC has requested a twelve-month recovery period and the companyhas not included any fuel replacement costs in the projected period.

Order No. PSC-97-0359-FOF-EI, at pages 10 and 11.

OPC's motion fails to allege a proper legal basis for reconsideration. It is well established that an agency may reconsider its final order if the order is found to have been based

on mistake or inadvertence. People's Gas System, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966). The purpose of a reconsideration proceeding is to bring to the attention of the agency some matter which it overlooked or failed to consider when it rendered its order. Diamond Cab Co. V. King, 146 So. 2d 889 (Fla. 1962) The mere fact that the loosing party disagrees with the order is not a basis for rearguing the case. Id. Nor is reweighing the evidence a sufficient basis for reconsideration. State v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

The Motion For Reconsideration is founded on an alleged insufficiency of evidence regarding the cause of the outage of the nuclear unit. The same argument was raised by OPC during the fuel hearings and decided by us. In its motion, OPC does not allege any mistake of fact or law that we overlooked or failed to consider in rendering our order. Instead, OPC disagrees with our decision and is merely attempting to reargue the case it made at the fuel adjustment hearing. Because we have already considered and rejected OPC's argument, it is not a proper ground for reconsideration.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's Motion For Reconsideration of Order No. PSC-97-0359-FOF-EI, Docket No. 970001-EI, is denied. It is further

ORDERED that in the event this Order becomes final, this Docket shall remain open because it is an ongoing fuel adjustment docket.

By ORDER of the Florida Public Service Commission, this 28th day of May, 1997.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

LJP

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.