

State of Florida



Public Service Commission  
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**DATE:** December 14, 2009

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Devlin, Draper, Lester, Barrett) *EJD* *MCB*  
Office of the General Counsel (Bennett) *MCB* *JSB* *TSB* *MCW* *CK*

**RE:** Docket No. 090001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

**AGENDA:** 12/15/09 – Regular Agenda – Post-Hearing Decision – Participation is at the Commission’s discretion.

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Skop

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** This is an emergency item and should be placed on the Commission’s December 15, 2009 Agenda.

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

**Case Background**

As part of the continuing fuel and purchased power cost recovery and generating performance incentive factor proceedings, a hearing was held on November 2, 2009, in this docket. On December 2, 2009, the Commission issued Order No. PSC-09-0795-FOF-EI, which set forth many of the decisions for the 2009 fuel proceeding, including the decision to order FPL to refund its customers the over-recovery of \$364,843,209 as a one-time credit on January 2010 bills.<sup>1</sup>

<sup>1</sup> Order No. PSC-09-0795-FOF-EI, issued December 2, 2009, in Docket No. 090001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

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On December 7, 2009, an FPL representative e-mailed the staff counsel stating that the order did not provide any specific guidance as to how the refund is to be made to FPL's customers in January 2010 and that FPL plans to implement the refund consistent with the method that was specified by the Commission in Order No. PSC-09-0024-FOF-EI.<sup>2</sup> That order directed FPL to refund \$6,667,227 of replacement power costs for the Turkey Point Unit 3 (drilled hole incident) outage as a one-time credit on customers' bills.

On December 10, 2009, staff counsel asked all parties to this docket for input on the question of how FPL should implement the refund. On December 11, 2009, FPL and FIPUG filed a brief in response to staff counsel's email. Gulf Power Company, Tampa Electric Company, Progress Energy Florida, Office of Public Counsel, Attorney General, Florida Public Utilities Company, and Florida Retail Federation (FRF) informed staff counsel that they will not be filing briefs. Although not filing a brief, an FRF representative stated that it supports the method planned by FPL and will speak to that at the Agenda Conference.

Staff is bringing this issue before the Commission to clarify the consumption upon which the refund should be based. Staff notes that, regardless of the refund methodology, the entire amount of the over-recovery will be refunded to customers.

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.

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<sup>2</sup> Order No. PSC-09-0024-FOF-EI, issued January 7, 2009, in Docket No. 080001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

### **Discussion of Issues**

**Issue 1:** What is the appropriate consumption that FPL should use in calculating the refund of the \$364,843,209 over-recovery?

**Primary Recommendation:** The refund should be based on each customer's consumption for the 12 consecutive billing cycles that end with the December 2009 billing cycle. Only customers of record in January 2010 should receive a refund. (Devlin)

**Alternative Recommendation:** The refund should be made on January 2010 bills and based upon that bill's consumption. (Draper, Lester)

**Staff Analysis:** As part of the November 2, 2009 fuel hearing, the Commission ordered FPL to refund to customers the total net true-up of \$364,843,209 as a one-time credit on customers' January 2010 bills. The \$364,843,209 amount is comprised of the \$79,321,012 under-recovery for 2008 and actual/estimated \$444,164,222 over-recovery for 2009. Thus, the over-recovery occurred in 2009.

On November 4, 2009, FPL filed with the Division of the Commission Clerk and Administrative Services a letter with revised fuel cost recovery schedules reflecting the Commission's decision to refund the net-true up over-recovery in January 2010. The traditional true-up process includes any over- or under-recovery in the calculation of the 12-month fuel factor. The November 4, 2009 filing also included a calculation for the refund factor and stated that the refund factor "will apply to customer bills for consumption in January 2010." FPL calculated the refund factor of 4.446 cents per kilowatt-hour (kWh) based on projected jurisdictional sales in January 2010.

On December 2, 2009, the Commission issued Order No. PSC-09-0795-FOF-EI, which states on page 6 the following regarding the refund of the true-up:

FPL shall refund the over-recovery of \$364,843,209 to its customers as a one-time credit in January 2010. We directed FPL to file new fuel factors for 2010, consistent with our Order directing the over-recovery to be refunded in January 2010. Our staff reviewed the new fuel factors, and found them to be consistent with our vote and accordingly, the new factors are included in this Order, provided further, however, that the amount of purchased power subject to our review regarding FPL's February 26, 2008, power outage shall be held subject to refund.

On December 7, 2009, FPL e-mailed the staff counsel stating that the order did not provide any specific guidance as to how the refund is to be made to FPL's customers in January 2010. FPL further stated in its email that it plans to implement the refund consistent with the method specified by the Commission in Order No. PSC-09-0024-FOF-EI, with respect to the March 2006 drilled hole incident. That order states "...only retail customers of record shall receive a refund and that refund shall be applied as a cent per kilowatt-hour credit to customer bills in the month the refund is made."

On December 10, 2009, staff counsel asked all parties for input on this matter. Gulf, TECO, PEF, OPC, Attorney General, FPUC, and FRF informed staff counsel that they will not be filing briefs. On December 11, 2009, FPL and FIPUG filed a brief in response to staff counsel's email.

FPL in its brief stated that FPL intends to refund the \$364,843,209 over-recovery using the same mechanism that the Commission approved and FPL employed in March 2009 to refund replacement power costs associated with the drilled hole incident. FPL further stated that because of the substantial amount of additional programming and other preparation that would be required to make a one-time refund on a different basis, a change in course at this time would inject increased costs, confusion, and delay for customers. Moreover, the refund factor that FPL filed on November 4, 2009, has been widely communicated to customers. Finally, FPL stated in its brief that on November 4, 2009, FPL filed revised schedules reflecting the calculation of the refund factor that is to be applied to bills in January 2010. FPL stated that it received no objections to the calculation of the refund factor filed on November 4, 2009.

FIPUG contends in its brief that FPL's refund should be made as proposed, in accordance with Order No. PSC-09-0024-FOF-EI. An FRF representative communicated that FRF supports FPL's proposed refund methodology, but FRF did not file a brief.

Staff has presented two alternatives for the Commission to consider: (1) base the refund on 2009 consumption, and (2) base the refund on January 2010 consumption. Both alternatives are discussed below.

#### Refund based on 2009 consumption

Since the over-recovery occurred in 2009, staff is recommending this alternative to the Commission. Basing the refund on twelve months of each customer's consumption will smooth out the month-to-month variation in consumption and will better match the refund with the customers' contribution to the over-recovery. Staff believes this method could result in the refund being closer to actual consumption.

FPL in its brief stated that modifying the billing system to compute the refund based on the 2009 consumption and locating and making refunds to all customers who consumed electricity in 2009 would result in programming changes in the range of \$200,000 to \$250,000 and would take approximately seven months to implement. However, staff is not recommending that former 2009 customers receive a refund. Staff is recommending that only customers of record in January 2010 should receive a refund. Staff therefore believes that FPL's programming costs are over-stated.

Primary staff believes this case can be differentiated from Order No. PSC-09-0024-FOF-EI. First, the refund ordered as a result of the drilled hole incident was considerably smaller (\$6.7 million vs. \$365 million). Second, the \$6.7 million refund was based on replacement fuel cost FPL incurred during a short time period, while the \$365 million over-recovery is based on 2009 consumption.

Refund based on consumption in January 2010 billing cycle

Staff believes that the Commission should also consider a refund based on January 2010 bills as FPL proposed. That method is also supported by FIPUG and FRF. FPL stated in its brief that FPL's proposed method is based on the precedent established by Order No. PSC-09-0024-FOF-EI, and FPL's filing of revised schedules on November 4, 2009, provided parties with notice regarding its intended refund methodology.

Staff notes that a customer's consumption for a specific month will vary from the consumption for the same customer for the past twelve months. Using twelve months of consumption could be considered a more accurate method of refunding the over-recovery since it probably more accurately matches the consumption that created the over-recovery. Any method short of complete bill recalculations, however, will not be completely exact since there is no way to match each customer's refund to their exact contribution to the over-recovery.

The discussions among Commissioners at the November 2 hearing, as well as the responses from FPL and parties on the refund matter, suggest that administrative efficiency and minimizing costs were important considerations. In specifying a credit on bills, as opposed to issuing checks to customers, the Commission recognized the need to minimize the administrative cost of the refund. A refund based on January 2010 bills would be the least-cost option and consistent with FPL's November 4, 2009, calculations.

FPL in its brief stated that FPL does not believe it is feasible at this time to base the refunds on consumption over a time period other than January 2010 and then make those refunds in January 2010. FPL stated the refunds need to start being made in less than three weeks.

Conclusion

Staff has presented two alternatives for the Commission to consider. Staff's primary recommendation is that the refund should be based on each customer's consumption for the 12 consecutive billing cycles that end with the December 2009 billing cycle. Only customers of record in January 2010 should receive a refund. In the alternative, staff recommends that the refund should be made on January 2010 bills and based upon that bill's consumption, and only customers of record in January 2010 should receive a refund.

Docket No. 090001-EI  
Date: December 14, 2009

**Issue 2:** 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)

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