

FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

DECEMBER 4, 1997

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FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (PAUGH) RVE JJP
DIVISION OF ELECTRIC & GAS (BOHRMANN) JBJ

RE: DOCKET NO. 971513-EU - TO DETERMINE THE NEED FOR
ADDITIONAL FILING REQUIREMENTS IN THE FUEL AND PURCHASED
POWER COST RECOVERY CLAUSE WHEN CERTAIN THRESHOLD LEVELS
ARE MET

AGENDA: DECEMBER 16, 1997 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\971513.RCM

CASE BACKGROUND

At the February 19, 1997, fuel adjustment hearing, the Commission voted to allow Florida Power Corporation (FPC or Company) to recover, on an interim basis, a portion of the replacement fuel costs associated with the extended outage of its Crystal River 3 nuclear unit. The interim recovery was subject to refund, with interest, pending the results of the Commission's investigation of the causes of the outage. Although the Commission allowed interim recovery of a portion of the outage related expenses, concern was expressed with the level of detail provided by FPC in its prefiled testimony. The Commission stated that more stringent filing requirements would be required in the future. In Order No. PSC-97-0359-POF-EI, issued March 31, 1997, (Order) the Commission stated:

We have a great deal of difficulty with allowing recovery of these costs. To a limited extent, we agree with the arguments of Public Counsel that given the significance of these costs, FPC should have made some initial presentation as to the reasonableness of these costs. In the past, we have permitted utilities to recover costs on a preliminary basis, subject to audit, "true-up" with

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interest and an after-the-fact prudence review. Thus, we do not believe it was unreasonable for FPC to expect that it would have the opportunity to meet the burden of proof in a proceeding specifically designed to determine the prudence of these costs. In the future, however, when a utility seeks to recover the costs which have a significant impact on the utility's fuel adjustment factor, the utility must affirmatively demonstrate that the actions or events that gave rise to the need for the recovery and the underlying costs are reasonable.

The Order did not define the "significant impact" which would trigger the more stringent filing requirements. On October 23, 1997, a recommendation defining significant impact as a 5% increase or decrease of a utility's fuel adjustment factor was presented to the Commission panel in Docket No. 970001-EI. At that time, FPC expressed concern that Staff's recommendation was too burdensome and requested an informal meeting to discuss the matter further. In addition, the Commissioners on the panel requested that the issue be heard by the full Commission.

On November 14, 1997, an informal meeting was held with representatives of the parties in Docket No. 970001-EI. At the meeting, Florida Power & Light, Gulf Power, Tampa Electric Company and the Florida Industrial Power Users Group indicated that they did not object to the 5% threshold previously recommended by Staff. The Office of Public Counsel and Florida Power Corporation did object to the 5% threshold and submitted alternative language for consideration. This recommendation addresses the suggestions made by the objectors and the guidelines recommended by Staff to be followed by utilities to determine when they must provide a preliminary explanation justifying the need to recover projected fuel costs as required by the Order.

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DISCUSSION OF ISSUES

ISSUE 1: What guideline should utilities follow to determine when they must provide a preliminary explanation justifying the need to recover projected fuel costs as required by Order No. PSC-97-0359-FOF-EI?

RECOMMENDATION: When a utility seeks to recover costs that cause the six-month fuel factor to increase by 5% or more from the previous recovery period, the utility must affirmatively demonstrate, prior to approval of recovery, that the actions or events which gave rise to the need for recovery and the underlying costs are reasonable.

STAFF ANALYSIS:

Fuel Adjustment Clause

The fuel adjustment clause was established to allow utilities to recover the cost of fuel through a continuous proceeding rather than through rates set in a rate case. Gulf Power Company v. Florida Public Service Commission, 487 So. 2d 1036, 1037 (Fla. 1986). The utilities are permitted to recover estimated expenses for a six-month projection period, subject to a "true-up" provision which operates as an adjustment to the past projections. Because fuel costs can fluctuate greatly, the clause benefits both utilities and ratepayers by allowing the utilities to recover the actual cost of fuel rather than the amount allocated for fuel in the utility's current general rate structure. Pinellas County v. Mayo, 218 So.2d 749, 750 (Fla. 1969).

Although the fuel adjustment clause allows utilities to recover the actual costs of fuel near the time they are incurred, this practice does not prohibit the Commission from reviewing the prudence of the fuel costs at a later date. In addition, because of the continuing nature of the clause, the Florida Supreme Court has affirmed the Commission's authority to review the prudence of costs several years after the costs have been recovered from ratepayers. Gulf Power, 487 So.2d at 1037.

The Commission has continuing jurisdiction over fuel costs, and many of the costs included in the utilities' fuel filings are normal expenses. Prior to the Commission's February decision, a utility needed only to demonstrate that its projections of kilowatt hour sales and associated fuel costs were reasonable in amount to be eligible for preliminary recovery. As such, utilities have not always provided detailed explanations of each expenditure included in its projections, unless staff or a party raised an issue

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concerning an expenditure. When this occurs, the issue is typically deferred until a subsequent fuel adjustment hearing or is "spun-off" into a specific investigatory docket in order to permit the parties to conduct discovery and file specific testimony addressing the issue. The Commission allows the utility to recover the costs relating to the expenditure on an interim basis, and the recovery does not become final until the prudence of the utility's actions is determined in the later proceeding.

Positions of Florida Power Corporation and Office of Public Counsel

FPC disagreed with Staff's recommendation that a 5% increase or decrease in a utility's fuel adjustment factor should trigger the requirement of preliminary proof of reasonableness as a condition precedent to interim recovery of fuel costs. As such, FPC proposed that the following language be adopted as the "Guideline for Preliminary Explanation Required by Order No. PSC-97-0359-POF-EI":

When a utility experiences an extended outage of a major generating unit that increase the utility's fuel adjustment factor for the projection period by more than 5% compared to what the factor would have been absent the outage, the utility must, prior to approval, disclose the extended outage and provide a preliminary explanation, within the limits of the information then available, of its actions surrounding the outage and the need to incur the underlying fuel costs. The utility's ultimate recovery of such fuel costs remains subject to an after-the-fact review through the true-up process.

FPC's concern with Staff's recommendation was that it was too restrictive and that the Company would have to present the preliminary proof as a matter of course in its fuel filings. As such, FPC has limited the preliminary proof to "extended outages" of "major generating units" that cause an increase of more than 5%.

Staff does not agree with FPC's recommended language for two reasons. First, the phrases "extended outage" and "major generating unit" which are intended to limit the scope of "significant impact" as that phrase is used in the Order, are ambiguous. An ambiguous policy would be difficult to administer and enforce. In addition, an ambiguous policy leads to uncertainty by entities who must file under the fuel clause as to what the rules are. Such a policy could be subject to challenge.

Second, FPC's suggested language lacks definition regarding the character of and manner in which the preliminary showing will

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be made. FPC's Guideline states only that an extended outage will be disclosed and that preliminary explanation will be made "within the limits of the information then available." Under FPC's language, the preliminary explanation could be made in oral argument without any affirmative, documentary evidence being provided in advance of hearing regarding the reasonableness of the costs. Staff believes this does not comply with the Commission's intent when it required an "affirmative demonstration" of reasonableness of costs to be made in advance of interim recovery.

OPC expressed concern that utilities may experience significant impacts which do not result in a 5% increase or decrease in the fuel adjustment factor. As such, OPC suggested the following alternative to Staff's recommendation and FPC's Guideline:

With respect to any matter having a material effect on costs sought to be recovered from its ratepayers, a utility must affirmatively demonstrate, prior to approval of recovery, that the actions or events which gave rise to the need for recovery and the underlying costs are reasonable.

OPC's suggested language is so broad that it may result in the entire policy on interim recovery being changed. OPC requires preliminary proof of reasonableness on "any matter having a material effect on costs sought to be recovered". There is no definition of material effect and no definitive minimum threshold triggering preliminary proofs. Taken to its logical conclusion, OPC's language could be interpreted as requiring preliminary proof for every fuel cost recovery filing. Staff does not believe the Commission intended to require universal preliminary proof for interim cost recovery.

Staff has carefully considered the suggestions of FPC and OPC regarding a standard for preliminary proof of projected fuel costs as required by the Order. However, Staff maintains that a numeric standard is necessary to provide certainty and equality of administration and enforcement of such a policy.

Therefore, Staff recommends that prior to interim recovery, utilities must demonstrate in their prefiled testimony, the reasonableness of costs that exceed the threshold for increases in fuel adjustment factor filings as set forth herein. Staff recommends that the threshold requirement of Order No. PSC-97-0359-FOP-EI be triggered whenever fuel costs will result in an increase of 5% or more of the utility's six-month fuel adjustment factor for the projection period. Examples of actions or events which may give

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rise to the requirement of a preliminary justification include, but are not limited to, a change in fuel prices, a fuel supply disruption or a generating plant outage. A 5% or more standard is reasonable and can be administered fairly to all investor-owned utilities, regardless of the level of their fuel adjustment factor. The preliminary proof of reasonableness required herein is not intended to be a substitute for a full prudence review nor does it abridge parties' rights or obligations in fuel adjustment or prudence proceedings.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the Commission's proposed agency action timely files a protest within twenty-one days of the issuance of the order, this docket should be closed.

STAFF ANALYSIS: Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interests are affected by the Commission's proposed agency action shall have 21 days after issuance of the order to file a protest. If no timely protest is filed, the docket should be closed.