

State of Florida



Public Service Commission
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DATE: AUGUST 23, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (ELIAS) *RVE used*
DIVISION OF ECONOMIC REGULATION (SLEMKEWICZ) *JS T92*

RE: DOCKET NO. 000824-EI - REVIEW OF FLORIDA POWER CORPORATION'S EARNINGS, INCLUDING EFFECTS OF PROPOSED ACQUISITION OF FLORIDA POWER CORPORATION BY CAROLINA POWER & LIGHT.

AGENDA: 09/04/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\000824.RCM

CASE BACKGROUND

At the May 15, 2001, agenda conference, the Commission voted to require Florida Power Corporation (FPC) to file minimum filing requirements, (MFRs) based on a 2002 test year. The MFRs will provide the Commission and interested persons with the information necessary to evaluate whether FPC's retail rates should be changed. The Commission also required FPC to hold \$113,894,794 of annual revenue (beginning July 1, 2001) subject to refund, pending final disposition as part of the rate proceeding. The Commission's decisions were memorialized in Order No. PSC-01-1348-PCO-EI issued June 20, 2001.

On June 12, 2001, the Florida Industrial Power User Group (FIPUG) filed a Motion for Expedited Customer Rate Relief. In essence, FIPUG asks that the Commission immediately reduce base rates by \$113,894,794 annually by flowing this amount through the

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fuel clause. On June 25, 2001, FPC filed a Memorandum in Opposition to Motion for Expedited Customer Rate Relief. FPC asserts the Florida Statutes provide no authority for the granting of such relief.

On July 2, 2001, FPC timely filed a Motion for Reconsideration of the Requirement in Order No. PSC-01-1348-PCO-EI to hold revenues subject to refund. FPC asserts that the Commission overlooked, failed to consider or mistakenly resolved matters of critical importance to its determination and failed to afford FPC procedural due process, "FPC also filed a separate request for oral argument on its motion for reconsideration. FPC suggests that oral argument "would be of great assistance to the Commission in addressing these concerns and would provide FPC with the first opportunity to be heard in a meaningful way on these matters."

This recommendation addresses FIPUG's motion and FPC's request for oral argument. Jurisdiction over these matters is vested in the Commission by Sections 366.04, 366.05, and 366.06, Florida Statutes. A subsequent recommendation will address FPC's motion for reconsideration.

DISCUSSION OF ISSUES

ISSUE 1: Should the Florida Industrial Power Users Group's Motion for Expedited Customer Rate Relief be granted?

RECOMMENDATION: No. There is no express statutory authority for granting the requested relief.

STAFF ANALYSIS: In its motion, FIPUG notes that FPC's currently authorized rate of return was set approximately nine years ago. FIPUG also suggests that the maximum of the authorized range (13%) exceeds what the Commission recently authorized for "more risky water and wastewater utilities" by approximately 340 basis points. FIPUG also calls attention to the fact that FPC's authorized fuel cost recovery has increased by approximately \$322.8 million annually. FIPUG references the fact that the Commission recently ordered FPC to collect approximately \$113.8 million of annual revenue subject to refund.

FIPUG asks that the Commission utilize the authority granted by Section 366.076, Florida Statutes, to effectuate an annual base rate reduction \$113,894,794, thus offsetting, to a degree the recent fuel cost recovery increases. FIPUG believes this reduction should be flowed through the fuel clause and implemented immediately.

On June 25, 2001, FPC filed a Memorandum in Opposition to the Motion for Expedited Customer Rate Relief. FPC asserts that Florida Statutes provide no authority for ordering immediate rate reductions prior to a full hearing on rates.

FPC states in its motion at pages 2 and 3:

...Section 366.06 specifically provides that, in order to adjust rates, "the commission shall order and hold a public hearing, giving notice to the public and to the public utility, and shall thereafter determine just and reasonable rates to be thereafter charged . . ." (Emphasis added). In the same vein, Section 366.07 provides that the commission may "fix . . . fair and reasonable rates" only "after public hearing." (Emphasis added). Because ratemaking affects the utility's substantial interests, the utility is entitled to a full evidentiary hearing before its rates are adversely

adjusted. Rule 28-106.201, Fla. Admin. Code. Consistent with this requirement, in its May 3 recommendation, Staff requested that the Commission order the filing of MFRs, and the Commission has ordered FPC to do so.

FPC further asserts:

Section 366.071 specifically provides that the Commission may obtain "interim" relief in a narrowly circumscribed way: namely, the "commission may, during any proceeding for a change of rates . . . authorize the collection of interim rates until the effective date of the final order." Section 366.071(1), Fla. Stats. (emphasis added).

"[i]n a proceeding for an interim decrease in rates, the commission shall authorize . . . the continued collection of the previously authorized rates . . . subject to refund with interest at a rate ordered by the commission." Section 366.071(b), Fla. Stats. (emphasis added). The statute then provides that the Commission may actually order refunds only after the completion of the full rate hearing with respect to revenues earned "during the pendency of the proceeding" and then only on a basis consistent with "the newly authorized rate of return which is found fair and reasonable on a prospective basis." Section 366.071(4), Fla. Stats. (emphasis added); see, e.g., In re Gulf Power Co., 120 P.U.R. 4:1 (Oct. 3, 1990);

In seeking "immediate" rate relief, FIPUG ignores these provisions and moves under Section 366.076, Fla. Stats. But that provision does not alter or supercede the very specific provisions that we have described that govern "interim" rate relief. Section 366.076 merely provides that the Commission may commence a proceeding to consider limited issues that may result in the adjustment of rates, consistent with the requirements of Chapter 366. This section does not authorize the Commission to adjust rates without affording the full panoply of due process rights to which the utility and other parties are entitled—under Chapter 366, applicable rules, and the state and federal constitutions—including a full evidentiary hearing.

Section 366.076, Florida Statutes, authorizes the Commission, on its motion, or upon petition, "...to conduct a limited proceeding to consider and act upon any matter within its jurisdiction, including any matter, the resolution of which requires a public utility to adjust its rates..." The Commission has previously considered a request to change rates under the authority of this statute, and concluded that it must be applied in a manner consistent with the other requirements of applicable law. In the rate setting context, these include notice to customers and the utility, the opportunity to conduct discovery, and a hearing.

By Order No. PSC-0794-FOR-EI, issued June 27, 1994, in Docket No. 930987-EI, the Commission denied a Motion for Reconsideration filed by the Office of Public Counsel (OPC). OPC suggested that the Commission had erred, when, in the context of limited proceeding to reset Tampa Electric Company's authorized return on equity and increase its storm damage reserve, the Commission did not reset rates at the midpoint of the range. The Commission stated:

While we could use this type of proceeding to adjust rates, it would be virtually impossible to do so on an expedited basis (as requested by OPC) and still comply with the notice requirements of Chapter 366, Florida Statutes, by providing a reasonable opportunity to present testimony, conduct discovery and obtain ratepayer input. (Order No. PSC-0794-FOR-EI at page 3)

Staff believes that any change to FPC's base rates, such as that requested by FIPUG, must comport with the requirements of Chapter 366, Florida Statutes. Any relief afforded FIPUG would necessarily involve those actions and steps already initiated by the Commission. These include requiring the filing of MFRs, ordering revenues held subject to refund, making arrangements for customer input and conducting a proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes. For these reasons, staff recommends that FIPUG's Motion for Expedited Customer Rate relief should be denied.

ISSUE 2: Should FPC's Request for Oral Argument on it's Motion for Reconsideration be granted?

RECOMMENDATION: Yes. Oral Argument could assist the Commission in evaluating FPC's motion. Oral Argument should be heard at the September 4, 2001, agenda conference and limited to fifteen minutes per side. A recommendation on the Motion for Reconsideration will be filed for consideration at a subsequent agenda conference.

STAFF ANALYSIS: In its 18 page Motion for Reconsideration, FPC questions every adjustment made by the Commission to FPC's reported earnings to conclude that FPC should collect \$113,894,794 in annual revenues subject to refund. Its arguments are very detailed. The Commission has not ordered an investor-owned electric utility to collect currently authorized revenues subject to refund in over a decade. In keeping with Commission practice, participation in the consideration at the agenda conference of the interim amount was limited to Commissioners and staff. Keeping in mind that FPC must meet the standard for reconsideration, staff believes Oral Argument could assist the Commission in evaluating FPC's motion. Oral Argument should be heard at the September 4, 2001, agenda conference and limited to fifteen minutes per side. A recommendation on the Motion for Reconsideration will be filed subsequently.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. . This docket should not be closed.
(SLEMKEWICZ, ELIAS)

STAFF ANALYSIS: This docket should remain open for the investigation of FPC's earnings and the filing of its MFRs.