

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of additional filing requirements in the fuel and purchased power cost recovery clause when certain threshold levels are met.

DOCKET NO. 971513-EI
ORDER NO. PSC-98-0049-FOF-EI
ISSUED: January 7, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING ESTABLISHMENT OF ADDITIONAL FILING REQUIREMENTS
FOR THE FUEL AND PURCHASED POWER COST RECOVERY CLAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

At the February 19, 1997, fuel adjustment hearing, the Commission voted to allow Florida Power Corporation (FPC) to recover, on an interim basis, a portion of the replacement fuel costs associated with the extended outage of its Crystal River 3 nuclear unit. The interim recovery was subject to refund, with interest, pending the results of our investigation of the causes of the outage. Although we allowed interim recovery of a portion of the outage related expenses, concern was expressed with the level of detail provided by FPC in its prefiled testimony. We stated that more stringent filing requirements would be required in the future. In Order No. PSC-97-0359-FOF-EI, issued March 31, 1997, we stated:

We have a great deal of difficulty with allowing recovery of these costs. To a limited extent, we agree with the arguments of Public Counsel that given the significance of these costs, FPC should have made some initial

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presentation as to the reasonableness of these costs. In the past, we have permitted utilities to recover costs on a preliminary basis, subject to audit, "true-up" with interest and an after-the-fact prudence review. Thus, we do not believe it was unreasonable for FPC to expect that it would have the opportunity to meet the burden of proof in a proceeding specifically designed to determine the prudence of these costs. In the future, however, when a utility seeks to recover the costs which have a significant impact on the utility's fuel adjustment factor, the utility must affirmatively demonstrate that the actions or events that gave rise to the need for the recovery and the underlying costs are reasonable.

Because of the need for further analysis in a separate proceeding, our Order did not define the "significant impact" which would trigger the more stringent filing requirements. On October 23, 1997, a recommendation defining significant impact as a 5% increase or decrease of a utility's fuel adjustment factor was presented to the Commission panel in Docket No. 970001-EI. At that time, FPC expressed concern that the proposed threshold was too burdensome and requested an informal meeting to discuss the matter further. In addition, the Commissioners on the panel requested that the issue be heard by the full Commission.

On November 14, 1997, an informal meeting was held with representatives of the parties in Docket No. 970001-EI. At the meeting, Florida Power & Light, Gulf Power, Tampa Electric Company and the Florida Industrial Power Users Group indicated that they did not object to the 5% threshold. The Office of Public Counsel (OPC) and Florida Power Corporation did object to the 5% threshold and submitted alternative language for consideration. Having considered the arguments of the parties, we now render our decision regarding additional filing requirements in the fuel and purchased power cost recovery clause.

FPC proposed that the following language be adopted as the "Guideline for Preliminary Explanation Required by Order No. PSC-97-0359-FOF-EI":

When a utility experiences an extended outage of a major generating unit that increase the utility's fuel adjustment factor for the projection period by more than 5% compared to what the factor would have been absent the outage, the utility must, prior to approval, disclose the

extended outage and provide a preliminary explanation, within the limits of the information then available, of its actions surrounding the outage and the need to incur the underlying fuel costs. The utility's ultimate recovery of such fuel costs remains subject to an after-the-fact review through the true-up process.

FPC's concern with the 5% threshold was that it was too restrictive and that the Company would have to present the preliminary proof as a matter of course in its fuel filings. As such, FPC seeks to limit the preliminary proof to "extended outages" of "major generating units" that cause an increase of more than 5%.

We do not believe that FPC's suggested language will adequately accomplish our purpose. First, the phrases "extended outage" and "major generating unit" which are intended to limit the scope of "significant impact" as that phrase is used in the Order, are ambiguous. An ambiguous policy would be difficult to administer and enforce. In addition, an ambiguous policy leads to uncertainty by entities who must file under the fuel clause as to what the rules are. Such a policy could be subject to challenge.

Second, FPC's suggested language lacks definition regarding the character of and manner in which the preliminary showing will be made. FPC's Guideline states only that an extended outage will be disclosed and that preliminary explanation will be made "within the limits of the information then available." Under FPC's language, the preliminary explanation could be made in oral argument without any affirmative, documentary evidence being provided in advance of hearing regarding the reasonableness of the costs. That does not comply with our intent when it required that an "affirmative demonstration" of reasonableness of costs to be made in advance of interim recovery.

OPC expressed concern that utilities may experience "significant impacts" which do not result in a 5% increase or decrease in the fuel adjustment factor. As such, OPC suggested the following alternative to the 5% proposal:

With respect to any matter having a material effect on costs sought to be recovered from its ratepayers, a utility must affirmatively demonstrate, prior to approval of recovery, that the actions or events which gave rise

to the need for recovery and the underlying costs are reasonable.

We believe that OPC's suggested language is too broad. OPC's proposal requires preliminary proof of reasonableness on "any matter having a material effect on costs sought to be recovered". There is no definition of material effect and no definitive minimum threshold triggering preliminary proofs. Taken to its logical conclusion, OPC's language could be interpreted as requiring preliminary proof for every fuel cost recovery filing.

We have carefully considered the suggestions of FPC and OPC regarding a standard for preliminary proof of projected fuel costs as required by the Order. However, we find that a numeric standard is necessary to provide certainty and equality of administration and enforcement of such a policy.

Therefore, we find that prior to interim recovery, utilities must demonstrate in their prefiled testimony, the reasonableness of costs that exceed the threshold for increases in fuel adjustment factor filings as set forth herein. The threshold requirement of Order No. PSC-97-0359-FOF-EI will be triggered whenever fuel costs will result in an increase of 5% or more of the utility's six-month fuel adjustment factor for the projection period. Examples of actions or events which may give rise to the requirement of a preliminary justification include, but are not limited to, a change in fuel prices, a fuel supply disruption or a generating plant outage. A 5% or more standard is reasonable and can be administered fairly to all investor-owned utilities, regardless of the level of its fuel adjustment factor. We have determined that a decrease of a utility's six-month fuel adjustment factor will not trigger the additional filing requirements.

The preliminary proof of reasonableness required by this Order is not intended to be a substitute for a full prudence review nor does it abridge parties' rights or obligations in fuel adjustment or prudence proceedings.

Based on the foregoing, it is

ORDERED that prior to interim recovery, utilities shall demonstrate in their prefiled testimony, the reasonableness of costs that exceed the threshold for increases in fuel adjustment factor filings as set forth in this Order. It is further


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ORDERED that the threshold requirement of Order No. PSC-97-0359-FOF-EI shall be triggered whenever fuel costs will result in an increase of 5% or more of the utility's six-month fuel adjustment factor for the projection period. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of January, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

LJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 28, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal 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 of the effective date 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.