BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 090001-EI ORDER NO. PSC-10-0002-FOF-EI ISSUED: January 4, 2010

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
NANCY ARGENZIANO
NATHAN A. SKOP
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APPEARANCES:

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FINAL ORDER APPROVING GULF POWER COMPANY'S EXPENDITURES AND TRUE-UP AMOUNTS FOR FUEL ADJUSTMENT FACTORS

BY THE COMMISSION:

Background

As part of the Florida Public Service Commission's continuing fuel and purchased power cost recovery and generation performance incentive factor proceedings, a hearing was held on November 2, 2009, in this docket. The hearing addressed the issues set forth in Order No. PSC-09-0723-PHO-EI (Prehearing Order), issued October 30, 2009. As noted in the Prehearing Order, several issues were resolved pursuant to stipulations. Florida Industrial Power Users

Group (FIPUG) challenged Gulf Power Company's (Gulf) 2010 fuel factor. We requested that briefs be filed by the parties.

On November 12, 2009, briefs were filed by 3 parties to this proceeding: Gulf, the Federal Executive Agencies (FEA), and the Florida Industrial Power Users Group (FIPUG). Although the FEA's brief did not assert a position on any of the outstanding issues for Gulf, it provided comments on three concerns that were raised by FIPUG regarding the Gulf issues. No other parties filed post-hearing briefs.

This Order addresses the 2010 fuel factor for Gulf, as challenged by FIPUG and FEA. We have 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.

True-up Amounts for the Period January 2008 Through December 2008

Parties' Arguments

For this issue, FIPUG, a party in this proceeding, alleges that Gulf sold power to the Southern Company (Southern) via the Intercompany Interchange Contract (IIC) at prices that were below the average cost of fuel used to generate power. Gulf is a subsidiary of Southern. Power transactions between Gulf and affiliates are typically governed by the IIC, a contract among the affiliated operating subsidiaries of Southern.

We note that FIPUG did not sponsor a witness to advance its position; rather, FIPUG made its argument by cross-examining the Gulf witnesses using a composite exhibit it introduced for that purpose. FIPUG based its prehearing position on the difference between cents per kilowatt-hour for Fuel Cost of System Net Generation and cents per kWh for Fuel Cost of Other Power Sales. FIPUG's exhibit is comprised of various A schedules and E schedules. These schedules show actual and estimated fuel expenses, kWh sales, and cents per kWh for various fuel components.

Gulf's 2008 cumulative A-1 Schedule, Comparison of Estimated and Actual Fuel and Purchased Power Cost Recovery Factor, Line 17, shows 3.6050 cents per kWh for Fuel Cost of Other Power Sales (A6). Line 1 shows 4.2044 cents per kWh for Fuel Cost of System Net Generation (A3). The difference, 0.5994 cents per kWh multiplied by 2,506,481,702 kWh sold to the Southern Company Interchange, is $15,023,851.[1] Gulf's pre-hearing position for the 2008 true-up amount was -$48,757,977. Prior to the hearing, FIPUG recommended that we adjust the 2008 final true-up by adding back $15,023,851. The sum would have been -$33,734,156, which was FIPUG's prehearing position for the 2008 true-up amount.

[1] Other Power Sales on Schedule A-1 includes sales to Southern Company Interchange and Flow Through Energy. Gulf witnesses Russell Ball and Richard Dodd explained that Flow Through Energy represents sales made by Southern to non-affiliates at times when Gulf's units are generating.

Post-hearing, FIPUG revised its position. The revision incorporated the removal of energy in Fuel Cost of Other Power Sales that was not sold to Southern, the removal of UPS energy sales from Plant Scherer from Fuel Cost of System Net Generation, and the removal of capacity payments made by Gulf to Southern. FIPUG removed the capacity payments from the fuel and purchased power under recovery. In its brief, FIPUG also absolved Gulf from having to refund any purchased power costs, as the average total purchased power cost was lower than average generation cost with Plant Scherer's average generation cost removed. FIPUG's total post-hearing adjustment to Gulf's 2008 final true-up was +$51,985,722. FIPUG's revised position was therefore +$3,227,745.

FIPUG's position is that if annual replacement cost of power sold, stated in cents-per kilowatt hour (c/kWh), is lower than average total cost of generation, the fuel cost of power sold is not incurred prudently, absent a demonstration of prudence in the fuel hearing. Further, FIPUG does not consider capacity payments made to Southern to be prudently incurred fuel costs. Nor does FIPUG consider the results of the PSC staff audit of Gulf's IIC to be a showing of prudence, as those results are not in the docket's record.

We note that FIPUG's proposed adjustments are to Gulf's 2008 actual expenses. The proposed adjustments would change the 2008 under recovery, but they would not change the 2008 interest. The 2008 actual true-up includes interest on the party's proposed adjustments, as did the 2008 final true-up.

The Federal Executive Agencies (FEA) contends that fuel costs for Plant Scherer are not prudent because Plant Scherer is not in Gulf's base rates. In its brief, the FEA makes 2 other assertions: (1) that Gulf sells electricity to affiliates below the cost of production; (2) that Gulf buys electricity above the cost of production, even though Gulf's customers use approximately 40 percent less power than Gulf is capable of producing. The FEA contends that Gulf's witness failed to demonstrate their claims that Gulf's power sales and power purchases are incurred prudently. The FEA did not suggest a particular disallowance.

In its brief, Gulf points out that it did not become aware of FIPUG's position on this issue until the October 20, 2009 Prehearing Conference, and that FIPUG conducted no discovery on the issue. Gulf also points out that the cross examination of its witnesses by FIPUG went beyond the scope of FIPUG's prehearing energy-sales-to-Southern position, into the areas of energy purchases from the Southern Power Pool (Pool), purchases and sales of capacity to and from the Pool, and hedging costs. In its brief, Gulf argues that it has met its burden of proof to support its proposed fuel cost recovery factors by presenting competent and substantial evidence through testimony and submission of all Commission-required schedules and exhibits.

Witness Ball explained that Gulf participates in the Southern Power Pool, whereby it makes power sales and power purchases, and shares capacity, according to the IIC. Transactions among the participants in the IIC are cost-based. According to witness Ball, everything within the pool is done at cost, and there are no gains or losses on these transactions.

Gulf maintains that the key to comparing fuel costs of power sales or fuel costs of power purchased, with fuel cost of generation, is to understand that the former costs are incurred hourly, at marginal replacement fuel costs, whereas fuel costs of generation are averaged over all megawatt-hours (mWh) generated during a period. Witness Ball explained that the Fuel Cost for System Net Generation, line 1, Schedule A-1, is the average cost for all generation during 2008. Fuel Costs of Other Power Sales, line 17, Schedule A-1, is the fuel cost of sales, made on an hourly basis, of power from specific generating units with unique marginal fuel replacement costs. Thus, witness Ball explained that the fuel cost of power sales, though averaged over all such sales during 2008, are of sales made at times when Gulf's units are generating at fuel costs lower than the average of all generation fuel costs. In other words, based on the witness's explanation, Gulf is not generating power for 4.2044 cents per kWh and selling that power to Southern for only 3.6050 cents per kWh, as would be implied by the FIPUG's recommended adjustment to the 2008 final true-up.

FIPUG also questioned witness Ball about power purchased from Southern, listed on Gulf's 2008 A-9 Schedule, regarding (1) the difference between the actual and estimated kWh's purchased and (2) the difference between the fuel cost of power purchased and the Fuel Cost of System Net Generation. The witness explained that under the IIC, Gulf purchased power on an hourly basis, and when it is more economical to purchase power from a lower cost unit in the Southern system than to generate power, it does so, to the benefit of its customers. The witness explained that the price comparison for power purchased from Southern is like that for power sold to Southern: average purchased power cents per kWh is an average of marginal costs and average generation cents per kWh is averaged over all kilowatt-hours generated. The witness also explained that in 2008, Gulf had a chance to purchase more kilowatt-hours when the Pool's fuel cost was lower than Gulf's marginal cost, than it had estimated when calculating the 2008 recovery factor. Gulf's participation in the Southern Power Pool is a benefit because Gulf can buy power at a price lower than its cost of generation. FIPUG did not include the fuel cost of power purchased from Southern to arrive at its position on the 2008 true-up amount.

FIPUG cross-examined witness Ball regarding the additional expenses paid by Gulf to Southern as payments for capacity, particularly, whether the purpose of Gulf's making capacity payments was to enable Gulf to purchase energy from Southern. Witness Ball responded that the purpose of making capacity payments is so Gulf can meet its reserve margin requirements.

Witness Ball testified that the IIC is approved by FERC. The witness testified further that in 2009, the Commission staff audited Gulf's administration of the contract and found that Gulf was in compliance with the contract, and that transactions under the contract did not negatively affect the ratepayers.

Analysis

We note the difference between two concepts that came up in the cross examination of witness Ball: (1) dollar fuel-cost variances and (2) over recoveries. The A-1 Schedule shows actual and estimated fuel and purchased power expense dollars, kilowatt-hours, and cents per kWh for the components of Jurisdictional kWh Sales. The schedule also shows the differences between actual and estimated amounts and ratios. FIPUG questioned witness Ball as though the dollar differences between actual and estimated amounts are the same as over recoveries or under recoveries of actual fuel expenses. We point out that that there is not a direct connection between the expense dollar difference (actual less estimated) and over recoveries or under recoveries. For example, the 2008 expense-dollar difference was $104,948,406, while the 2008 under recovery was only $48,757,977.

We find the testimony on the 2008 true-up amount reflects that Fuel Cost of System Net Generation, whether or not those costs are adjusted by sales from Plant Scherer to other utilities, and Fuel Cost of Other Power Sales, whether or not those costs are adjusted by sales not made to Southern, are fundamentally different. The former is the average of all generation costs, incurred annually, and the latter is the average of marginal costs, incurred hourly. As such, we do not find Gulf is subsidizing affiliates through its sales into the Southern Power Pool. Similarly, we do not find that the fuel costs of power purchased hourly are prudent solely because they are less than the fuel cost of power generated annually. We do not find that fuel expenses and capacity expenses are incurred for the same purpose, as capacity cost recovery is the subject of other issues in this docket that were ruled upon by separate order. We find Gulf has met its obligations to support its positions since it made the required filings in this docket on a timely basis, and by making its witnesses available for questioning regarding the issues in the docket.

Prior to this proceeding, neither Gulf, the intervenors, nor staff raised the issue of prudence. No notice was provided to Gulf that prudence was an issue that the intervenors planned to raise, and Gulf did not provide any testimony or exhibits on the issue of prudence. It was only in their post-hearing briefs that both FIPUG and FEA asserted that Gulf failed to meet its burden of proof to prove prudence in this proceeding and therefore should not be permitted to collect certain fuel costs spent.

The annual fuel and purchased power cost recovery clause is not a prudence review of costs. See Order No. 12645, issued November 3, 1983, in Docket No. 830001-EU, <u>In re: Investigation of Fuel Adjustment Clauses of Electric Utilities</u>, at 23. We do not review prudence of costs unless raised as an issue ahead of time. <u>Id.</u> at 23. Rather we only consider "the question of comparing projected to actual results. . . . [E]ach utility will be required at true-up only to demonstrate how the amounts actually expended for fuel and purchased power compare with the amounts projected for the prior six month period." <u>Id.</u> at 23 "Although the burden of proving the prudence of its actions will remain with the utility, the question of prudence will arise only as facts regarding fuel procurement justify scrutiny." <u>Id.</u> at 23-24. As we stated, "[q]uestions of prudence require careful and often prolonged study. When a question arises as to the prudence of a utility's expenditures, proper time should be taken to fully analyze the question and resolve the matter on all of the facts available."[2] <u>Id.</u> at 23. Thus, until there are facts and evidence in the record, and time to fully analyze those facts and evidence, no determination of prudence can be properly made. Accordingly, because there is no evidence in the record related to prudence, our

[2] For recent instances in which the issue of prudence was adjudicated by the Commission, see Commission to Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, <u>In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers $143 million</u>; and Order No. PSC-09-0025-FOF-EI, issued January 7, 2009, in Docket No. 080001-EI, <u>In re: Fuel and purchased power cost recovery clause with generating performance incentive.</u> <u>Also see</u> the Prehearing Order in this Docket, Order No. PSC-09-0723-PHO, issued October 30, 2009, for the spin out of an issue raised by Office of Public Counsel regarding the responsibility for purchased power costs associated with an outage.

review of the true-up amounts for 2008, and 2009, as well as the projected expenditures and fuel factors for Gulf, shall only compare the projections of 2008 to the actual expenditures of 2008, and not a review these costs for prudence.

In this case, the issue of the prudence of those costs was not raised in this proceeding. By the time Prehearing Statements were filed, all testimony had been filed and the discovery process had ended. There are no facts or evidence in the record upon which we could review these costs for prudence. Because of how and when this issue (prudence) was raised, we find FIPUG deprived us of our opportunity to review the prudence of an expenditure as contemplated in Order 12645. We find that only when the issue is raised in a timely manner can testimony and discovery be taken as contemplated by Order 12645.

In this docket, because no issue of prudence was raised in a timely manner, only testimony comparing actual to projected expenditures was presented by Gulf. Gulf did not sponsor any testimony regarding the prudence of its contractual relationship with Southern Company. No intervenor or our staff was able to sponsor testimony addressing the issue of prudence because it was not timely raised. During cross-examination, there was a reference to our staff's audit which purports to find no fault in the dealings between Gulf and Southern Company, but because the issue of the prudence of the dealings between Gulf and Southern Company was not clearly raised until FIPUG filed its Prehearing Statement, and again when FIPUG cross-examined the Gulf witnesses, the testimony of the auditor and the audit were not available to us in the fuel proceeding.

We find Gulf provided the appropriate showing pursuant to Order 12645 to permit it to recover the costs of the purchased power; therefore, Gulf shall be permitted to collect the requested costs. We do not find the issue of the prudence of those costs and the relationship between Southern Company and Gulf Power Company was properly raised as an issue in this docket. Therefore, we shall not reach a decision on the prudence of those costs. If we or a party wish to explore the prudence of those costs or of the transactions between Gulf Power Company and Southern Company, then that issue shall be raised as a separate issue in next year's fuel docket or as a separate proceeding so that testimony, audits, and discovery can be reviewed by us to adjudicate the question of prudence as we previously described in Order 12645.

Conclusion

The appropriate fuel adjustment true-up amounts for the period January 2008 through December 2008 is an under recovery of $48,757,977. We find Gulf calculated this amount in accordance with the way utilities recover fuel costs. Finally, we note that our decision here affects the remaining issues for Gulf regarding the 2009 true-up amounts and the fuel factor for 2010. Our analysis above is applicable to the remaining issues addressed in this Order.

True-up Amounts for the Period January 2009 through December 2009

Having determined the issue of true-up amounts for 2008, the appropriate fuel adjustment true-up amount for the period January 2009 through December 2009 is $36,414,908 (over recovery).

True-up Amounts to be Collected/Refunded from January 2010 to December 2010

Having determined the issue of true-up amounts for 2008, the appropriate total fuel adjustment true-up amounts to be collected from January 2010 to December 2010 is $12,343,069.

Appropriate Projected Net Fuel and Purchased Power Cost Recovery and Generating Performance Incentive Amounts to be Included in the Recovery Factor for the Period January 2010 through December 2010

The appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amount to be included in the recovery factor for the period January 2010 through December 2010 is $600,624,266.

Appropriate Levelized Fuel Cost Recovery Factors for the Period January 2010 through December 2010

The appropriate levelized fuel cost recovery factor for the period January 2010 through December 2010 is 5.343 cents per kWh.

Appropriate Fuel Cost Recovery Factors for Each Rate Class/Delivery Voltage Level Class Adjusted for Line Losses

The appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses are shown in the table below:

Group	Rate Schedules*	Line Loss Multipliers	Fuel Cost Factors ¢/KWH		
			Standard	Time of Use	
				On-Peak	Off-Peak
A	RS, RSVP,GS, GSD, GSDT, GSTOU, OSIII, SBS(1)	1.00526	5.371	5.873	4.994
B	LP, LPT, SBS(2)	0.98890	5.284	5.777	4.913
C	PX, PXT, RTP, SBS(3)	0.98063	5.239	5.729	4.872
D	OSI/II	1.00529	5.215	N/A	N/A

*The recovery factor applicable to customers taking service under Rate Schedule SBS is determined as follows: (1) customers with a contract demand in the range of 100 to 499 KW will use the recovery factor applicable to Rate Schedule GSD; (2) customers with a contract demand in the range of 500 to 7,499 KW will use the recovery factor applicable to Rate Schedule LP; and (3) customers with a contract demand over 7,499 KW will use the recovery factor applicable to Rate Schedule PX.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the findings set forth in the body of this Order are hereby approved. It is further

ORDERED that Gulf Power Company is hereby authorized to apply the fuel cost recovery factors set forth herein during the period January 2010 through December 2010. It is further

ORDERED the estimated true-up amounts contained in the fuel cost recovery factors approved herein are hereby authorized subject to final true-up and further subject to proof of the reasonableness and prudence of the expenditures upon which the amounts are based.

By ORDER of the Florida Public Service Commission this 4th day of January, 2010.

ANN COLE
Commission Clerk

(S E A L)

LCB

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 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: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, 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.