



Public Service Commission

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RECORDS AND REPORTING

DATE: MAY 4, 2000

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

FROM: DIVISION OF ELECTRIC AND GAS (BOHRMANN) *Tb DW CSB RCT*
DIVISION OF LEGAL SERVICES (C. KEATING) *WCK RVE*

RE: DOCKET NO. 991837-EI - DETERMINATION OF APPROPRIATE DISCLOSURE REQUIREMENTS FOR CERTAIN AFFILIATED TRANSACTION DATA AND WHOLESALE TRANSACTION DATA FOR INVESTOR-OWNED ELECTRIC UTILITIES.

AGENDA: 05/16/2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\EAG\WP\991837.RCM

CASE BACKGROUND

In Docket No. 990001-EI, as part of the Commission's continuing fuel and purchased power cost recovery and generating performance incentive factor proceedings (fuel docket), the Florida Industrial Power Users Group (FIPUG) raised several issues in its prehearing statement that were ultimately removed from consideration in that docket by the prehearing officer. In Order No. PSC-99-2271-PHO-EI, issued November 18, 1999, the prehearing officer ruled that these issues were eliminated from consideration in Docket No. 990001-EI and would be addressed in a separate proceeding. These issues had been raised for the first time in FIPUG's prehearing statement.

On December 7, 1999, Docket No. 991837-EI was opened to address these issues. On January 11, 2000, staff conducted an issue identification conference which was attended by all parties and interested persons in this docket, including Florida Power

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Corporation (FPC), Florida Power & Light Company (FPL), Gulf Power Company (Gulf), Tampa Electric Company (TECO), Office of Public Counsel (OPC), and FIPUG. A second issue identification conference was held on March 29, 2000. All parties and interested persons were in attendance. At the second issue identification conference, FIPUG agreed to withdraw all but two of the issues that were deferred to this docket. These two issues, as revised throughout the course of this docket, read as follows:

1. Should amounts that electric utilities pay to affiliated companies for fuel, fuel handling, and fuel transportation be separated in fuel cost recovery filings and be publicly disclosed?
2. Is the benchmark proxy for market price used to test the reasonableness of fuel-related transactions between a regulated utility and its affiliated companies still valid under current operating conditions?

The first issue was put forth by FIPUG as a generic issue, although only TECO and FPC participate in the types of affiliate transactions identified in the issue. The second issue was originally stated by FIPUG as an issue specific to TECO, although FPC is also governed by benchmark proxies for certain fuel-related transactions with its affiliates.

FPC, FPL, Gulf, and TECO believe that neither of these two remaining issues are appropriate and that this docket should be closed. Because eliminating these two issues would effectively mean closing this docket, staff is filing this recommendation to determine how the Commission wishes to proceed, if at all, with these issues.

DISCUSSION OF ISSUES

ISSUE 1: How should the Commission dispose of the two remaining issues in this docket?

RECOMMENDATION: The Commission should eliminate the two remaining issues from consideration in this docket. (BOHRMANN, C. KEATING)

STAFF ANALYSIS: Staff believes that the two issues remaining in this docket are not appropriate and should be eliminated from consideration in this docket, for the reasons stated below.

- 1. Should amounts that electric utilities pay to affiliated companies for fuel, fuel handling, and fuel transportation be separated in fuel cost recovery filings and be publicly disclosed?**

This issue asks the Commission to consider requiring Florida's investor-owned electric utilities (IOUs) to publicly disclose, and separately identify in their fuel cost recovery filings, the amounts that they pay to affiliated companies for fuel, fuel handling, and fuel transportation. Currently, Florida's IOUs file this information in their monthly fuel cost recovery filings and request confidential treatment for the data.

Pursuant to Section 366.093(1), Florida Statutes, "[u]pon request of the public utility or other person, any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and exempt from s. 199.07(1) [Florida's public records law]." For investor-owned electric utilities, Section 366.093(3), Florida Statutes, provides the standard that the Commission must use to determine whether a given piece of information is proprietary confidential business information.

The Commission has consistently granted IOUs' requests for confidential treatment of fuel-related affiliate transaction data on the ground that the data constitutes proprietary confidential business information as defined in Section 366.093(3), Florida Statutes. Specifically, the Commission has consistently found that this data constitutes information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms, and is thus proprietary confidential business information pursuant to Section 366.093(3)(d), Florida Statutes. See, e.g., Order No. PSC-99-1694-CFO-EI, issued August 31, 1999; Order No. PSC-1245-CFO-EI, issued June 24, 1999.

FIPUG's proposed issue essentially asks the Commission to consider making a blanket determination that all of the IOUs' fuel-related affiliate transaction data filed with the Commission in the future, should not be protected from disclosure as proprietary confidential business information, but should be publicly disclosed. Making such a determination would be inconsistent with

the Commission's repeated findings that these data satisfy the statutory standard for "proprietary confidential business information." More importantly, making such a determination would be inconsistent with the provisions of Section 366.093, Florida Statutes, that give public utilities the opportunity to seek confidential treatment for information that satisfies a specific, established statutory standard.

Staff notes that the Commission's rules provide procedures to ensure that FIPUG and other parties to the fuel docket are made aware of requests for confidential treatment made in that docket and to allow them to challenge specific requests. Specifically, Rule 25-22.006(3)(b), Florida Administrative Code, requires that any utility or person requesting confidential treatment must serve a copy or summary of the request on all parties of record and on Public Counsel. The rule further provides that any party may file an objection to the request for confidential treatment within 14 days of service of the copy or summary. Rule 25-22.006(3)(c), Florida Administrative Code, provides that the prehearing officer shall rule on any request and any responsive objections, and that the Commission panel assigned to the docket will hear any motions for reconsideration of the prehearing officer's ruling. Thus, if FIPUG believes that any portion of the IOUs' fuel-related affiliate transaction data does not satisfy the statutory standard for proprietary confidential business information, it may challenge any request for confidential treatment of that data.

Staff also notes that nothing in the Commission's rules discourages or prohibits the sharing of confidential information pursuant to protective agreements or protective orders of the Commission. Thus, FIPUG could obtain this information by entering into a protective agreement with any of the IOUs who have requested confidential treatment of that information. See, Rule 25-22.006(7), Florida Administrative Code. In the issue identification conferences held in this docket, the IOUs have indicated that they are willing to provide this information to FIPUG under a protective agreement.

In summary, staff believes that this issue is not appropriate and should be eliminated from consideration in this docket. The issue seeks a policy determination from the Commission that would be inconsistent not only with the Commission's repeated application of the standard for confidential treatment, but also with the procedures established in Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, that provide public utilities and other persons the opportunity, on a case-by-case basis, to request confidential treatment for information that

satisfies specific, established statutory criteria. FIPUG, like any other party to the fuel docket, may challenge any particular request for confidential treatment. FIPUG could also seek access to this confidential information pursuant to a protective agreement or protective order of the Commission.

2. Is the benchmark proxy for market price used to test the reasonableness of fuel-related transactions between a regulated utility and its affiliated companies still valid under current operating conditions?

This issue asks the Commission to reconsider benchmarks it established in prior orders as proxies for market price to determine whether fuel-related transactions between IOUs and their affiliates are reasonable for purposes of cost recovery in the fuel docket. FIPUG suggests that the Commission should take a fresh look at these benchmarks to determine whether they still provide valid proxies for market price.

The Commission has approved benchmark proxies for market prices for the following affiliate transactions, with the year the benchmark was approved noted in parentheses: (1) FPC's coal purchases from affiliate Powell Mountain Joint Venture (PMJV) (1990); (2) FPC's receipt of waterborne transportation services from affiliate Electric Fuels Corporation (EFC) (1993); (3) TECO's coal purchases from affiliate Gatliff Coal Company (Gatliff) (1993); and (4) TECO's receipt of coal transportation services from affiliate TECO Transport and Trade (TTT) (1988). (TECO's coal supply contract with Gatliff expired in December 1999 and has not been renewed.)

FIPUG has given no indication that it believes there are any particular problems with any of the current benchmarks. Instead, FIPUG has asserted that the Commission should reconsider these benchmarks to ensure that they are "still valid under current operating conditions." This issue would require a sweeping review of all current benchmarks that have already received the Commission's approval. Absent any indication of evidence that any of these benchmarks are inappropriate, staff believes that this issue is not appropriate for hearing at this time and should be eliminated, without prejudice to FIPUG or any other party to raise a similar or related issue in a future proceeding if there is evidence to indicate that reconsideration of the current benchmarks may be appropriate.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, there will be no issues left for consideration in this docket. Therefore, the docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.