

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 100001-EI
ORDER NO. PSC-10-0612-PCO-EI
ISSUED: October 8, 2010

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL
PETITIONS AND TESTIMONY
AND
ORDER GRANTING OFFICE OF PUBLIC COUNSEL
AND OFFICE OF ATTORNEY GENERAL'S
JOINT MOTION FOR EXTENSION OF TIME TO FILE TESTIMONY

As part of the Commission's continuing fuel and purchased power cost recovery and generating performance incentive factor proceedings, this docket was opened, and a hearing has been set for November 1-3, 2010. By Order No. PSC-10-0154-PCO-EI (Order Establishing Procedure), issued March 18, 2010, a procedural schedule was established setting forth the controlling dates for this docket. It was subsequently modified by Order Nos. PSC-10-0577-PCO-EI, issued September 20, 2010, (granting the Office of Public Counsel (OPC) and Office of Attorney General (AG) until October 4, 2010, additional time to file testimony on the subject of projected fuel savings associated with Florida Power & Light Company's (FPL's) West County Energy Center-3 (WCEC-3)) and PSC-10-0596-PCO-EI, issued September 29, 2010 (granting Commission staff until October 4, 2010, to file audit testimony and exhibits).

On October 1, 2010, FPL filed a motion for leave to file supplemental petition for approval of levelized fuel cost recovery factors and capacity cost recovery factors for January 2011 through December 2011, supplemental petition for approval of generating performance incentive factor (GPIF) targets for January 2011 through December 2011, revised GPIF targets for January 2010 through December 2010 and revised GPIF reward for January 2009 through December 2009, and supplemental testimony and exhibits of T. J. Keith, G. J. Yupp, and C. A. Priore, III (hereinafter, FPL Motion). FPL filed its supplemental petitions and testimony concurrent with its motion.

On October 4, 2010, the Office of Public Counsel (OPC) and Office of Attorney General (AG) filed a joint response to FPL's motion as well as a motion for extension of time to file testimony responsive to FPL's supplemental petitions and testimony related to projected fuel savings associated with FPL's WCEC-3 (hereinafter, Joint Motion).

FPL's Motion

By its October 1, 2010 motion, FPL states that on September 1, 2010, FPL filed a petition for approval of levelized cost recovery (FCR) and capacity cost recovery (CCR) charges for

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January 2011 through December 2011 (FPL's September 1 FCR/CCR Petition). The September 1 FCR/CCR Petition also sought approval for revised 2010 estimated/actual FCR and CCR true-up underrecoveries, which were based on actual data for January through July 2010 and estimates for August through December 2010. Also on September 1, 2010, FPL filed a petition for approval of generating performance incentive factor (GPIF) targets for January 2011 through December 2011 (FPL September 1 GPIF Petition). FPL states that its September 1 FCR/CCR Petition and September 1 GPIF Petition were based on fuel price projections for the remainder of 2010 and for 2011 as of August 2, 2010, which was the most current information that could be accommodated in that September 1, 2010, filing.

FPL asserts that, subsequent to its September 1 filings, fuel price projections for natural gas have declined substantially, and that this change has been reflected in its supplemental petitions and testimony filed on October 1, 2010. FPL asserts that it has re-calculated its 2011 FCR and CCR charges and 2010 estimated/actual true-ups based upon fuel price projections as of September 21, 2010. FPL also included one more month (August) of actual results in FPL's calculation of the 2010 estimated/actual FCR and CCR true-ups. Additionally, FPL asserts that the changes in the projected 2011 fuel prices have changed the projected 2011 fuel savings associated with the West County Energy Center Unit 3 (WCEC-3), which is the measure of the WCEC-3 non-fuel revenue requirements that FPL will be entitled to recovery through the CCR clause if the Stipulation and Settlement filed in Docket No. 080667-EI is approved by the Commission. Thus, FPL seeks approval of the re-calculated 2011 FCR and CCR charges and 2010 estimated/actual true-ups as well as re-calculated WCEC-3 fuel savings, contained in the October 1, 2010 Supplemental FCR/CCR Petition. Similarly, FPL asserts that changes in the 2011 fuel prices have affected the projected fuel savings for the GPIF units and thus the weighting factors for FPL's 2011 GPIF targets. Thus, FPL seeks approval of the re-calculated weighting factors contained in October 1, 2010 Supplemental GPIF Petition. FPL further asserts that its supplemental testimony supports all the above referenced changes.

In support of its motion to file supplemental petitions and testimony showing a significant decrease in projected fuel costs, FPL cites Order No. 13694, issued September 20, 1984, in Docket No. 840001-EI. FPL asserts that the updated fuel projections represent a "material and significant change in basic assumptions," as described in Order 13694, thus supporting FPL's filing of supplemental petitions and testimony. FPL asserts that the use of the October 1, 2010, revised FCR and CCR factors, instead of those filed on September 1, 2010, will result in customers paying substantially reduced charges and more accurately reflect FPL's actual 2010 fuel costs and currently projected fuel costs for the remainder of 2010 and for 2011. By using the updated fuel price projection on FPL's projected 2011 FCR and CCR charges and 2010 estimated/actual true-ups, it will result in a reduction of approximately \$260 million in the system for FCR and CCR costs that are the basis for the FCR and CCR factors to be charged to customers in 2011.

FPL asserts that for ease of reference, FPL's October 1, 2010 Supplemental FCR/CCR Petitions and Supplemental GPIF Petition and supporting supplemental testimony and exhibits by T.J. Keith, G. J. Yupp, and C. A. Priore, III, will replace its September 1, 2010 petitions and testimony. FPL notes that the direct testimony and exhibits of Kimberly Ousdahl and G.F. St.

Pierre, filed on September 1, 2010, were not affected by the updated fuel price projection, but were re-filed and bound together with the supplemental petitions and testimony filed on October 1, 2010.

FPL represents that it contacted all the other parties of record concerning this motion and none stated an objection to the motion. OPC stated that it did not object on the condition that it is allowed reasonable time for discovery and testimony.

OPC and AG's Joint Motion

By its October 4, 2010 Joint Response and Motion, OPC and AG do not object to FPL's motion for leave to file supplemental petitions and testimony so long as OPC and AG are granted a further extension of time to file testimony on the subject of projected fuel savings associated with FPL's WCEC-3. By Order No. PSC-10-0577-PCO-EI, issued September 20, 2010, OPC and AG were granted an extension of time to October 4, 2010, to file testimony on projected fuel savings associated with WCEC-3. However, in light of FPL's filing of its supplemental petitions and testimony which directly affects the projected fuel savings associated with WCEC-3, OPC and AG need additional time within which to review FPL's calculations and capacity cost recovery amounts in order make a full assessment.

OPC has contacted all the other parties of record regarding OPC and AG's Joint Motion and FPL stated it did not object to an extension to Tuesday, October 12, 2010, if FPL's deadline to file rebuttal testimony related to OPC and AG's testimony was extended to Friday, October 22, 2010. OPC indicates that FIPUG, FEA, and PCS have no objection to its Joint Motion; PEF had no position on the Joint Motion, and that AFFIRM, FRF, FPUC, TECO, and Gulf had not responded by the time the Joint Motion was filed.

Analysis & Ruling

According to Order No. 13694, cited by FPL, the Commission stated "regulated utilities are on notice that notice that testimony given at hearing, whether verbal or prefiled, must be true and correct as of the date it is incorporated in the record." *Id.* at 14. However, the Commission clarified that it was not concerned with every known change being brought to the Commission's attention, but the Commission was "concerned with material and significant changes in the basic assumptions supporting a company's request. A changed assumption that would either result in, or have the potential to result in, a mid-course correction should certainly be brought to [the Commission's] attention." *Id.* at 14. It should be noted that in the 080001-EI, fuel clause proceedings, Progress Energy Florida, Inc. provided supplemental direct testimony in response to falling fuel price forecasts and FPL filed for a mid-course correction shortly after the hearing. Here, FPL asserts that fuel price projections for natural gas have declined substantially, and, in light of Order No. 13694, FPL has provided supplemental petitions and testimony in response to that changed fuel forecast.

Having reviewed these motions, it appears that FPL has alleged sufficient grounds, pursuant to Order No. 13694, to file supplemental petitions and testimony, in that it will allow a

reduction of approximately \$260 million in system FCR and CCR costs and thereby lower the fuel FCR and CCR factors to be charged to customers in 2011. Accordingly, FPL's motion for leave to file supplemental petitions and testimony is hereby granted.

Further, given the acceptance of allowing FPL to file supplemental petitions and testimony, and the fact that the supplemental filing directly affects the projected fuel savings associated with WCEC-3 to which OPC and AG were granted until October 4, 2010, to file its testimony, it appears that OPC and AG have alleged sufficient grounds to support extending the time to file testimony regarding the fuel savings associated with WCEC-3. Accordingly, OPC and AG's Joint Motion for Extension of Time to file testimony on the subject of fuel savings associated with WCEC-3 is granted to and include October 12, 2010. FPL shall have until October 22, 2010, to file rebuttal testimony to OPC and AG's testimony. In addition, in order to allow Staff and the parties to conduct written discovery related to the FPL's supplemental petitions and testimony and also OPC and AG's testimony regarding the fuel savings associated with WCEC-3, the cut-off date for completion of discovery pertaining to the supplemental petitions and testimony shall be extended to Friday, October 29, 2010, as well as discovery pertaining to the fuel savings attributable to WCEC-3.

For written discovery requests on FPL's supplemental petitions and testimony and on OPC and AG's testimony regarding the issue of fuel savings attributable to West County Energy Center Unit 3, the party shall serve its responses to the requesting party, and to staff, via electronic mail, within 7 days of the date of the request. A hard copy of the responses shall also be served by hand-delivery, U.S. Mail, or overnight mail on the day that responses are served electronically.

Upon consideration, these motions are granted, and the dates established by Order No. PSC-10-0154-PCO-EI, as modified by Order Nos. PSC-10-0577-PCO-EI and PSC-10-0596-PCO-EI, shall be revised as follows:

<u>Event</u>	<u>Current Due Date</u>	<u>Extended Due Date</u>
OPC and AG testimony and exhibits regarding the issue of fuel savings attributable to WCEC-3	October 4, 2010	October 12, 2010
FPL rebuttal testimony and exhibits regarding OPC and AG testimony	October 18, 2010	October 22, 2010
Discovery Cut Off	October 26, 2010	October 29, 2010

All other requirements of Order No. PSC-10-0154-PCO-EI are re-affirmed and those dates control for all testimony and discovery, except as specifically referenced by this Order.

Based upon the foregoing, it is

ORDERED by Chairman Nancy Argenziano, as Presiding Officer, that the Motion for Leave to file Supplemental Petitions and Supplemental Testimony and Exhibits by Florida Power & Light Company is granted. It is further

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ORDERED that the Motion for Extension of Time to File Testimony by Office of Public Counsel and Office of Attorney General is granted. It is further

ORDERED that Order No. PSC-10-0154-PCO-EI shall be revised as indicated above. It is further

ORDERED that all other provisions of Order No. PSC-10-0154-PCO-EI, as modified by Order Nos. PSC-10-0577-PCO-EI and PSC-10-0596-PCO-EI, remains in effect and shall govern this proceeding unless modified by the Commission.

By ORDER of Chairman Nancy Argenziano, as Presiding Officer, this 8th day of October, 2010.



NANCY ARGENZIANO
Chairman and Presiding Officer

(SEAL)

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.