BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into affiliated cost-plus fuel supply relationships of Florida Power Corporation.	DOCKET NO. 860001-EI-G ORDER NO. 23510 ISSUED: 9-18-90

The following Commissioners participated in the disposition of this matter:

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

ORDER ON FLORIDA POWER CORPORATION'S MOTION FOR RECONSIDERATION OF ORDER NO. 22401

BY THE COMMISSION:

In February, 1986, the Commission opened Docket No. 860001-EI-G for the purpose of investigating the affiliated cost-plus fuel supply relationships between Florida Power Corporation (FPC) and Tampa Electric Company (TECO) and their respective affiliated fuel supply corporations. Also, in February, 1986, the Commission established Docket No. 860001-EI-G in Order No. 15895 for the purpose of determining why FPC's cost to transport coal by non-affiliated rail. In September, 1987, the Commission issued Order No. 18122, which removed TECO from Docket 860001-EI-G, established Docket No. 870001-EI-A for hearing the TECO issues, consolidated the two FPC issues for hearing in Docket No. 860001-EI-G and closed Docket No. 860001-EI-F.

By Order No. 18982, issued on March 11, 1988, the Commission determined to bifurcate the hearings in this docket on (1) the policy issue of whether a market price standard should be imposed on the recovery of costs for goods and services purchased from affiliated companies and (2) the separate issue of whether any of the monies FPC had recovered through its fuel and purchased power cost recovery clause for goods and services purchased from affiliates from 1984 to date had been imprudently or unreasonably incurred and should, therefore, be refunded to its customers. Hearing on the policy issues in this docket were held on May 11-13, 1988. Hearings on the prudency issues in this docket were held December 14-16, 1988 and April 19, 1989.

Staff's recommendations on the policy issues were considered at the Commission's September 6, 1988 Agenda Conference. As stated in Order No. 20604 issued January 13, 1988, the Commission determined that affiliated coal purchases should be priced at market price for recovery through the utilities' fuel cost recovery clauses and that affiliated coal transportation and handling services also should be priced at "market" where it was reasonably possible to construct a market price for the goods and services being considered. Staff was directed to conduct workshops amongst the affected parties for the purposes of determining how best to establish and implement market pricing mechanisms.

Workshops with the parties were held on March 17, March 30, and April 27, 1989. Several market methodologies were discussed; however, the parties could not reach an agreement on one specific market methodology. In Order No. 20604, the Commission ordered that if the parties are unable to agree upon market methodologies, the Commission would impose such methodologies it deemed to be appropriate. Since agreement was not reached, Staff presented a recommendation at the October 17, 1989 agenda conference. Order No. 22401 was issued January 25, 1990. On February 2, 1990, Occidental Chemical Corporation filed a request for oral argument on FPC's motion for reconsideration. Occidental's request was granted by Order No. 22888 issued May 4, 1990. Oral arguments were held June 27, 1990.

Florida Power Corporation argues that the April 1, 1989, market price is incorrect because it is the result of applying the adjustment mechanism to a delivered price. Doing so, FPC argues, affects the recovery of rail delivery costs, not just the cost of coal at the mine. FPC maintains that the adjustment mechanism should be applied to an equivalent FOB mine price to reach future market prices, not to a delivered cost. FPC argues that there is no competent substantial evidence in the record to support the methodology recommended by staff and adopted in the Order. In addition, FPC argues, the Order failed to sufficiently consider the problems inherent in using a weighted average adjustor in conjunction with a relatively small sample. While FPC believes the Commission should adopt the regulator the company originally recommended, an alternative acceptable to FPC is a regulator adjusting the PMJV FOB mine price based on changes in the weighted average price of 1% sulfur contract coal from BOM District 8. That,

FPC argues, would increase the sample size, thereby ameliorating the effects of using a weighted average with a small sample in which changing purchasing patterns can have such marked effects.

Finally, a comparison with TECO's regulator, FPC argues, shows the Commission's methodology as applied to FPC is unfair; the TECO market price methodology uses an adjusted FOB mine price and a broader based adjustor which dampens distribution effects. In the interest of consistency, FPC argues, the Commission should adopt an FOB mine price benchmark (transportation adjusted) for FPC and apply a regulator which mitigates distortions caused by changing purchasing patterns.

Public Counsel argues that FPC's motion does not meet the criteria for reconsideration; FPC has not shown any mistake of fact, nor has it demonstrated that the conclusions reached in Order No. 22401 are not supported by the record evidence. FPC's disagreement with Order No. 22401 centers on the application of an adjustor to the delivered price of the coal. But that is how purchasing decisions are made. The simple fact remains that purchases from PMJV are prudent only to the extent they do not exceed a market standard on a delivered basis. FPC next challenges the sample size which it characterizes as too small. Again, FPC urges alternatives but shows no error in the sample chosen.

Occidental argues that FPC's assertion that the index adopted by the Commission, the percentage change in the Btu weighted average price of compliance coal delivered from BOM District 8 to 15 specified electric generating plants, is inappropriate. OCC maintains that FPC's criticism of the sample overlooks the fact that it was FPC that proposed the 15 plant sample as representative of generating plants requiring compliance coals purchased from BOM District 8. OCC argues that FPC's real issue is that its "median" methodology was not adopted; its motion is merely a rehash of FPC's previous position and presents no basis for the alleged advantage of escalating the market price of coal by the median of percentage changes in coal market prices as opposed to the Btu weighted average. FPC's comparison of the Commission's methodology with the index that TECO agreed to for Gatliff coal, OCC argues, does not demonstrate unfair or discriminatory treatment of FPC; unlike TECO, FPC elected not to settle on a market price for PMJV coal. No discrimination exists, OCC argues, where the

agency reaches a decision on the administrative record that differs from a voluntary settlement.

OCC also argues that FPC's complaint that the Commission wrongly applied the index to the delivered price of PMJV coal is misplaced. Applying the index to the delivered price, OCC argues, gives FPC the incentive it must have, in view of its affiliate relationship with PMJV, to buy the lowest cost coal on a delivered basis.

We find that the Bureau of Mines District 8 compliance coal should be used for purposes of calculating the market price benchmark applicable to Powell Mountain Joint Venture coal. We also, however, elect to defer our decision as to whether FOB mine or delivered prices should be used to allow a determination of whether FOB mine prices are available.

We also find that the outside traffic, (backhaul, etc.), which uses the four barges required by the Commission should make a contribution to fixed costs.

On July 17, 1990, OCC filed a motion to lodge "correct" 1987 FOB mine prices for certain of the coal supply contracts in the "market sample" used to set the 1987 delivered market price for coal purchased from PMJV. On July 25, 1990, FPC moved to strike OCC's and Office of Public Counsel's motion to lodge data as an unauthorized and improper attempt to replace evidence in the record. We find that FPC's motion to strike the motion to lodge should be granted.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that BOM District 8 compliance coal will be used in calculating the market price benchmark applicable to PMJV coal. It is further

ORDERED that the decision as to whether FOB mine or delivered prices will be used in calculating the market price benchmark applicable to Powell Mountain Joint Venture coal is deferred until the Commission determines whether FOB mine prices are available. It is further

ORDERED that the outside traffic on the four Commission-required barges make a contribution to the fixed costs. It is further

ORDERED that the transportation bidding requirement adopted for international coal purchases is appropriate. It is further

ORDERED that Florida Power Corporation's motion to strike Office of Public Counsel's and Occidental Chemical Corporation's motion to lodge is granted.

By ORDER of the Florida Public Service Commission, this 18th day of SEPTEMBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

BAB

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 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.