State of Florida

Public Service Commission

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

DATE: November 19, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Lester, Barrett, Draper, Franklin, Lee, Matlock, Slemkewicz)
Office of the General Counsel (Bennett, Sayler)

RE: Docket No. 090001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor – Issues for Florida Public Utilities Company.

AGENDA: 12/01/09 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: For the fuel factors to be effective on January 1, 2010, the Commission must make a decision on or before December 1, 2009.

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090001FPUC.RCM.DOC

Case Background

As part of the Florida Public Service Commission's continuing fuel and purchased power cost recovery and generation performance incentive factor proceedings, a hearing was held on November 2, 2009, in this docket. The hearing addressed the issues set forth in Order No. PSC-09-0723-PHO-EI (Prehearing Order), issued October 30, 2009. As noted in the Prehearing Order, several issues were resolved pursuant to stipulations. However, the Commission asked that briefs be filed for the outstanding issues from Florida Public Utilities Company (FPUC) and Gulf Power Company (Gulf).

This recommendation addresses the eight outstanding issues in this docket for FPUC. Only FPUC filed a brief regarding its issues. Staff notes that the argument and analysis for the first two issues (Issues 3A and 3B) impact the recommendations for all of the issues that follow (Issues 8, 9, 10, 12, 13 and 15). Therefore, the bulk of FPUC's arguments and staff's analysis are included in Issues 3A and 3B.

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

Discussion of Issues

Issue 3A: Has FPUC pursued all reasonable avenues to protect its ratepayers from mid-course increases in fuel and demand charges from JEA in 2009?

Recommendation: Yes. FPUC pursued all reasonable avenues to protect its ratepayers from mid-course increases in fuel and demand charges from JEA in 2009. (D. Lee)

Position of the Parties

FPUC: Yes. Upon notification of the increase, FPU retained services of consultants to review the cost of service study utilized by JEA and presented comments and objections to the JEA Board. Although JEA approved the increases, the efforts of the Company resulted in some adjustments to the benefit of FPUC customers.

Staff Analysis:

Background of Issue 3A

This issue is a follow-up of FPUC's actions to address the mid-course increase in fuel and demand charges approved in Order No. PSC-09-0213-PCO-EI, issued April 9, 2009, in Docket 090001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor (mid-course order). The Commission allows mid-course corrections between fuel hearings to timely correct a large underrecovery or overrecovery caused by significant deviation between revenues and projected costs.

JEA (formerly the Jacksonville Electric Authority) is the primary power supplier for FPUC's Northeast Division. FPUC's purchased power contract with JEA (JEA Contract) was amended and became effective January 2007. (TR 396-397) The amended contract contained provisions for rates based on cost-of-service principles.[1]

As noted in the mid-course order, early this year FPUC received notification from JEA that the energy and demand charges would increase significantly effective March 1, 2009. The rate increase was based on the contract provision for cost-of-service rates. Citing JEA's rate increase, FPUC filed a petition for a mid-course increase for its Northeast (Fernandina Beach) Division on February 12, 2009. After staff and parties questioned whether FPUC had adequate time and information to review JEA's rate increase, FPUC reported that after further discussion with JEA, JEA had delayed the implementation of the new rates until April 1, 2009. On March 16, 2009, FPUC informed staff that JEA had again delayed the rate increase until May 2009. JEA's two-month delay reduced FPUC's estimated year-end underrecovery from \$2,671,081 to \$1,743,884.

[1] In Docket No. 060001-EI, the Commission approved purchased power cost recovery for FPUC based on its purchased power contract with JEA (JEA Contract). See: Order No. PSC-06-1057-FOF-EI, issued on December 22, 2006, in Docket No. 060001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

FPUC's Arguments

FPUC contended that it pursued all reasonable avenues to protect its ratepayers. Initially, FPUC retained the services of consultants to review the cost-of-service study utilized by JEA. (FPUC BR 1-2) Based on that review, FPUC presented comments and objections regarding the study's results to the JEA Board. As a result, the JEA Board made some adjustments of input data used to set the cost-of-service charges. However, the JEA Board voted for the rate increase and rejected FPUC's alternative proposals which would have further protected FPUC's customers. (TR 409; FPUC BR 2-3)

FPUC also consulted an attorney and considered additional options, including oversight by the Federal Energy Regulatory Commission (FERC) and other administrative or legal complaints. (EXH 20, pp. 236, 240-251) Witness Cutshaw testified that neither party is at fault for the miscommunication that occurred between FPUC and JEA regarding the term "fuel cost." (TR 401) FPUC Witness Cutshaw stated that FPUC relied on the assurance from JEA that there would be no fuel increase this year. (TR 401) However, JEA did raise its rates for FPUC, but this increase was not attributable to fuel. (TR 401) The witness stated that FPUC and JEA had contrasting interpretations of what the term "fuel cost" meant. He stated that FPUC's use of the term was intended to mean the total cost related to the JEA Contract, while JEA's interpretation of the term "fuel cost" referred to the fuel charge specified in the contract. (TR 401) According to witness Cutshaw, when all of the facts and circumstances were evaluated, FPUC's legal counsel advised the utility that a successful outcome to litigation was not very likely. (TR 407-408; EXH 22, p. 471; FPUC BR 3)

Analysis

The question before the Commission is whether FPUC has taken all reasonable actions to protect its ratepayers. As referenced earlier, FPUC had taken some actions prior to the Commission's approval of the mid-course increase. Upon request by FPUC, the JEA Board delayed the implementation of the rate increase in order to address FPUC's concerns. Further, FPUC retained the services of consultants in order to present alternative methods and input data for JEA's consideration. JEA's two-month delay of the rate increase and input data adjustments resulted in a benefit to FPUC's customers.

In addition, FPUC sought advice from legal counsel and outside technical experts to determine if other actions could be taken. In the end, it was determined that the likelihood of success was minimal. Staff believes FPUC took actions consistent with what a reasonable utility would do, when faced with a contractual dispute, in hiring a legal consultant to evaluate its case and outside experts to negotiate a resolution to the dispute.

Conclusion

Based on the record evidence and testimony, staff believes FPUC has taken a reasonable course of action to protect its ratepayers from the mid-course increases in fuel and demand charges from JEA in 2009.

<u>Issue 3B</u>: Should the Commission approve FPUC's proposal to use a portion of storm hardening revenues to mitigate increases to customers in the Northwest Division?

<u>Recommendation</u>: No. FPUC's proposal merely postpones the 2009 underrecovery to a later date and could compromise reliability due to reduced storm hardening activities. (Lester, Draper, Barrett, Franklin)

<u>Position of the Parties</u>

FPUC: FPUC should be permitted to recover costs associated with the purchased power agreement but to mitigate the increase in the Northwest Division. The proposal to apply a portion of storm hardening revenue to the under recovered fuel costs in the Northwest Division would reduce the total bill and should be considered. The option, if approved, would be for one (1) year with further evaluation.

<u>Staff Analysis</u>:

<u>FPUC's Arguments</u>

While base rates for FPUC's two operating divisions have been consolidated, the fuel factors are division-specific because FPUC has two different power suppliers. FPUC does not generate power, but instead purchases power from Gulf Power Company (Gulf) for its Northwest Division and from JEA for its Northeast Division.[2] For its Northwest Division (FPUC-Marianna), FPUC presented testimony that supported a significant increase in fuel costs and in customers' bills for 2010. Based on this testimony, the monthly 1000 kWh residential bill would increase by $18.93, from $136.59 in 2009 to $155.52[3] in 2010. (TR 384) FPUC witness Cutshaw stated that the reasons for the increase were an underrecovery of fuel and purchased power costs in 2009 of $1,725,320, an increase in capacity payments for 2010 in the Purchased Power Agreement (PPA), and a pass through of increased environmental compliance costs from Gulf. (TR 386-387, EXH 24, pp.46-48)

FPUC witnesses Cutshaw and Young stated FPUC is in continuing discussions with Gulf to determine if rate reductions are possible. Witness Cutshaw stated that FPUC has taken all prudent measures to manage the cost of purchased power, and "will review any alternatives that we may be able to find in order to reduce these prices." (TR 398) To mitigate immediate concerns, FPUC proposed an alternative to help reduce the cost of energy for customers in the Northwest Division by deferring the collection of the underrecovery that is currently projected at the end of 2009.

With this option, FPUC would remove the 2009 underrecovery of $1,725,320 from the calculation of 2010 fuel factors. The underrecovery would be amortized and paid with revenues

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[2] The Commission approved the purchased power agreement (PPA) between FPUC and Gulf by Order No. PSC-07-0476-PAA-EI, issued June 6, 2007, in Docket No. 070108-EI, <u>In re: Petition for approval of agreement for generation services and related terms and conditions with Gulf Power Company for Northwest Division (Marianna) beginning 2008, by Florida Public Utilities Company.</u>

[3] Although the FPUC witness uses the figure $155.52, staff notes that this figure does not incorporate the 2010 conservation charge, which is $0.80, an increase of $0.02 from 2009. The correct figure is $155.54.

created by reducing storm hardening expenditures. For 2010, the reduction to storm hardening expenses would be approximately $295,000. The 2010 monthly 1000 kWh residential bill would be $149.95 with this option, reducing the increase resulting from the 2009 underrecovery by a total of $5.63. (TR 387) FPUC proposed this option for only one year. (TR 387) FPUC does not address how the balance of the 2009 underrecovery would be collected. Witness Cutshaw states:

> The deferral would use approximately $295,000 to pay for the amortization of the underrecovery, which would defer pole inspections, joint use audits and a portion of the tree trimming. Since this service area is located inland and is not subject to significant damage that would be expected along the coast, this deferral would reduce the electric cost while not adversely impacting the damage and outages that may occur if a hurricane struck this area. (TR 398)

In its brief, FPUC noted that its primary position was to recover, and not defer, the 2009 underrecovery. FPUC's proposal involving storm hardening revenue is an option the company presented as a way of mitigating increases experienced by Northwest Division customers since January 2007. (FPUC BR at 4)

<u>Analysis</u>

<u>FPUC's Proposed Option</u>

Staff notes that FPUC's storm hardening plan was part of FPUC's recent base rate case. (See Docket Nos. 070300-EI and 070304-EI) Therein, the Commission approved FPUC's storm hardening plan, including expense allowances in base rates to implement the plan.[4] The Commission carefully evaluated funding for storm hardening in the rate case to determine the amount necessary for FPUC to meet its requirements. In Order No. PSC-08-0327-FOF-EI, the Commission allowed funds for joint use audits, pole inspections and tree trimming – the areas FPUC's proposal would reduce for one year. (Order No. PSC-08-0327-FOF-EI, pp. 8-20; TR 387, 428) FPUC witness Cutshaw stated that if the proposal at issue in the fuel docket is approved, FPUC would cut back on these activities in 2010, and "catch up" on most of these programs in 2011. (TR 416) He admitted, however, that tree trimming was an area the company would not be able to catch up on. (TR 418) Upon approval, the witness stated that FPUC would amend its storm hardening plan. (Cutshaw TR 418)

Witness Cutshaw acknowledged that the proposal would cause base rates to subsidize fuel rates. (TR 414-415) Under FPUC's proposal, customers would not pay the full cost of fuel. Instead, the costs would be paid by reductions in storm hardening expenses that were authorized in FPUC's recent base rate case.

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[4] See pages 8 through 20 of Order No. PSC-08-0327-FOF-EI, issued May 19, 2008 in Docket No. 070300-EI, <u>In re: Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C., submitted by Florida Public Utilities Company</u> and Docket No. 070304-EI, <u>In re: Petition for a rate increase by Florida Public Utilities Company</u>.

Staff believes that FPUC's proposal to use storm hardening revenue to offset a portion of the fuel costs compounds problems for both fuel and storm hardening. The proposed plan would recover only a small portion of the 2009 underrecovery in 2010. According to the petition, the balance of the 2009 underrecovery would be amortized. FPUC does not address how or when the amortized balance would be recovered. If the balance were deferred to future fuel proceedings, it could result in higher fuel costs over a longer period. Future fuel costs could continue to increase over the same time period, leaving customers to pay for the remaining balance of the 2009 underrecovery – approximately $1.4 million – in addition to new fuel costs, and potential future under recoveries for several years out. Staff discusses the risks associated with such a deferral below.

In addition, by diverting storm hardening costs to offset fuel and purchased power costs, FPUC's storm hardening activities could be impaired. This could affect distribution reliability, possibly for years into the future, if FPUC were to propose continuing the same treatment for the balance of the underrecovery. Although witness Cutshaw contended that its Northwest Division service area was inland, staff believes that if FPUC were allowed to reduce its storm hardening activities, the end result could be more frequent and longer outages to its customers. (TR 398) Staff believes that if FPUC can meet its storm hardening plan while diverting funds to fuel, then it is possible the plan is over-funded, and base rates should be reduced.

Staff believes FPUC's proposal seriously distorts the concept of proper price signals.[5] The purpose in setting fuel factors on an annual basis is to better match rates to the cost of service so customers can make efficient choices in using electricity. Proper price signals are crucial to fostering conservation and encouraging participation in conservation programs, which benefit all ratepayers. Subsidizing immediate fuel costs, especially with funds that are committed to the comprehensive storm hardening activities, is of questionable long term value. Based on this analysis, staff does not recommend approving FPUC's proposal to use a portion of storm hardening revenues to mitigate increases to customers.

Deferral Option

Staff recognizes that the large proposed increase in fuel costs to customers in the Northwest Division could worsen other economic pressures the area is experiencing. Staff notes that a "middle-of-the-road" option to consider would be to defer one-half of the 2009 underrecovery to the 2011 cost recovery period. The Commission has used this practice in the past for other utilities in order to maintain the nexus of the costs and benefits.[6] For FPUC, this option would preserve the storm hardening funds which were determined prudent as part of its rate case, and at the same time provide some relief to FPUC's Northwest division customers in 2010. Witness Young acknowledged that deferring half the underrecovery would reduce the monthly 1000 kWh residential bill by approximately $2.72. (TR 429)

[5] For a discussion of rate stability and price signals, see page 11 of Order No. PSC-08-0495-PCO-EI, issued August 5, 2008, in Docket No. 080001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

[6] For a discussion of deferrals, see pages 11 through 13 of Order No. PSC-08-0495-PCO-EI, issued August 5, 2008, in Docket No. 080001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

In its brief, FPUC stated this option would have some advantages as well as some issues. FPUC emphasized that it should be permitted to fully recover fuel costs associated with providing power to its customers. (FPUC BR at 5)

While this deferral option is less than the $5.63 reduction under FPUC's proposal, this comparison is misleading because it is only a one-year snapshot of the impacts. FPUC's proposal removes all of the underrecovery, with no plan for recovery of any but the initial $295,000 transfer from the storm hardening funds. It does not address the out-years, when the remaining $1,430,320 balance of the underrecovery would be recovered. Staff believes that recognizing at least a portion of the underrecovery this year, with a plan certain for recovery of the remaining portion avoids many of the problems addressed above in FPUC's plan. Furthermore, witness Young stated that FPUC had the financial capability to carry out such a deferral. (TR 430)

Staff notes that the option of deferring even part of 2009's underrecovery to a future period can create significant risks as well, particularly for a distribution-only utility like FPUC. FPUC's Northwest Division buys all its power from Gulf and therefore has limited ability to control fuel expenses. As a distribution-only utility, FPUC's bill has a higher percentage of fuel revenue than other IOUs. Fuel is approximately 40% of the bill for the generating IOUs in Florida and 79% for FPUC-Mariana. (EXHs 66, p. 117; 83, p. 8; 84, p. 8; 86, p. 6; 94, p. 58; 127, p. 58) Further, whereas a generating utility's fuel costs vary with sales, FPUC recovers capacity and demand charges, which are essentially fixed costs, through its fuel charge. (TR 411-412; EXH 24, pp. 46-48) If FPUC sells less kWhs than forecasted, then an underrecovery will result. Therefore, a deferral of costs, compounded with rising purchased power costs, could magnify the bill impact for Northwest Division customers beyond the impact of a deferral for a fully integrated electric utility. Due to these risks, staff does not recommend the option of deferring one-half of FPUC's 2009 underrecovery to 2011.

As noted above, staff believes that approval of FPUC's proposal would create an inappropriate subsidy that would send the wrong price signal to customers. In addition, staff believes that reducing storm hardening activities could lead to undesirable consequences that may compromise the reliability of the Northwest Division's distribution system over the long term. If FPUC's proposal was granted, staff believes this action could compound the impact of any bill increases that customers may face beyond 2010. Although FPUC developed this proposal to bring its customers lower bills, the Commission must balance any reduction today with the consequences to customers in the future. Witness Cutshaw states that with or without this proposal, the company will continue to explore all possible options regarding the cost of purchased power. (TR 398)

Conclusion

Staff believes the Deferral Option and FPUC's storm hardening proposal carry risks that are undesirable. Both options merely postpone recovery of the 2009 underrecovery and may compound the overall rate impact in future years. Subsidizing fuel costs with storm hardening revenue will decrease storm hardening activities. Therefore, staff recommends that the Commission reject the proposal.

Issue 8: What are the appropriate fuel adjustment true-up amounts for the period January 2008 through December 2008?

Recommendation: The appropriate fuel adjustment true-up amounts for the period January 2008 through December 2008 are as shown below in staff's analysis. (Lester, Barrett, Franklin)

Position of the Parties

FPUC: The appropriate true-up amounts for the period January 2008 through December 2008 are:

Northwest Division: $591,984 (overrecovery)
Northeast Division: $1,659,809 (overrecovery)

Staff Analysis: Issues 8, 9, 10, 12, 13, and 15 are fallout considerations from Issues 3A and 3B. Staff believes the appropriate fuel adjustment true-up amounts for the period January 2008 through December 2008 are:

Northwest Division: $591,984 (overrecovery)

Northeast Division: $1,659,809 (overrecovery)

These true-up amounts are included in the calculation of the 2010 fuel factors (Issue 15).

Issue 9: What are the appropriate fuel adjustment true-up amounts for the period January 2009 through December 2009?

Recommendation: The appropriate fuel adjustment true-up amounts for the period January 2009 through December 2009 are as shown below in staff's analysis. (Lester, Barrett, Franklin)

Position of the Parties

FPUC: The appropriate true-up amounts for the period January 2009 through December 2009 are:

Northwest Division: $2,317,304 (underrecovery)
Northeast Division: $2,485,067 (underrecovery)

Staff Analysis: Issues 8, 9, 10, 12, 13, and 15 are fallout considerations from Issues 3A and 3B. Staff believes the appropriate fuel adjustment true-up amounts for the period January 2009 through December 2009 are:

Northwest Division: $2,317,304 (underrecovery)
Northeast Division: $2,485,067 (underrecovery)

These true-up amounts are included in the calculation of the 2010 fuel factors (Issue 15).

Issue 10: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2010 to December 2010?

Recommendation: The appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2010 to December 2010 are as shown below in staff's analysis. (Lester, Barrett, Franklin)

Position of the Parties

FPUC: The appropriate true-up amounts for the period January 2010 through December 2010 are:

Northwest Division: $1,725,320 (underrecovery)

Northeast Division: $825,258 (underrecovery)

Staff Analysis: Issues 8, 9, 10, 12, 13, and 15 are fallout considerations from Issues 3A and 3B. Staff believes the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2010 to December 2010 are:

Northwest Division: $1,725,320 (underrecovery)

Northeast Division: $825,258 (underrecovery)

These true-up amounts are included in the calculation of the 2010 fuel factors (Issue 15).

Issue 12: What are the appropriate projected net fuel and purchased power cost recovery and Generating performance Incentive amounts to be included in the recovery factor for the period January 2010 through December 2010?

Recommendation: The appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2010 through December 2010 are as shown below in staff's analysis. (Lester, Barrett, Franklin)

Position of the Parties

FPUC: The appropriate projected net fuel and purchased power cost recovery amounts for the period January 2010 through December 2010 are:

Northwest Division: $26,064,444

Northeast Division: $22,114,719

Staff Analysis: Issues 8, 9, 10, 12, 13, and 15 are fallout considerations from Issues 3A and 3B. Staff believes the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2010 through December 2010 are:

Northwest Division: $26,064,444

Northeast Division: $22,114,719

These projected amounts are included in the calculation of the 2010 fuel factors (Issue 15).

Issue 13: What are the appropriate levelized fuel cost recovery factors for the period January 2010 through December 2010?

Recommendation: The appropriate levelized fuel cost recovery factors for the period January 2010 through December 2010 are as shown in staff's analysis. (Draper, Lester, Barrett, Franklin)

Position of the Parties

FPUC: The appropriate levelized fuel cost recovery factors for the period January 2010 through December 2010 are:

Northwest Division: 8.197¢/kwh

Northeast Division: 6.572¢/kwh

Staff Analysis: Issues 8, 9, 10, 12, 13, and 15 are fallout considerations from Issues 3A and 3B. Staff believes the appropriate levelized fuel cost recovery factors for the period January 2010 through December 2010 are:

Northwest Division: 8.197¢/kwh

Northeast Division: 6.572¢/kwh

These factors are included in the calculation of the 2010 fuel factors (Issue 15).

Issue 15: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

Recommendation: The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses are as shown in staff's analysis. (Draper)

Position of the Parties

FPUC: The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses are:

Northwest Division:

Rate Schedule	Adjustment
RS	$.12293
GS	$.12158
GSD	$.11708
GSLD	$.11285
OL, OL1	$.09937
SL1, SL2 and SL3	$.10018
Step Rate for RS	
RS with less than 1,000 kWh/month	$.11927
RS with more than 1,000 kWh/month	$.12927

Northeast Division:

Rate Schedule	Adjustment
RS	$.09955
GS	$.09735
GSD	$.09266
GSLD	$.09341
OL	$.07050
SL	$.07112
Step Rate for RS	
RS with less than 1,000 kWh/month	$.09615
RS with more than 1,000 kWh/month	$.10615

Staff Analysis: Issues 8, 9, 10, 12, 13, and 15 are fallout considerations from Issues 3A and 3B. FPUC included this information in its Prehearing Statement filed on October 7, 2009, and again in its Brief filed on November 12, 2009.

Northwest Division:

Rate Schedule	Adjustment
RS	$.12293
GS	$.12158
GSD	$.11708
GSLD	$.11285
OL, OL1	$.09937
SL1, SL2 and SL3	$.10018
Step Rate for RS	
RS with less than 1,000 kWh/Month	$.11927
RS with more than 1,000 kWh/Month	$.12927

Northeast Division:

Rate Schedule	Adjustment
RS	$.09955
GS	$.09735
GSD	$.09266
GSLD	$.09341
OL	$.07050
SL	$.07112
Step Rate for RS	
RS with less than 1,000 kWh/Month	$.09615
RS with more than 1,000 kWh/Month	$.10615

Issue 16: Should this docket be closed?

Recommendation: No. The Fuel and Purchased Power Cost Recovery Clause docket is an on-going docket and should remain open. (Bennett, Sayler)

Staff Analysis: The Fuel and Purchased Power Cost Recovery Clause docket is an on-going docket and should remain open.