

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of ) DOCKET NO. 930444-EI  
proposal for revenue decoupling ) ORDER NO. PSC-94-1410-PCO-EI  
by FLORIDA POWER CORPORATION. ) ISSUED: November 17, 1994  
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ORDER DENYING MOTION FOR CASE MANAGEMENT CONFERENCE

BY THE COMMISSION:

At the October 3, 1994, Special Agenda Conference, the Commission approved Florida Power Corporation's (FPC) proposal for a revenue decoupling pilot program. The Commission instructed staff to submit a supplemental recommendation to further address implementation details and criteria for evaluation of the project. Staff's supplemental recommendation was filed October 27, 1994.

Although FPC ostensibly moves for a "case management conference", FPC actually seeks an opportunity to communicate with staff regarding a matter currently at issue in this docket. The question of implementation details (Issue 10) was specifically addressed at the hearing and in the briefs of the parties. The record in this docket is now closed.

The Commission's standard operating procedures provide that in fact-finding proceedings, communication between staff and any party about the subject matter of that proceeding is inappropriate after the record has been closed. Once the hearing is over and post-hearing argument has been completed, the right of the parties to participate is over.<sup>1</sup> The Commission cannot take further evidence or hear further argument without reopening the proceeding and affording parties the same procedural rights given in the hearing, e.g., notice, the right to submit rebuttal evidence, cross examination and counter argument. To do otherwise would be to invite impermissible communications.

In the decisional phase of the proceeding, only the Commission's advisory staff, who did not testify in the hearing, are entitled by law to discuss the merits of the case with the Commissioners rendering the final decision. The staff's

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<sup>1</sup>See Legal Environmental Assistance Foundation, Inc., v Florida Public Service Commission, 641 So 2d 1349 (1DCA, 1994), where the Court affirmed the Commission's adoption of rules which did not allow parties to file exceptions or allow oral argument as a matter of right.

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recommendation is not evidence or argument that is submitted subject to debate by the parties. It is simply advice, which the Commission is free to accept or reject. In formulating its advice, staff should not be subjected to communication from parties after the record has been closed. The type of conference suggested by FPC would allow parties to exert pressure on staff to advise the Commission in a certain manner. This type of communication is not consistent with the framework of fairness established by the Administrative Procedure Act and the Commission's rules of practice and procedure.

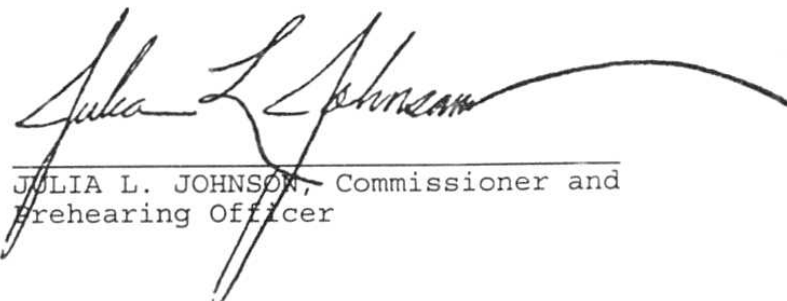
We choose not to establish precedent that may in the future allow staff to be pressured by a party after the record is closed. While we recognize that FPC's intentions are good and that the company seeks merely to assist and educate, we deny FPC's motion because it is inconsistent with our established procedures and because of the precedent it would establish.

It is likely that adversarial parties will never be completely satisfied with the staff's analysis of their evidence and argument. There will always be claims that the staff, and the Commission, overlooked or misunderstood what was presented. The procedural means to address such a problem is a motion for reconsideration. Reconsideration should be granted if there is a misapprehension of law or fact which has a significant impact on the Commission's final decision. If the party believes the Commission is still wrong, even after reconsideration, then an appeal is the ultimate recourse.

Based on the foregoing, it is,

ORDERED that the Motion for Case Management Conference filed by Florida Power Corporation on November 7, 1994, is hereby denied.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 17th day of November, 1994.



JULIA L. JOHNSON, Commissioner and  
Prehearing Officer

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR 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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.