

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Florida ) DOCKET NO.: 890148-EI  
Industrial Power Users Group to ) ORDER NO: 23302  
Discontinue Florida Power & Light ) ISSUED: 8-3-90  
Company's Oil Backout Cost Recovery )  
Factor. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
THOMAS M. BEARD  
BETTY EASLEY  
GERALD L. GUNTER

ORDER DENYING MOTIONS FOR RECONSIDERATION

BY THE COMMISSION:

In connection with the February, 1989 hearing in Docket No. 890001-EI, the Florida Industrial Power Users Group (FIPUG) raised issues relating to discontinuance of Florida Power & Light Company's (FPL's) Oil Backout Cost Recovery Factor. FIPUG also filed a separate petition in this docket, which challenged FPL's past and present collection of oil backout cost recovery revenues pursuant to Rule 25-17.016, Florida Administrative Code. The issues in Docket No. 890001-EI were deferred until the August, 1989 hearing in that docket, and both dockets were heard at that time.

After hearing, the Commission issued Order No. 22268, which denied FIPUG's petition, but which also ordered FPL to refund excess revenues resulting from the use of a 15.6% return on equity (ROE). The utility was ordered to calculate the refund amount based on a 13.6% ROE. FPL filed a Motion for Reconsideration of the refund portion of the order, and FIPUG filed a Cross Motion for Reconsideration of the decision to make no adjustment to amounts collected as accelerated depreciation and the decision to continue collection of capacity charges paid by FPL to the Southern Company. The parties were granted oral argument upon their motions.

DOCUMENT NUMBER-DATE

07020 AUG -3 1990

FPSC-RECORDS/REPORTING

FPL's Motion for Reconsideration

In its motion, FPL argued that the issue of an oil backout refund based on a revised return on equity was not properly before the Commission, and that it constituted unlawful retroactive ratemaking. We disagree. Rule 25-17.016, Florida Administrative Code (the Oil Backout Cost Recovery Rule) allows FPL recovery of certain oil backout project costs, including the actual cost of capital of such project. Although the burden of proof of the correctness of its requested recovery is on the utility, FPL did not prove its actual cost of capital in prior oil backout cost recovery proceedings. Rather, the utility admittedly used its last authorized cost of capital in calculating its oil backout cost recovery factor, which is not proper under the rule. As summarized above, FPL argued in its motion that it was not properly placed on notice that its cost of capital was at issue, nor that oil backout cost recovery funds were "at risk". However, neither argument is sufficient to deprive the Commission of the ability to correct FPL's use of an incorrect cost of capital by ordering a refund.

FPL argued that according to Gulf Power Company v. Florida Public Service Commission, 487 So. 2d 1036 (Fla. 1986), the Commission may only reach funds previously approved in adjustment proceedings if there is an issue of prudence. In that case, the Florida Supreme Court affirmed a Commission order which instructed Gulf to refund excessive fuel costs of \$2,200,000 to its ratepayers. The court found that the order did not constitute retroactive ratemaking, and stated that "authorization to collect fuel costs close to the time they are incurred should not be used to divest the commission of the jurisdiction and power to review the prudence of these costs." Id. at 1037. That is, although the fuel costs in question had been previously approved through the Commission's fuel cost recovery mechanism, the Commission retained the power to examine those costs for prudence. The same rationale applies to the present case. The oil backout cost recovery mechanism operates in the exactly the same fashion as the fuel adjustment mechanism. Both pass certain costs directly to ratepayers. There is no reason for distinguishing the examination of the prudence of fuel costs from the examination of the correctness of cost of capital.

FPL also argued that it had no notice of a possible equity refund, and thus the issue was not properly before the Commission. We find this argument unpersuasive. FIPUG's petition stated (at page 12) that "FPL has used the oil backout cost recovery mechanism to evade the Commission's ability to monitor and regulate the utility's earned rate of return", and further pointed out that "FPL has used the 15.6% ROE in calculating the revenue requirement associated with the transmission line investment which is being collected via the OBCRF [Oil Backout Cost Recovery Factor]." On the same page of its petition, FIPUG stated that "[s]ince the Commission authorized the 15.6% return on equity, capital costs have fallen dramatically. However, FPL has continued to earn a return of 15.6% on its investment in the oil backout project." In its answer to FIPUG's petition, FPL admitted use of the 15.6% ROE in its oil backout recovery. FIPUG's failure to request an equity refund does not prevent the Commission from ordering such a refund on its own motion.

Rule 25-17.016(e), Florida Administrative Code, clearly states that the oil backout cost recovery factor is to be estimated every six months, "based on the most current projections of oil and non-oil fuel prices, other operation and maintenance expenses, taxes, and kilowatt-hour sales and on the actual cost of capital for the qualified oil-backout project." (Emphasis added.) The rule then requires a true-up adjustment, with interest, "to reconcile differences between estimated and actual data." Faced with FPL's use of a return on equity other than the actual cost of capital for the project, we ordered a refund. This Commission has the authority to review costs recovered through adjustment proceedings. We therefore deny FPL's motion for reconsideration.

#### FIPUG'S Cross Motion For Reconsideration

In Order No. 22268 we declined to adjust the amounts collected by FPL as accelerated depreciation in connection with its oil backout cost recovery project, and further declined to order FPL to recover through base rates the capacity charges which the utility paid to the Southern Company. FIPUG sought reconsideration of these decisions, but in so doing, failed to raise an issue proper for reconsideration. Rather, FIPUG merely argued that the Commission's decision in Order No. 22268 was incorrect. The

ORDER NO. 23302  
DOCKET NO. 890148-EI  
PAGE 4

contentions in FIPUG's motion have been heard and decided after hearing, and raise no mistake of fact or law sufficient for reconsideration. We therefore deny FIPUG'S cross motion for reconsideration.

Based on the foregoing, it is

ORDERED that the Motion for Reconsideration filed herein by Florida Power & Light Company and the Cross Motion for Reconsideration filed herein by the Florida Industrial Power Users Group are hereby denied. It is further

ORDERED that this docket shall remain open.

BY ORDER of the Florida Public Service Commission,  
this 3rd day of August, 1990.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

(7704L)MER:bmi

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal

ORDER NO. 23302  
DOCKET NO. 890148-EI  
PAGE 5

with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

MEMORANDUM

August 2, 1990

TO : DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (RULE) *WR*  
RE : DOCKET NO.: 890148-EI - PETITION OF THE FLORIDA  
INDUSTRIAL POWER USERS GROUP TO DISCONTINUE FLORIDA  
POWER & LIGHT COMPANY'S OIL BACKOUT COST RECOVERY  
FACTOR.

*23302*

---

Please issue the attached ORDER DENYING MOTIONS FOR RECONSIDERATION in the above-referenced docket.

(7704L)MER:bmi

Attachment/Order

DOCUMENT NUMBER-DATE

07020 AUG -3 1990

FPSC-RECORDS/REPORTING