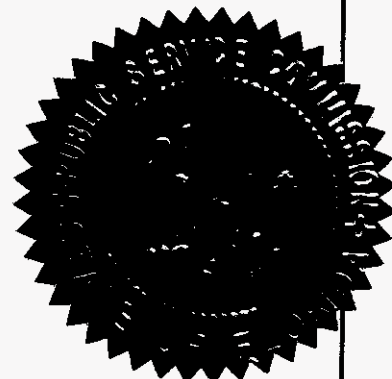


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN THE MATTER OF: DOCKET NO. 090001-EI

FUEL AND PURCHASED POWER COST RECOVERY
CLAUSE WITH GENERATING PERFORMANCE
INCENTIVE FACTOR. (FLORIDA PUBLIC
UTILITY COMPANY)



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 7

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, March 17, 2009

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

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1 APPEARANCES:

2 NORMAN H. HORTON, JR., ESQUIRE, CURTIS YOUNG and
3 MARK CUTSHAW, appearing on behalf of Florida Public
4 Utilities Company.

5 DANIEL LEE, appearing on behalf of Commission
6 staff.

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P R O C E E D I N G S

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2 CHAIRMAN CARTER: Okay. Now we proceed,
3 Commissioners, to Item 7. Give staff a moment to get
4 situated here.

5 And I think you -- I think staff has an oral
6 modification. Is that right?

7 MR. LEE: Yes.

8 CHAIRMAN CARTER: Why don't you guys address
9 your oral modification first, and then we'll go ahead
10 and we'll introduce the case. You're recognized.

11 MR. LEE: Thank you, Chairman, Commissioners.
12 Item 7 is staff's recommendation to approve a midcourse
13 correction for Florida Public Utilities Company.

14 FPUC's projected under-recovery is due to a
15 rate increase by JEA for its cost of service providing
16 wholesale power to the company. Staff would note that
17 JEA has twice delayed the implementation of the new rate
18 in order to give FPUC time to review the rate increase.

19 Yesterday FPUC filed an amended petition
20 reflecting the second delay of the new rate until
21 May 1st, 2009. Including the additional cost reduction
22 caused by this delay, the midcourse adjustment for
23 residential customers using 1,000-kilowatt hours is an
24 increase of approximately 6 percent. Based on
25 yesterday's revised filing, staff would like to make a

1 few oral modifications to the recommendation. I'm
2 prepared to review those modifications now, if you'd
3 like.

4 COMMISSIONER EDGAR: Please go ahead and go
5 through the modifications, if you would.

6 MR. LEE: Thank you.

7 On Page 3, the third paragraph, just add a
8 sentence at the end. It would read, "Further, on
9 March 16, 2009, FPUC informed staff that JEA had again
10 delayed implementation of the new rates until May 1st,
11 2009."

12 And the next paragraph, there are a few
13 related changes on the second line. Following
14 "February 25th, 2009," add "and then again on
15 March 16th, 2009."

16 And the next line, the under-recovery number,
17 strike that \$2,160,471 and replace with \$1,743,884.
18 The, at the end of the paragraph strike "in March,"
19 replace with "through April."

20 On Page 4, the first full paragraph, three
21 numbers connected to the table that follow needs to be
22 changed. On the second -- on the third, third line the
23 first number is -- strike \$9.31 and replace with \$7.60,
24 and strike \$18.62, replace with \$15.20. And the next
25 line strike 7.7, replace with 6.26. Okay. And the

1 table should be reflected in the handouts that's
2 provided earlier.

3 COMMISSIONER EDGAR: And so just to make sure
4 I'm clear, the modifications to the staff recommendation
5 that you have described to us, those are to take into
6 account the change in the implementation date from April
7 to May?

8 MR. LEE: That's right.

9 COMMISSIONER EDGAR: Thank you. I'd like to
10 go ahead and ask FPUC to speak to the item as modified.

11 MR. HORTON: Yes, ma'am. Norman H. Horton,
12 Jr., on behalf of Florida Public Utilities Company. And
13 also with me is Mr. Curtis Young and Mr. Mark Cutshaw,
14 and we're primarily here to answer your questions. We
15 do support the staff recommendation as modified. I
16 think they gave you an explanation and we're here to
17 answer questions.

18 CHAIRMAN CARTER: Commissioner Skop, you're
19 recognized.

20 COMMISSIONER SKOP: Thank you, Mr. Chairman.

21 I'd just like to first commend our staff for
22 the work that they've done on this. I know that working
23 through the issues and the, the May increase and the
24 associated cost savings that result in that are
25 commendable. I do have some questions for the utility,

1 as I am still struggling to find some answers that I
2 think that are, that are relevant to this midcourse
3 correction.

4 First to the company, it's my understanding
5 that this midcourse correction is not related to a
6 fuel-specific charge but rather a demand in energy
7 charge associated with the power purchase agreement; is
8 that correct?

9 MR. HORTON: Yes, sir.

10 COMMISSIONER SKOP: Okay. And with respect to
11 the contract on Page 3 of the staff recommendation, the
12 bottom of the second paragraph of the staff analysis,
13 Section 3(d) of the JEA contract provides that JEA can
14 adjust its energy and demand charges based on the cost
15 of service principles defined in the contract, beginning
16 1, January, 2009.

17 If that were the case and this is a
18 substantial charge that is being passed on to the
19 consumers, what actions did FPUC take to identify this
20 contingency in the fuel clause proceeding last November?

21 MR. CUTSHAW: Good morning, Commissioners.
22 I'm Mark Cutshaw with Florida Public Utilities.

23 Last September when we began preparations for
24 the 01 docket we did contact JEA and request that they
25 provide us with their estimates of any changes that

1 would be included in our contract for 2009. Based on
2 their input to us, there were no changes to any of the
3 base components of the contract and at that point in
4 time we did not include any changes.

5 COMMISSIONER SKOP: Okay. Let's take one step
6 back. So the proposed changes in the midcourse
7 correction are not fuel related, they're demand and
8 energy charges associated with the PPA. But these
9 additional rate increases, which are over 6 percent for
10 the average consumer, come on top of rate case and fuel
11 clause increases that were passed through last year; is
12 that correct?

13 MR. CUTSHAW: That's correct.

14 COMMISSIONER SKOP: Okay. When you contacted
15 JEA with respect to the 2009 proceedings, again, that
16 would seem to imply diligence on the part of FPUC. Do
17 you have any written documentation supporting that?

18 MR. CUTSHAW: Yes. We have documentation we'd
19 be glad to provide where we did contact them asking for
20 information for our 01 docket that would be for calendar
21 year 2009.

22 COMMISSIONER SKOP: Okay. And in response did
23 JEA provide FPUC with a written response indicating that
24 there would be no such adjustments to base rate charges?

25 MR. CUTSHAW: The response indicated that the

1 only change would be related to fuel.

2 COMMISSIONER SKOP: Okay.

3 MR. CUTSHAW: There was not any specific
4 identification regarding the base or demand charges.

5 COMMISSIONER SKOP: Okay. So in that regard,
6 I guess this brings me to the question I'm kind of
7 puzzled by and seeking answers to. The contract
8 provides the means for JEA to update their rates based
9 on a cost of service study that was performed in 2007.
10 Apparently FPUC showed diligence and JEA provided a
11 written response. Does that written response supersede
12 their ability under the contract to pass through
13 charges? For instance, by virtue of the written
14 response, would JEA be estopped based on the
15 representations made to FPUC from passing through those
16 charges for 2009 to the extent that customer bills would
17 not go up?

18 MR. HORTON: That's, that's an issue that we
19 have not fully explored, Commissioner.

20 COMMISSIONER SKOP: Okay. Well, that's the
21 issue I'm facing passing on a substantial rate increase
22 to your customers.

23 MR. HORTON: Yes, sir.

24 COMMISSIONER SKOP: And I think that that --
25 again, if this were a fuel charge, I think that fuel is

1 a pass-through cost. I'm certainly -- you know, I don't
2 have a copy of the contract in front of me, but I think
3 that's a very, very relevant question, and part of me
4 would want to defer it until analysis of that. But,
5 again, I'll acquiesce to the will of the Commission, but
6 I would like at a minimum to see that as a separate
7 issue broken out in the fuel clause to track that
8 specifically as to whether JEA's inaction or written
9 representation to FPUC constituted a waiver of their
10 contractual ability for 2009 or whether they should be
11 estopped from passing through that cost based on the
12 written representations to FPUC.

13 MR. HORTON: The -- certainly, Commissioner.
14 The contract does permit JEA to make these adjustments
15 and contemplates an adjustment annually, excuse me, as
16 we go forward.

17 Just a clarification. Even though this may
18 not be an increase that's fuel related for JEA, we
19 consider it to be fuel related to us. So just a
20 clarification on that.

21 COMMISSIONER SKOP: I understand. And, I
22 mean, my concern would have been had FPUC not shown
23 diligence in terms of trying to anticipate a contingency
24 and make the Commission aware of that. Because, again,
25 I don't think your customers like surprises and I really

1 don't either. So, again, I appreciate the good faith
2 effort that was made.

3 Apparently, if, if taking the facts on face
4 are true, apparently JEA affirmatively represented in a
5 written document to FPUC that no such base rate energy
6 and demand charges would be forthcoming for 2009. And I
7 guess the question that I would look at in terms of
8 protecting your ratepayers would be could those written
9 representations be used effectively against JEA to estop
10 and delay those increases, having then missed a window
11 of opportunity by their own written representation to
12 FPUC that they would not seek those increases. I know
13 what the contract says pursuant to what the staff
14 recommendation says, but, again, it is a very
15 substantial increase. For the average customer it's
16 over \$9 per month. And, again, in these difficult
17 economic times, again, if JEA -- you know, certainly
18 they're entitled to cover their costs.

19 But, again, I think that's a very relevant
20 issue that should be looked at critically. Because,
21 again, for them to represent affirmatively to FPUC that
22 there would be no such charges, only to decide later
23 that there were going to be charges and result in a
24 substantial increase to your ratepayers, again, that
25 people need time to plan for that, and having 30 days

1 notice isn't a lot of time. So, again, I commend FPUC's
2 efforts to, to try and work in good faith with JEA, but,
3 again, I'm more interested in the written response and
4 what ramifications that may have in terms of JEA's
5 rights under the contract, whether that effectively was
6 a modification to their right under the contract for the
7 remainder of 2009. So, Mr. Chair.

8 CHAIRMAN CARTER: Thank you, Commissioner.
9 And I do appreciate the company acting, you know,
10 diligently to bring that information to us in a timely
11 manner. And as you said, they do have to, you know,
12 respond to JEA, who is a major provider for them, and I
13 just appreciate that. And as we proceed further, we can
14 look at how things go from there. But I think that on
15 the record here things seem to be pretty much in order.

16 Commissioners, anything further? Commissioner
17 McMurrian, you're recognized.

18 COMMISSIONER McMURRIAN: I just want to ask
19 staff to respond to what's come up. Are we able to --
20 well, I suppose we're definitely able to add some kind
21 of issue to the fuel clause such that I guess if the
22 extension of that question raised were that JEA could be
23 estopped from trying to pass on those energy and demand
24 charges based on that representation, we would be
25 talking about some sort of refund, I guess, if we were

1 to act today and then that came up in fuel.

2 MS. BENNETT: Yes. In fact, staff has already
3 prepared some discovery to confirm FPUC has done all
4 that it can. We will certainly monitor those specific
5 questions that Commissioner Skop has had and we can
6 include that as an issue in the fuel clause.

7 COMMISSIONER McMURRIAN: And there's not a way
8 to, to have those kinds of questions answered today?
9 That's a more thorny, probably legal issue than we're
10 prepared to deal with today; is that what I'm
11 understanding?

12 MS. BENNETT: Estoppel tends to be an issue
13 that the courts would handle and I think that that's
14 where we would be looking at. Has JEA -- I mean, has
15 FPUC pursued all of its avenues to protect its
16 ratepayers through the contract between FPUC and JEA? I
17 don't think we have those answers today. I think
18 interim proceedings like midcourse corrections, the
19 party may make a prima facie case, but they understand
20 that we will look at it in depth in the fuel proceeding
21 which culminates in November.

22 COMMISSIONER McMURRIAN: Okay. Thank you.
23 That's all I need, Mr. Chairman.

24 CHAIRMAN CARTER: Thank you, Commissioner.

25 Commissioners, anything further? Commissioner

1 Edgar, you're recognized for a motion.

2 COMMISSIONER EDGAR: Thank you, Mr. Chairman.
3 I would make the motion in favor of the staff
4 recommendation on Issues 1 through 3 as modified.

5 COMMISSIONER SKOP: Second.

6 CHAIRMAN CARTER: It's been moved and properly
7 seconded. Commissioners, any debate, any questions, any
8 concern? Hearing none, it's been moved and properly
9 seconded. All in favor, let it be known by the sign of
10 aye.

11 (Unanimous affirmative vote.)

12 All those opposed, like sign. Show it done.

13 (Agenda Item 7 concluded.)
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1 STATE OF FLORIDA)
 2 COUNTY OF LEON) CERTIFICATE OF REPORTER

3
 4 I, LINDA BOLES, RPR, CRR, Official Commission
 5 Reporter, do hereby certify that the foregoing proceeding
 was heard at the time and place herein stated.

6 IT IS FURTHER CERTIFIED that I stenographically
 7 reported the said proceedings; that the same has been
 8 transcribed under my direct supervision; and that this
 transcript constitutes a true transcription of my notes of
 said proceedings.

9 I FURTHER CERTIFY that I am not a relative,
 10 employee, attorney or counsel of any of the parties, nor am
 I a relative or employee of any of the parties' attorneys or
 11 counsel connected with the action, nor am I financially
 interested in the action.

12 DATED THIS 24th day of March,

13 2009.

14
 15 Linda Boles
 16 LINDA BOLES, RPR, CRR
 FPSC Official Commission Reporter
 (850) 413-6734