State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: AUGUST 23, 2001

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

FROM: DIVISION OF LEGAL SERVICES (C. KEATING) WCK RVE
DIVISION OF ECONOMIC REGULATION (BRINKLEY, SLEMKEWICZ) JS DM TGB
DIVISION OF SAFETY & ELECTRIC RELIABILITY (COLSON, HARLOW)
Lee

RE: DOCKET NO. 010944-EI - COMPLAINT OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION, ET AL. AGAINST FLORIDA POWER & LIGHT COMPANY, REQUEST FOR EXPEDITIOUS RELIEF, AND REQUEST FOR INTERIM RATE PROCEDURES WITH RATES SUBJECT TO BOND.

DOCKET NO. 001148-EI - REVIEW OF FLORIDA POWER & LIGHT COMPANY'S PROPOSED MERGER WITH ENTERGY CORPORATION, THE FORMATION OF A FLORIDA TRANSMISSION COMPANY ("FLORIDA TRANSCO"), AND THEIR EFFECT ON FPL'S RETAIL RATES.

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

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010944.RCM

CASE BACKGROUND

By Order No. PSC-01-1346-PCO-EI, issued June 19, 2001, in Docket No. 001148-EI, the Commission initiated a rate proceeding for Florida Power & Light Company ("FPL"), ordering FPL to file Minimum Filing Requirements based on a projected calendar year 2000 test year. The Commission further ordered that no money be placed subject to refund. In determining that no money should be placed subject to refund, the Commission noted that FPL is currently operating under a three-year revenue sharing plan that was part of

a stipulation approved in Order No. PSC-99-0519-AS-EI, issued March 17, 1999, in Docket No. 990067 ("FPL rate stipulation" or "stipulation").

On July 5, 2001, the South Florida Hospital and Healthcare Association ("SFHHA") timely filed a request for clarification, or, in the alternative, reconsideration of Order No. PSC-01-1346-PCO-EI. SFHHA seeks clarification that the Order did not intend to limit the ability of entities not parties to the current FPL rate stipulation, like itself, to seek a reduction in FPL's base rates. Alternatively, if the Commission interprets the Order to limit such entities' ability to seek a reduction in FPL's base rates, SFHHA seeks reconsideration of that portion of the Order. On July 17, 2001, FPL filed its response in opposition to SFHHA's request. On August 7, 2001, SFHHA filed an answer to FPL's response. On August 14, 2001, FPL filed a motion to strike SFHHA's answer to FPL's response.

On July 6, 2001, SFHHA filed a complaint and request that FPL's rates be reduced under the interim rate procedures set forth in Section 366.071, Florida Statutes. SFHHA's complaint initiated Docket No. 010944-EI. On July 31, 2001, FPL filed its motion to dismiss SFHHA's complaint. On August 8, 2001, SFHHA filed its response to FPL's motion to dismiss and concurrently filed an amended petition for interim rate relief.

SFHHA's requests for relief are closely related. As a whole, these pleadings appear to be intended to effect an interim rate reduction for FPL. Thus, although these pleadings were filed in separate dockets, staff addresses both requests for relief in this recommendation.

The Commission has jurisdiction over this subject through the provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, 366.06, and 366.071, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Florida Power & Light Company's motion to dismiss the South Florida Hospital and Healthcare Association's amended petition for interim rate relief in Docket No. 010944-EI?

RECOMMENDATION: Yes. The Commission should grant Florida Power & Light Company's motion to dismiss the South Florida Hospital and Healthcare Association's amended petition for interim rate relief. On its own motion, the Commission has already considered and decided the matter of interim rates, making SFHHA's amended petition an improper collateral attack on the Commission's decision.

STAFF ANALYSIS: As a preliminary matter, staff's analysis is based on SFHHA's amended petition filed August 8, 2001, rather than SFHHA's original pleading filed July 6, 2001, in Docket No. 010944-EI. In its motion to dismiss, FPL asserted that SFHHA's original pleading did not satisfy certain of the pleading requirements in Rule 28-106.201, Florida Administrative Code. In its response, SFHHA insisted that FPL's objections were not valid and that an amended pleading was unnecessary. Nevertheless, SFHHA indicated that its amended petition was being filed to alleviate any concerns about its compliance with the rule. Pursuant to Rule 28-106.202, Florida Administrative Code, a petitioner may amend its petition without leave prior to the designation of a presiding officer. As of the date of this recommendation, a presiding officer has not yet been assigned to Docket No. 010944-EI. Thus, SFHHA's amended petition is permissible.

Another preliminary matter merits a brief mention. Rule 28-106.204, Florida Administrative Code, provides that motions to dismiss "shall be filed no later than 20 days after service of the petition on the party." Pursuant to Rule 28-106.103, Florida Administrative Code, five days shall be added to the time for response when service has been made by U.S. Mail. Although a certificate of service did not accompany SFHHA's original pleading, it is staff's understanding from discussions with the parties that service to FPL was made by mail. Accordingly, FPL's motion to dismiss, filed 25 days after the original pleading, is timely.

A. POSITIONS OF THE PARTIES

In its amended petition, SFHHA states that FPL is clearly earning returns in excess of its maximum authorized level of return on equity. SFHHA asserts that allowing such excessive returns is inconsistent with the Commission's statutory mandate to fix fair and reasonable rates upon a finding of excessive rates. SFHHA points out that it was not a party to the FPL rate stipulation approved by the Commission in 1999 and asserts, therefore, that it may seek a reduction to FPL's base rates. In its amended petition, SFHHA requests that the Commission: (1) order FPL to hold all revenues contributing to earnings above the mid-point of its authorized range of return (11%) calculated to recognize certain adjustments; (2) establish an expedited procedural schedule to process the amended petition; (3) conduct further proceedings as necessary to bring review of FPL's excess earnings to a close; and (4) issue a final order directing the return of rates held subject to refund, adopting a mid-point return on equity, and setting lower retail base rates and charges.

In its motion to dismiss, FPL first argues that there is no basis in the Commission's governing statutes to conduct an interim rate proceeding independent of a proceeding to set permanent rates. Thus, FPL contends that the amended petition must be dismissed for lack of subject matter jurisdiction. Second, FPL argues that the amended petition should be dismissed because it constitutes a collateral attack on a Commission order which already addresses the matters raised in the amended petition. FPL maintains that the Commission, in establishing a rate proceeding for FPL through Order No. PSC-01-1346-PCO-EI, expressly considered whether to set interim rates. Third, FPL argues that the provisions of the FPL rate stipulation provide the exclusive means to determine FPL's rates during the three-year term of the stipulation. FPL points out that the order approving the stipulation, Order No. PSC-99-0519-AS-EI, is final agency action that may not now be overturned. Further, FPL asserts that SFHHA's members, as retail customers of FPL, were fully represented by the Office of Public Counsel ("OPC") and the Coalition for Equitable Rates ("Coalition") in the proceeding in which the stipulation was reached. FPL also argues that it would be bad policy for the Commission to set aside the stipulation it previously approved.

In its response to FPL's motion to dismiss, SFHHA first argues that all of the matters raised in its amended petition were not

addressed by the Commission in rendering Order No. PSC-01-1346-PCO-EI. As examples of matters raised in its amended petition that were not addressed, SFHHA lists the following: (1) the opportunity for FPL to implement defensive strategies, particularly to defer expenses until the 2002 test year, enhancing 2001 earnings and artificially enhancing test year expenses; (2) an increase of over $500 million in the level of unrealized gains in special use funds, indicating that current funding levels are too high; (3) FPL's admission that the failed Entergy merger would not have produced the anticipated synergies, raising questions about the prudence of costs associated with the merger; (4) FPL's plan to pay a certain employee an additional 25% if the merger terminated; and (5) a potential windfall to FPL's owners if FPL is allowed to continue to accelerate depreciation on generating assets then, during industry restructuring, transfer those assets to an affiliate at an artificially-low net book value.

Second, SFHHA argues that the clear language of the FPL rate stipulation does not preclude an entity not a party to the stipulation, like itself, from seeking a reduction in FPL's base rates during the three-year term of the stipulation. SFHHA argues that its members were neither represented by OPC nor the Coalition in the stipulation. Citing Section 350.611, Florida Statutes, SFHHA states that OPC's statutory duties are to provide "legal representation for the people of the state" and that OPC may file in the name of the state or its citizens. SFHHA asserts that its members, hospitals and like entities, are not "people." SFHHA further states that the statute does not provide OPC authority to represent every retail customer in Florida. SFHHA states that none of its members were represented by the Coalition.

Third, SFHHA argues that it would be bad policy for the Commission to interpret the FPL rate stipulation to preclude all customers, including those not a party to the stipulation, from seeking a rate reduction. Fourth, SFHHA argues that Section 366.071, Florida Statutes, concerning interim rate procedures, does not preclude it from seeking the relief requested in its amended petition.

B. ANALYSIS

A motion to dismiss raises as a question of law, whether the petition alleges sufficient facts to state a cause of action. Varnes v. Dawkins, 624 So.2d 349, 350 (Fla. 1st DCA 1993). The

standard for disposing of motions to dismiss is whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief may be granted. Id. When making this determination, the tribunal must consider only the petition. All reasonable inferences drawn from the petition must be made in favor of the petitioner. Id.

Section 366.071(1), Florida Statutes, states, in pertinent part:

> (1) The commission may, during any proceeding for a change of rates, upon its own motion, or upon petition from any party, or by a tariff filing of a public utility, authorize the collection of interim rates until the effective date of the final order.

Clearly, Section 366.071(1), Florida Statutes, permits a third party, such as SFHHA, to request the collection of interim rates during a rate proceeding, such as the current FPL rate proceeding. The statute also clearly provides the Commission authority to authorize interim rates on its own motion.

As set forth in Order No. PSC-01-1346-PCO-EI, the Commission, on its own motion, initiated the current FPL rate proceeding. The Order also indicates that the Commission considered, on its own motion, the question of whether to establish interim rates, i.e., hold money subject to refund, for FPL. At page 6, the Order clearly indicates the Commission's decision: "[w]e find that no money shall be placed subject to refund at this time." Thus, SFHHA's amended petition to establish interim rates essentially asks the Commission to reconsider the matter of interim rates through a collateral proceeding. Such a proceeding would constitute an improper collateral attack on the Order. See Department of HRS v. Barr, 359 So. 2d 503 (Fla. 1st DCA 1978).

The appropriate procedural vehicle to request reconsideration of a Commission order is a motion for reconsideration. As stated above, SFHHA has filed a motion for reconsideration of Order No. PSC-01-1346-PCO-EI. However, as discussed in Issue 3, below, the motion for reconsideration does not ask the Commission to reconsider its decision not to hold money subject to refund.

The parties' arguments concerning what was or was not considered by the Commission in rendering its decision not to

establish interim rates do not need to be reached to dispose of the motion to dismiss. Likewise, the parties' arguments concerning SFHHA's ability to seek a rate reduction during the three-year term of the FPL rate stipulation do not need to be reached to dispose of the motion to dismiss.

In summary, although Section 366.071(1), Florida Statutes, authorizes SFHHA to petition for interim rates, the Commission has already considered and decided the matter on its own motion, making SFHHA's amended petition an improper collateral attack on the Commission's decision. Accordingly, SFHHA's amended petition should be dismissed.

ISSUE 2: Should the Commission grant Florida Power & Light Company's motion to strike the South Florida Hospital and Healthcare Association's answer to FPL's response to SFHHA's request for clarification/reconsideration?

RECOMMENDATION: Yes. The Commission should grant Florida Power & Light Company's motion to strike the South Florida Hospital and Healthcare Association's answer to FPL's response to SFHHA's request for clarification/reconsideration. The Uniform Rules of Procedure do not authorize such a reply to a response to a motion.

STAFF ANALYSIS: In its motion to strike, FPL correctly points out that Rule 28-106.204(1), Florida Administrative Code, authorizes the filing of a response to a motion, but that the Uniform Rules of Procedure do not authorize the movant to reply to a response. FPL also correctly points out that the Commission has routinely refused to consider such replies and has even done so in this docket by Order No. PSC-01-0099-PCO-EI, issued January 12, 2001. Consistent with the Uniform Rules of Procedure and Commission precedent, the Commission should strike and refuse to consider SFHHA's answer to FPL's response to SFHHA's request for clarification/ reconsideration.

Staff notes that SFHHA's deadline for responding to FPL's motion to strike has not expired as of the date this recommendation was filed. Regardless, staff can imagine no reason why an exception to the Commission's consistent refusal to consider replies to responses to motions should be granted in this case.

ISSUE 3: Should the Commission grant the South Florida Hospital and Healthcare Association's request for clarification or, in the alternative, reconsideration of Order No. PSC-01-1346-PCO-EI?

RECOMMENDATION: To clarify its intent in rendering Order No. PSC-01-1346-PCO-EI, the Commission should make the clarification requested by the South Florida Hospital Association. The clarification does not have the effect of reversing the Commission's decision to hold no money subject to refund.

STAFF ANALYSIS:

A. POSITIONS OF THE PARTIES

In its request for clarification/reconsideration, SFHHA asserts that the last paragraph of the body of Order No. PSC-01-1346-PCO-EI is ambiguous. That paragraph, found at page 6 of the Order, reads:

> Although we are not a party bound by its terms, we did approve the Stipulation in Order No. PSC-99-0519-AS-EI. One provision of the stipulation provides that the revenue sharing plan is to be the parties' "exclusive mechanism" to address any excessive earnings that might occur during the term of the stipulation. This provision provides some measure of protection for the ratepayers. For this reason, we find that no money shall be placed subject to refund at this time.

In its request, SFHHA asserts that this language appears to suggest that an entity, such as itself, which was not a party to the FPL rate stipulation, is not bound by the stipulation to use the revenue sharing plan as its sole mechanism for a reduction in base rates. SFHHA asserts that this interpretation of the Order would be consistent with Article 5 of the stipulation. Article 5 of the stipulation states, in pertinent part:

> No party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any provision hereof. OPC, FIPUG and the Coalition will neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect for three years . . ..

SFHHA requests that if the Commission intended this interpretation of the Order, clarification should be provided by the Commission. In such case, SFHHA states that its request for reconsideration is not necessary.

Alternatively, SFHHA requests reconsideration of the paragraph in question if the Commission interprets it to preclude entities that were not parties to the FPL rate stipulation from seeking a reduction in FPL's base rates. First, SFHHA argues that the express terms of the stipulation preclude only the parties to the stipulation - OPC, FIPUG, and the Coalition - from seeking a reduction in FPL's base rates. SFHHA asserts that precluding other entities, such as itself, from seeking such relief would amount to altering these express terms. Second, SFHHA argues that an interpretation contrary to its request would be contrary to the Commission's statutory mandate to set fair and reasonable rates. SFHHA asserts that the Commission is not precluded by the stipulation from exercising its statutory jurisdiction. Third, SFHHA argues that an interpretation contrary to its request is unsupported by competent substantial evidence of FPL's overearnings.

In its response, FPL asserts that the paragraph in question is not ambiguous and does not need clarification. FPL states that the Commission's reasoning for not placing money subject to refund does not depend on a distinction between parties bound by the stipulation and those not bound by it. Further, FPL argues that reconsideration is not appropriate because SFHHA has failed to identify some point of fact or law that was overlooked or not considered by the Commission in rendering its Order. FPL asserts that SFHHA's request merely disagrees with the Commission's conclusion that money should not be held subject to refund.

FPL contends that SFHHA's request is fundamentally an attack on the Order approving the FPL rate stipulation. FPL asserts that the time for judicial review of the Order has passed, and the Order is now final and not subject to collateral attack by SFHHA. FPL notes that the stipulation explicitly recognized that FPL might earn beyond the top of its authorized return. Therefore, according to FPL, SFHHA cannot not claim that FPL now doing so would constitute a changed circumstance that would justify overturning the Order approving the stipulation. FPL contends that this is true regardless of whether SFHHA's member were or were not

represented in the proceeding in which the stipulation was approved (Docket No. 990067-EI).

FPL argues that even if the Commission finds merit in SFHHA's argument that only parties to the stipulation are bound by it, that argument fails because SFHHA's members were represented in Docket No. 990067-EI. FPL asserts that SFHHA's members were represented by OPC. FPL cites OPC authority under Section 350.061(1), Florida Statutes, to "represent the general public of Florida before the Florida Public Service Commission." FPL also points out that in OPC's petition to initiate Docket No. 990067-EI, OPC stated, "Public Counsel is filing this petition on behalf of the retail customers of FPL . . .."

Finally, FPL argues that it would create bad precedent and bad policy for the Commission to "disavow" the stipulation it approved. FPL points out that, as with any settlement, the parties to the stipulation compromised positions they otherwise would have advocated. FPL states that the stipulation required FPL to reduce its rates by and charges at least $350 million annually and to refund future revenues over certain forecasted amounts, both items which could not be done without Commission approval. FPL states that in return, the stipulation provided FPL an incentive to be more efficient and reduce expenditures by allowing it to share certain revenues with customers. FPL asserts that SFHHA is asking the Commission to turn its back on that portion of the stipulation which benefits FPL, after SFHHA received the benefits of FPL having reduced rates and made additional rate refunds to customers pursuant to the stipulation. FPL contends that disavowing the stipulation would thus have a chilling effect on the practice of parties reaching settlements as a cost-effective alternative to litigation.

B. ANALYSIS

The applicable standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that was overlooked or not considered by the decision-maker in rendering its order. Diamond Cab Co. V. King, 146 So.2d 889 (Fla. 1962). The mere fact that a party disagrees with the order is not a valid basis for reconsideration. Id. Further, roughing of the evidence is not a sufficient basis for reconsideration. State v. Green, 104 So.2d 817 (Fla. 1st DCA 1958).

Neither the Uniform Rules of Procedure nor the Commission's rules specifically make provision for a motion for clarification. However, in evaluating a pleading titled a motion for clarification, the Commission has typically applied the Diamond Cab standard when the motion actually sought reconsideration of some part of the substance of a Commission order. In cases where the motion sought only explanation or clarification of a Commission order, the Commission has typically considered whether its order requires further explanation or clarification to fully make clear the Commission's intent. See, e.g., Order No. PSC-95-0576-FOF-SU, issued May 9, 1995.

In its request for clarification/reconsideration, SFHHA first indicates that it will be satisfied if the Commission simply clarifies that it did not intend to preclude entities not a party to the FPL rate stipulation from seeking a reduction in FPL's base rates. In its alternative request for reconsideration, SFHHA appears to indicate that it will also be satisfied if the Commission reconsiders and overturns a contrary interpretation of the Order. However, reading further into the alternative request for reconsideration, SFHHA asks the Commission "to exercise [its] inherent authority to reduce FP&L's rates with respect to [SFHHA's members]." It appears that this request for relief is intended to be supported by SFHHA's arguments, cited above, that failure to reduce FPL's rates is contrary to the Commission's statutory mandate to set fair and reasonable rates and is unsupported by competent substantial evidence of FPL's overearnings.

Presumably, the interpretation of the Order sought by SFHHA (either through clarification of reconsideration) would pave the way for SFHHA's amended petition, which was discussed in Issue 1, above. The requested interpretation would, of course, be of no benefit to SFHHA if the Commission accepts staff's recommendation in Issue 1 and dismisses the amended petition.

The second request for relief found in SFHHA's request, a reduction in FPL's rates with respect to SFHHA's members, is inappropriate for two reasons. First, the request comes in the form of a request for reconsideration of a Commission Order initiating a rate proceeding for FPL. As SFHHA's request indicates, the Order was based upon evidence that FPL's rates may be excessive and stated that a rate proceeding was appropriate to address this situation. Presumably, if rates are found excessive in that rate proceeding, the Commission would reduce FPL's rates to

a fair and reasonable level. Thus, it appears that SFHHA's second request for relief asks for a proceeding that the Commission has already undertaken. Second, the request seeks a rate reduction for select customers. Granting this relief would create unduly discriminatory rates.

Nowhere in its request for clarification/reconsideration does SFHHA ask the Commission to reconsider its finding that "no money shall be placed subject to refund at this time." Perhaps in light of SFHHA's amended petition seeking interim rates, which shortly followed the request for clarification/reconsideration, many of the arguments raised by FPL in its response appear directed at the issue of whether the Commission should reconsider its Order and place money subject to refund. Because SFHHA does not request reconsideration on this point, the Commission need not reach these arguments.

Staff recommends that the Commission grant SFHHA's request for clarification. Staff believes that the Commission did not intend to modify or interpret the terms of the FPL rate stipulation to preclude entities, such as SFHHA, that were not parties to the stipulation, from seeking a reduction in FPL's base rates. The stipulation clearly identifies those parties that have agreed to "neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect for three years . . .." Those parties are OPC, FIPUG, and the Coalition. The Commission's Order initiating this rate proceeding and the transcript of its deliberations offer no indication that it even considered expanding the stipulation to preclude non-signatories from seeking base rate reductions. Thus, to fully make clear its intent, the Commission should grant SFHHA's request for clarification. By doing so, the Commission would merely be recognizing that SFHHA is not precluded by the terms of the stipulation from seeking a base rate reduction. The effect of this finding would not be inconsistent with dismissing SFHHA's amended petition, as recommended in Issue 1. According to SFHHA's request, the Commission need not address the alternative motion for reconsideration.

As discussed in Issue 1, SFHHA contends in its amended petition that the Commission failed to consider certain matters in rendering its decision to hold no money subject to refund. SFHHA also contends in its amended petition that allowing FPL to earn returns in excess of its maximum authorized level of return on

equity is inconsistent with the Commission's statutory mandate to fix fair and reasonable rates upon a finding of excessive rates. For the reasons set forth in Issues 1 and 3, staff believes that these arguments need not be addressed to dispose of the motions at issue. Further, staff believes it would be inappropriate to treat the amended petition as a motion for reconsideration because it was not filed within the time allowed for such a motion. As discussed below, even if these arguments are considered, they would not warrant overturning the Commission's finding that no money be placed subject to refund.

First, as examples of matters raised in its amended petition that the Commission did not consider, SFHHA lists the following: (1) the opportunity for FPL to implement defensive strategies, particularly to defer expenses until the 2002 test year, enhancing 2001 earnings and artificially enhancing test year expenses; (2) an increase of over $500 million in the level of unrealized gains in special use funds, indicating that current funding levels are too high; (3) FPL's admission that the failed Entergy merger would not have produced the anticipated synergies, raising questions about the prudence of costs associated with the merger; (4) FPL's plan to pay a certain employee an additional 25% if the merger terminated; and (5) a potential windfall to FPL's owners if FPL is allowed to continue to accelerate depreciation on generating assets then, during industry restructuring, transfer those assets to an affiliate at an artificially-low net book value. While each of these points may raise a valid issue for resolution in the FPL rate proceeding, staff does not believe that these points are relevant to the Commission's decision to place no money subject to refund.

Second, SFHHA contends that allowing FPL to earn returns in excess of its maximum authorized level of return on equity is inconsistent with the Commission's statutory mandate to fix fair and reasonable rates upon a finding of excessive rates. Reworded in terms of a request for reconsideration of the Commission's decision on interim rates, SFHHA's argument is that the Commission has failed to consider its statutory mandate to fix fair and reasonable rates.

In its Order, the Commission chose not to set interim rates, based on the ratepayer protection to be provided by the stipulation throughout the term of the rate proceeding. The stipulation was approved by the Commission as a means to achieve fair and reasonable rates for FPL's customers over its three-year term. In

approving the stipulation, the Commission recognized that FPL might earn over its authorized level of return on equity, but balanced that with the rate reduction and refunds that customers would receive. By not establishing interim rates, the Commission allowed the stipulation to run its course to achieve the benefits it was intended to create for ratepayers. Thus, the Commission has at no time failed to consider its statutory mandate to fix fair and reasonable rates.

ISSUE 4: Should these dockets be closed

RECOMMENDATION: If the Commission approves staff's recommendation to deny SFHHA's amended petition in Issue 1, Docket No. 010944-EI should be closed. Docket No. 001148-EI should remain open.

STAFF ANALYSIS: If the Commission approves staff's recommendation to deny SFHHA's amended petition in Issue 1, Docket No. 010944-EI should be closed. Docket No. 001148-EI should remain open.