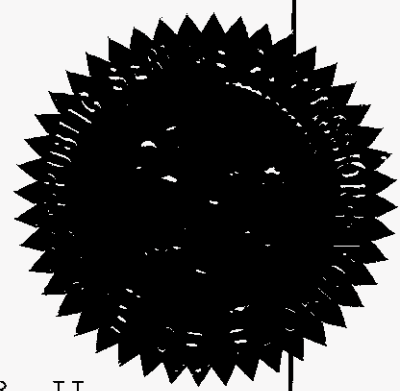


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 090001-EI  
FUEL AND PURCHASED POWER COST  
RECOVERY CLAUSE WITH GENERATING  
PERFORMANCE INCENTIVE FACTOR.



PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 9A

COMMISSIONERS  
PARTICIPATING: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP  
COMMISSIONER DAVID E. KLEMENT

DATE: Tuesday, December 15, 2009

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

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FPSC-COMMISSIONER CLERK

## P R O C E E D I N G S

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1  
2  
3           **CHAIRMAN CARTER:** Commissioners and staff, now  
4 let's move to Item 9A, 9 apple. And before we go today,  
5 Commissioners, I just have one minor point I'd like,  
6 before we end the day, just one, one, just one little  
7 short point I want to make.

8           You may proceed.

9           **MS. DRAPER:** Commissioners, Elizabeth Draper  
10 with staff. Item 9A addresses how FP&L should refund  
11 the 2009 fuel overrecovery to its customers. At the  
12 November 2nd, 2009, fuel hearing you voted that FP&L  
13 refund \$364 million to its customers on January 2010  
14 customer bills.

15           Staff has presented two options for your  
16 consideration. The primary recommendation recommends  
17 that the refund be based on 2009 consumption. The  
18 alternative recommendation recommends that the refund be  
19 based on the consumption in the January 2010 billing  
20 cycle. Both options provide that only customers of  
21 record in January 2010 receive a refund. This is a  
22 posthearing decision; however, participation is at the  
23 Commission's discretion.

24           **CHAIRMAN CARTER:** Commissioners, I think I  
25 would like to hear from the parties since they're here.

1                   **COMMISSIONER EDGAR:** Mr. Chairman, I would as  
2 well.

3                   **CHAIRMAN CARTER:** Okay. Mr. Butler, you're  
4 recognized.

5                   **MR. BUTLER:** Thank you, Mr. Chairman. I'll  
6 try to be very brief here. FPL is interested, first and  
7 foremost, in ensuring that the \$365 million overrecovery  
8 be refunded to customers in January 2010 as envisioned  
9 by the Commission's order and as we have communicated to  
10 our customers. To ensure that the refund can take place  
11 in January as planned, FPL has been working diligently  
12 to do the necessary programming and put the necessary  
13 processes in place. It's taken us about six weeks since  
14 really right after the fuel hearing on November 2 when  
15 you determined that the refund should be made on a  
16 one-time basis to make these preparations. We now have  
17 all the pieces in place to make the refund starting on  
18 January 4, 2010, as planned.

19                   Now all these preparations have been based on  
20 making the refund the same way we made the refund in  
21 March of this year for the Turkey Point Unit 3 outage.  
22 That method applies a cents per kilowatt hour refund  
23 factor to consumption that's billed in the month of the  
24 refund. The Commission had directed FPL to use that  
25 method for the Turkey Point refund and it worked well.

1 Just to clarify here, that's what is the alternate  
2 recommendation or alternative recommendation before you  
3 today.

4 On November 4, two days after the fuel  
5 hearing, FPL filed and served revised E schedules  
6 reflecting the one-time refund that the Commission had  
7 just approved. That filing included a calculation of  
8 the refund factor. The calculation divides the  
9 \$365 million overrecovery amount by projected  
10 January 2010 consumption, which is the appropriate  
11 calculation for refunding on the same basis that we had  
12 used in March. No one objected to our approach, and we  
13 have been preparing to implement it ever since.

14 Last week staff raised some questions about  
15 how the refund should be applied: To one-month  
16 consumption, as was done in March and as FPL is  
17 preparing to do here, or to 12 months of consumption in  
18 2009. FPL has no objection in principle to basing a  
19 refund on 12 months of consumption. However, we feel  
20 that using one-month consumption is consistent with the  
21 normal function of the fuel clause. Most importantly  
22 though, using one-month consumption is the only basis  
23 for refund that FPL can use at this point to make the  
24 refund in January 2010. Doing the programming and other  
25 preparations needed to base the refund on 12 months of

1 consumption would take FPL several months, and the clock  
2 for those preparations would not have started until now.  
3 Simply put, it is not possible for FPL to begin  
4 preparations now to refund on a 12-month basis and then  
5 make that refund in January 2010. In fact, the refund  
6 likely could not be made on a 12-month basis until  
7 sometime late in the spring of 2010.

8 FPL is concerned that such a delay would not  
9 be well received by customers. Your order directed that  
10 the refund take place in January 2010, and FPL has  
11 communicated that schedule to customers in several  
12 forms. I'd just like to point out a couple of those.  
13 We have in the current bill that's going out to  
14 customers this bill message: "Your bill will go down in  
15 January due to lower fuel and nonfuel cost recovery  
16 clause costs projected for 2010. There will also be a  
17 one-time credit to your January bill to reverse an  
18 overrecovery of fuel costs in 2009." There are similar  
19 more detailed statements in the current bill insert  
20 that's being sent to customers and an e-mailing that is  
21 done to customers who sign up to get electronic  
22 notification. At a minimum, changing the refund date  
23 would cause considerable customer confusion in view of  
24 what customers have already been told.

25 Finally, FPL notes that both FIPUG and the

1 Florida Retail Federation have supported FPL's proposal  
2 to make the refund based on the consumption that's  
3 billed in January, and no party to date has filed any  
4 comments opposing it.

5 For these reasons, I urge the Commission to  
6 approve staff's alternative recommendation that  
7 customers receive their refund in January as they are  
8 expecting based on consumption that is billed in  
9 January. Thank you.

10 **CHAIRMAN CARTER:** Thank you. Ms. Bradley, you  
11 want to bat cleanup?

12 **MS. BRADLEY:** That's fine. Thank you.

13 **CHAIRMAN CARTER:** Okay. Mr. Wright.

14 **MR. WRIGHT:** Thank you, Mr. Chairman. Schef  
15 Wright representing the Florida Retail Federation in  
16 this matter. We support FPL's proposed methodology and  
17 we agree with FPL in asking you to approve the alternate  
18 refund methodology on the basis of kWh that shows on  
19 customers' bills for the January billing cycle. This is  
20 a reasonable methodology, and we, like FPL, believe that  
21 it's significantly better to make the refunds in  
22 January, especially considering where we are today, than  
23 to incur the delays to late spring if FPL were required  
24 to reprogram the billing system for a different refund  
25 method.

1           Like FPL, we don't have an objection in  
2 principle to the alternate methodology based on 2009,  
3 total 2009 consumption, but we have a particular issue  
4 if you were inclined to go in that direction. And our  
5 issue is this: Some of our members have stores that  
6 were actually replaced, had one store served by FPL for  
7 part of the year, shut it down, and replaced it with a  
8 new store. The problem we have is that we have  
9 different account numbers for the old store and the new  
10 store. So if you only did it on the basis of customers  
11 of record for January, we wouldn't get a fair refund  
12 based on the total consumption for the year. We would  
13 ask that if you are inclined to go in that direction,  
14 that you recognize that adjustment. And we're fully  
15 prepared to give FPL the information they need to  
16 identify those accounts to make the adjustment. Again  
17 though, we support FPL's position on this and ask you  
18 that, ask that you please approve the staff's alternate  
19 recommendation based on kWh on the January bills. Thank  
20 you.

21           **CHAIRMAN CARTER:** Thank you.

22           Ms. Bradley.

23           **MS. BRADLEY:** Mr. Chairman, as you've realized  
24 previously, I'm not an accountant and I'm going to have  
25 to defer to them on this. Our only concern is that

1 customers get what they're entitled to as quickly as  
2 possible, and we'll leave that to the accountants.  
3 Thank you.

4 **CHAIRMAN CARTER:** Thank you. And I think, as  
5 Bradley said, we kind of went around and around on this  
6 last time saying we want to get it done as soon as  
7 possible, want to get the money to the folks as soon as  
8 possible.

9 Commissioner Argenziano, you're recognized.

10 **COMMISSIONER ARGENZIANO:** Thank you. Just one  
11 question to staff. Is there a difference in the amount  
12 of money on, let's say, considering one month's  
13 consumption versus 12 months? If we're going to one  
14 month of consumption, which month would it be, and is  
15 there a difference in consumption and the amount of  
16 money that would be refunded?

17 **MR. DEVLIN:** This is Tim Devlin. There would  
18 not be a difference in the total amount of the refund,  
19 which is approximately \$365 million.

20 **COMMISSIONER ARGENZIANO:** Okay.

21 **MR. DEVLIN:** Where there would be a difference  
22 is what particular customers get what share of that, and  
23 it depends on whether we choose -- and this is why the  
24 staff wanted to bring this to the Commission's  
25 attention. Even though the Commission gave staff



1 administrative authority to approve this, we thought  
2 this was a very important issue that the Commission  
3 should decide upon. Because depending on whether you  
4 choose the 12-month consumption period or what FPL  
5 suggests, a one-month period, will have an effect on the  
6 individual consumers.

7 And I'll give you an example. If it's just  
8 one month, and it would be a combination really between  
9 December and January, and that particular customer is on  
10 vacation, that particular customer would not get maybe  
11 half a normal share of the refund. Whereas, if you used  
12 the full 12-month period of consumption --

13 **COMMISSIONER ARGENZIANO:** It would be an  
14 average.

15 **MR. DEVLIN:** -- it sort of smoothes out the  
16 effect of all consumers.

17 **COMMISSIONER ARGENZIANO:** Well, let me ask you  
18 in the same vein, if you picked a different month, June  
19 versus January, could there be more consumption in June  
20 than January?

21 **MR. DEVLIN:** That's a very good point. If you  
22 picked the summer months, residential customers tend to  
23 use more, use more power in summer months because of air  
24 conditioning. If you leave those months out and only  
25 look at December, January, perhaps the residential

1 customers would get less than the commercial/industrial  
2 customers. That's why we think it's, I think anyway,  
3 it's fairest to use the 12-month period which you catch  
4 all the peaks and valleys. And plus, not only that,  
5 that's the period of time that generated this overcharge  
6 in fuel to begin with is 2009, not January 2010. So I  
7 think there's good reason to use 12 months, but there  
8 are also logistical issues to deal with, whether they  
9 can do it on a timely basis, because this is a late  
10 breaking issue.

11 **COMMISSIONER ARGENZIANO:** Right. And that is  
12 a concern if they've already sent a notice out to people  
13 too, how could they get it done? And we do want them to  
14 get their money back as soon as possible. That's why I  
15 was trying to figure out what it would mean to -- it's  
16 probably pretty hard to figure out what it means to  
17 individual residential consumers. I'm just concerned  
18 with the fact that, and with all due respect to the  
19 company, that it may be to benefit the company by doing  
20 one month rather than the, than the ratepayer.

21 **MR. BUTLER:** Mr. Chairman, if I may respond  
22 briefly to that.

23 **CHAIRMAN CARTER:** Mr. Butler.

24 **MR. BUTLER:** I can assure you, Commissioner  
25 Argenziano, the exact dollar amount of the refund will

1 be made to customers.

2 **COMMISSIONER ARGENZIANO:** Right. I got that.

3 **MR. BUTLER:** And at the end of day, regardless  
4 of which method we end up using, this is simply about  
5 the way to measure the basis for the refund, and just  
6 again urge that, you know, we've really set up, and I  
7 think at, you know, the Commission's direction and our  
8 own desire was to be sure that customers were aware that  
9 this refund is coming. We've told them in many  
10 different forums. The news media has reported on it in,  
11 you know, many instances. And we just -- unfortunately  
12 at this late date the only way to do it so it happens in  
13 January is what we have been going down the path to  
14 implement.

15 **COMMISSIONER ARGENZIANO:** In order to change,  
16 it would be several months to be able to get those  
17 notices and really confusing, I think too.

18 **CHAIRMAN CARTER:** Yeah. And as I said before,  
19 is that when we went down this road, we said we wanted  
20 to get to the people as soon as possible.

21 **COMMISSIONER ARGENZIANO:** Yeah. I just wanted  
22 to see on the consumption side of that. But I can see  
23 where it could be logistically a nightmare and they  
24 would detain in getting the refund. So I understand  
25 that. Thank you.

1                   **CHAIRMAN CARTER:** Commissioner Edgar, you're  
2 recognized.

3                   **COMMISSIONER ARGENZIANO:** And I want to thank  
4 staff though because it is an issue that I think we  
5 needed to hear.

6                   **CHAIRMAN CARTER:** Thank you.

7 Commissioner Edgar.

8                   **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
9 And I guess -- well, first of all, a question,  
10 Mr. Butler. And this is, the answer is not  
11 determinative of anything, just a point of information.

12                   Do you know approximately what the estimate  
13 would be for a 1,000 user or a 1,200 per month just as  
14 a, the refund amount just as a point of reference?

15                   **MR. BUTLER:** For a thousand kilowatt hour  
16 consumption it's right at \$44.40 or somewhere like that.  
17 And, you know, if somebody used evenly over 12 months  
18 and once you did the recalculation, it would be the same  
19 thing. Obviously there could be differences between  
20 individual customers.

21                   **COMMISSIONER EDGAR:** Yeah. I just didn't have  
22 a number, and that works for my purposes. Again, just a  
23 point of information.

24                   I guess my thoughts are along these lines. I  
25 think that the primary recommendation in a, in a perfect

1 world makes probably the most sense, I mean, dollar for  
2 dollar, usage to usage, customer to customer. But I do  
3 have a concern that we could, as one of my colleagues  
4 often says, I don't remember which one of you, sorry,  
5 maybe more than one, that we don't want the perfect to  
6 be the enemy of the good.

7 **CHAIRMAN CARTER:** Enemy of the good.

8 **COMMISSIONER EDGAR:** Thank you. And so it  
9 does seem to me that the discussion that we had at the  
10 time that we made this decision was realizing the  
11 economic conditions facing us all, and, and for, I think  
12 for ratepayers to, to see decisiveness as well, and that  
13 when a decision is made, that the ramifications come  
14 through.

15 So with that, I think that the alternative  
16 recommendation is, makes sense. It just makes sense to  
17 me from a practical standpoint. Maybe not as exactly  
18 precise customer per customer per customer as over the  
19 one year, but I think from a policy perspective it makes  
20 sense and serves the regulatory process well.

21 And I would also, just for this comment, my  
22 thinking would be that should the, in the future a  
23 true-up or overage, underage, whatever word we want to  
24 use, that whichever way it goes, that the mechanism that  
25 we use really should be consistent. So that's all.

1 Thank you Mr. Chairman.

2 **CHAIRMAN CARTER:** Thank you.

3 Commissioner Klement, you're recognized.

4 **COMMISSIONER KLEMENT:** Thank you, Mr. Chair.

5 A question for Mr. Devlin. Maybe it's a  
6 clarification. If -- are we talking an average of the  
7 last 12 months that it would go in one month, or are we  
8 talking about the January bill calculated on?

9 **MR. DEVLIN:** In my mind we're still talking  
10 about the January bill. It just would be the way, the  
11 method you'd use to calculate the individual customer  
12 effect. It's still the same amount of money,  
13 \$365 million. The Commission voted on that, and they  
14 also voted to have it done, the credit, if you will, in  
15 January. So that's -- those two, those two have been  
16 determined, those two issues have been determined.

17 **COMMISSIONER KLEMENT:** Uh-huh. All right.  
18 But I have, say I have a four-week cruise planned.

19 **MR. DEVLIN:** That's my point.

20 **COMMISSIONER KLEMENT:** If I, if I were so  
21 lucky. That's your point. Okay.

22 **COMMISSIONER EDGAR:** Not anymore.

23 (Laughter.)

24 **COMMISSIONER KLEMENT:** So I would just  
25 suggest, if I may, Mr. Chairman, that --

1                   **CHAIRMAN CARTER:** You're recognized.

2                   **COMMISSIONER KLEMENT:** -- my colleagues  
3 consider that, you know, that factor along with the  
4 others that are also very convincing.

5                   **CHAIRMAN CARTER:** Okay. Commissioner Skop,  
6 you're recognized, sir.

7                   **COMMISSIONER SKOP:** Thank you, Mr. Chairman.  
8 Mr. Devlin, just a quick question. I thought  
9 I heard Mr. Butler speak to the issue of using projected  
10 January consumption or January 2010 consumption as the  
11 basis for determining the refund for each individual  
12 ratepayer; is that correct?

13                   **MR. DEVLIN:** I believe, and Mr. Butler could  
14 speak for himself, that they calculated the effect per  
15 kilowatt hour on a projected 2010, January 2010 basis.  
16 But it would be applied once that factor, and I want to  
17 say it's 4.4 cents or something like that, it would be  
18 applied to actual consumption in January.

19                   **COMMISSIONER SKOP:** Okay.

20                   **MR. DEVLIN:** But I could be wrong on that.  
21 Mr. Butler can correct me if I am.

22                   **COMMISSIONER SKOP:** Okay. I guess, okay, I  
23 guess what I'm trying to reason out in my mind, and I  
24 know we're constrained by the timing and some of the  
25 other issues that have been raised, but the

1 approximately \$365 million refund resulting from the  
2 overrecovery of fuel charges, I'm wondering if there's,  
3 if there's not a fundamental difference in terms of the  
4 amount of refund that each customer would receive. And  
5 I think Commissioner Edgar raised the issue of a  
6 thousand kilowatts and the amount that that would  
7 correspond to.

8 But if you have a total amount of money, a  
9 pool of money to divvy out, and if your total projected  
10 consumption for January was one number, maybe a lower  
11 number because people aren't using as much electricity,  
12 versus the total average consumption over the 2009 and  
13 you do the math, either dividing the, you know, the  
14 total amount by the consumption and do the math, on the  
15 other one the total amount by the January consumption,  
16 I'm wondering if you don't get different, differing  
17 refund amounts.

18 **CHAIRMAN CARTER:** Commissioner Argenziano.

19 **COMMISSIONER ARGENZIANO:** Commissioner Skop,  
20 that's what I was referring to before, not the total  
21 amount.

22 **COMMISSIONER SKOP:** But my concern to that,  
23 and I mean this, it's hard to say because I don't know  
24 what the numbers are, the projected numbers, but my  
25 concern would be that the requested refund amount or the



1 ordered refund amount of approximately \$365 million is  
2 divvied up. And if you're basing it on projected  
3 January consumption that's lower than aggregate, that  
4 means only one thing, the refund has to go up.

5 **MR. DEVLIN:** Commissioner Skop, I know we  
6 actually -- Ms. Draper has an illustration. But the  
7 goal would be, whether it be 12 months or one month,  
8 you'd set the rate that would generate \$365 million  
9 worth of credits. You're never going to be perfectly  
10 right on target because you're basing it on projections  
11 and they'd be subject to true-up. But really, it really  
12 shouldn't matter with respect to the aggregate goal of  
13 crediting \$365 million. It can be accomplished either  
14 way.

15 **COMMISSIONER SKOP:** Okay. All right. I just  
16 wanted -- you mentioned she had an illustration. I  
17 mean, is that something that --

18 **MR. BUTLER:** Mr. Chairman?

19 **CHAIRMAN CARTER:** Mr. Butler.

20 **MR. BUTLER:** Sorry. Just to clarify to  
21 Commissioner Skop's point, there will be a true-up. I  
22 mean, it's impossible to have it hit dead on no matter  
23 how well you do the projections. And at the end of the  
24 year this will become part of the final true-up for  
25 2010, be it that we slightly under refund or if we

1 slightly over refund, that'll just end up becoming part  
2 of the final true-up for the following year.

3 **CHAIRMAN CARTER:** Okay. Anything --  
4 Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you. And that's  
6 what I was just trying to ascertain. I mean, just as an  
7 illustrative example, you know, if you're using January  
8 and the total in January was 100 and you take 365  
9 divided by 100, you get one number. And then maybe say  
10 over the 12 months it was 150, you divide 365 by 150.  
11 Obviously the second illustration is going to produce a  
12 lower average refund because it's going to be divided  
13 over a greater number; whereas, the other one might  
14 produce a little bit higher refund. And to me it's  
15 indifferent, but what I want to ensure is that we don't  
16 get into a significant under refund. That's my only  
17 concern.

18 **CHAIRMAN CARTER:** Okay. Commissioners,  
19 anything further from the bench? Commissioner Edgar,  
20 you're recognized for a motion.

21 **COMMISSIONER EDGAR:** Mr. Chairman, I would  
22 move at this time that we adopt the alternative  
23 recommendation for Issue 1. And on Issue 2, the staff  
24 recommendation, leave the docket open.

25 **COMMISSIONER SKOP:** Second.

1           **CHAIRMAN CARTER:** Motion and a second.  
2 Commissioners, any further questions? Any debate?  
3 Hearing none, all in favor --

4           **COMMISSIONER KLEMENT:** Mr. Chairman.

5           **CHAIRMAN CARTER:** Commissioner Klement.

6           **COMMISSIONER KLEMENT:** Can the motion be  
7 explained, please?

8           **CHAIRMAN CARTER:** You're recognized. The  
9 motion is such that we will adopt the alternate  
10 recommendation --

11           **COMMISSIONER KLEMENT:** Is that on page --

12           **CHAIRMAN CARTER:** -- which is found on Page 3,  
13 found on Page 3 of the case, the alternate  
14 recommendation.

15           **COMMISSIONER KLEMENT:** Oh, okay.

16           **CHAIRMAN CARTER:** And then we'll close the  
17 docket; right? Actually leave the docket open, leave it  
18 open so we can do the true-up.

19           **COMMISSIONER EDGAR:** We would leave the docket  
20 open since it's part of the annual fuel cost recovery  
21 that goes on and on and on and on.

22           **CHAIRMAN CARTER:** We do true-up at the end of  
23 the year.

24           **COMMISSIONER KLEMENT:** Okay.

25           **CHAIRMAN CARTER:** Any further questions? Any

1           comments? Hearing none, all in favor, let it be known  
2           by the sign of aye.

3                       (Simultaneous vote.)

4                       All those opposed, like sign.

5                       (Agenda Item 9A concluded.)

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1 STATE OF FLORIDA )  
 : CERTIFICATE OF REPORTER  
 2 COUNTY OF LEON )

3  
 4 I, LINDA BOLES, RPR, CRR, Official Commission  
 Reporter, do hereby certify that the foregoing  
 5 proceeding was heard at the time and place herein  
 stated.  
 6

7 IT IS FURTHER CERTIFIED that I  
 stenographically reported the said proceedings; that the  
 same has been transcribed under my direct supervision;  
 8 and that this transcript constitutes a true  
 transcription of my notes of said proceedings.  
 9

10 I FURTHER CERTIFY that I am not a relative,  
 employee, attorney or counsel of any of the parties, nor  
 am I a relative or employee of any of the parties'  
 11 attorneys or counsel connected with the action, nor am I  
 financially interested in the action.  
 12

13 DATED THIS 4<sup>th</sup> day of January,  
 2009.

14  
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 16 FPSC Official Commission Reporter  
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