

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light Company's electrical system.

DOCKET NO. 090505-EI
ORDER NO. PSC-11-0140-FOF-EI
ISSUED: February 28, 2011

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

On February 26, 2008, a fault occurred at Florida Power & Light Company's (FPL) Flagami substation. The fault disrupted service to approximately 596,000 FPL customers and created conditions on the transmission grid that caused three of FPL's fossil-fuel generating units and FPL's Turkey Point Nuclear Units 3 and 4 to trip off-line. The fault and tripping of generators is referred to herein as the "February 26, 2008 outage."

As a result of the February 26, 2008 outage, FPL was required to: (1) operate several less efficient and more costly peaking units, (2) purchase power at a cost greater than the Company's marginal cost of power production, and (3) replace nuclear-fueled generation with more costly fossil-fuel fired generation. Docket No. 090505-EI was established to determine whether FPL should refund customers for the outage. The Office of Public Counsel (OPC) and the Office of the Attorney General (AG) intervened in Docket No. 090505-EI. On December 4, 2009, FPL, OPC, and the AG executed a Proposed Resolution of Issues¹ in which FPL agreed to bear the replacement power costs attributable to the Flagami Transmission Event but disputed the amount to be refunded and how that refund would be made. At our January 26, 2010, Agenda Conference, we approved the parties' Proposed Resolution of Issues.

On March 17 and 18, 2010, we conducted a hearing on the remaining issues. On June 1, 2010, we considered and adopted our staff's recommendation. Our final order, Order No. PSC-10-0381-FOF-EI (Final Order) was issued on June 15, 2010, and found that FPL was responsible for 131 hours of outage time at Turkey Point Unit 3 and 107 hours of outage time at Turkey Point Unit 4. Based on the outage times, the Final Order required FPL to refund \$13,854,054.63 to its ratepayers.

¹ The February 26, 2008 outage was referred to as the Flagami Transmission Event in the parties' Proposed Resolution of Issues.

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FPSC-COMMISSION CLERK

On June 30, FPL filed a Motion for Reconsideration, seeking reconsideration of our decision to require FPL to refund 131 hours of the 158 hours of outage at Turkey Point Unit 3 and all 107 hours of the outage at Turkey Point Unit 4. It did not file a request for Oral Argument. On July 7, 2010, the OPC, the Florida Industrial Power Users Group (FIPUG) and AG, (jointly Intervenor) filed their response to FPL's Motion for Reconsideration. Intervenor did not request oral argument. Pursuant to Rule 25-22.0022, Florida Administrative Code, oral argument is not permitted unless it is requested by a party at the time of the motion or unless we feel that oral argument will assist us in our decision. Accordingly, no oral argument shall be allowed unless we request oral argument on our own.

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 (F.S.). We are authorized to consider Motions for Reconsideration pursuant to Rule 25-22.060, Florida Administrative Code (F.A.C.).

DECISION

Turkey Point Unit 3

In its motion, FPL argues that we overlooked or failed to consider facts regarding the duration of the rod position indication system repair. FPL states that the Final Order correctly determined that the duration of the Turkey Point 3 outage must take into account the Company's repair of the rod position indication system. FPL acknowledges that we considered FPL's response to a production of document request in making our decision in this docket. But FPL contends that we misunderstood the document and also failed to consider undisputed record evidence. According to FPL, that undisputed evidence was that the duration of the rod position indication repair was 126 hours not 27 hours.

FPL states that the document we used is a timeline identifying 18 separate steps in the repair of the rod position indication system. According to FPL, each of the 18 steps have a separate duration, which when added, results in 27 hours, the credit that we gave to FPL for the repair of the rod position indication system repair. FPL argues that this is an unrealistic and incorrect way to measure the repair duration. FPL contends that no witness for FPL or OPC stated that the 27 hours is the actual time required to complete the rod position indication repair. FPL asserts that the 27 hours is directly contradicted by undisputed record evidence that the Final Order does not address.

According to FPL, the timeline upon which we relied shows that the repair of the rod position indication system began at 10:00 p.m. on February 26, 2008 and the final step was completed on March 3, 2008, at 1:59 a.m. FPL states that the 126 hours is the correct duration of the repair time to be credited to FPL.

FPL points to additional interrogatory responses entered into the record supporting its position that 126 hours was the total time it took for the repair and thus the credit. Finally, FPL states that its witness Stall testified that the rod position indication system repair took

approximately 127 hours. FPL contends that the Final Order failed to give any consideration to the time that must elapse between the steps on the timeline. FPL asserts that the evidence in the record is undisputed that the 126 hours is the duration of the repairs to the rod position indication system. FPL argues that we may not ignore undisputed record evidence and substitute an unsubstantiated assumption in its stead.

In their response to FPL's motion, the Intervenor argue that the standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (1st DCA 1981). Intervenor argue that FPL failed to meet the standard of reconsideration which is "to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision." State ex. Rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (1st DCA 1959). Intervenor argue that while FPL couches its motion as a mistake of fact concerning the amount of time FPL spent repairing a rod position indicator system at Turkey Point Unit 3, it is actually an attempt to have us change the standard it used to grant FPL a credit against the outage time. FPL asserts that we determined that FPL should be granted a credit for the incremental time the outage was extended due to the repair to the rod position indicator system. Intervenor conclude that FPL wants we to delete the term incremental from the standard it applied and give FPL credit whether or not the outage was extended due to the repair.

Intervenor explain that on February 26, 2008, an FPL field engineer employee tested a circuit switcher at the Flagami substation located in western Miami. Intervenor relate that the FPL employee disabled both the primary circuit protection and the breaker failure protection (secondary level of protection) without advising the load dispatcher that he had disabled the secondary and primary protections. Intervenor state that the load dispatcher failed to tell the system operator at FPL Control Center that any of the protection had been disabled. Intervenor assert that the shunt reactor and its associated circuit switch operated live on the electric system for approximately 37 minutes with two levels of protection disabled.

According to Intervenor, a fault occurred during the FPL engineer's activities which caused a 17-19 second arc, and because both layers of protection had been disabled, a three-phase fault occurred on the 138 kilovolt transmission system to which the Flagami substation was connected. Intervenor assert that this led to significant frequency swings which tripped transmission lines and generators around portions of the lower two-thirds of Florida. Intervenor state that the Flagami episode shut down 4,300 megawatts of generation, including three gas-fired generators and two nuclear plants. Intervenor state that Turkey Point Unit 3 was out of service for 158 hours and Turkey Point Unit 4 was out of service for 107 hours.

Intervenor relate that FPL entered into a proposed resolution of issues with the Intervenor, in which FPL agreed to bear the cost of replacement power attributable to the incident, leaving us to determine the appropriate measure of replacement power costs.

Intervenors argue that even though FPL agreed to bear the cost of the Flagami incident, we gave FPL credit for the incremental time added to the outage due to repairs to the rod position indicator system at Turkey point Unit 3. Intervenors state that we gave FPL 27 hours of credit, thus reducing the time of the outage for which FPL is responsible from 158 hours to 131 hours.

Intervenors assert that FPL wants us to give FPL a credit for 126 of the 158 hours of the outage for Turkey Point Unit 3. According to Intervenors, under the scenario FPL advocates, FPL would assume responsibility for only 32 hours of the outage at Unit 3, while customers would be responsible for approximately four times as much of the outage. Intervenors contend that the record reflects that when power ascension is accounted for, the normal time for restarting two nuclear units falls within the range of 85 to 135 hours without the complexities of additional tasks. Intervenors argue that to treat the entire 126 hours that FPL claims are related to the rod position indicator system repair as incremental to the restart attributable to the Flagami episode would mean that FPL spent only 32 hours on the power ascension. Intervenors conclude that it is therefore clear that much of the time spent working on the repair rod position indicator was concurrent with, and took place in parallel to the restart activities attributable to the Flagami incident. Intervenors assert that FPL wants us to ignore the distinction between the time spent on the rod position indication repair and the impact of that activity on the overall outage.

Intervenors argue that we plainly stated that only the impact of the repair of the rod position indication on the overall outage was relevant to the adjustment of the refund amount for mitigating circumstances. Intervenors assert that the Final Order clearly states that “incremental time added by the repairs would be borne by the ratepayers.” Intervenors contend that FPL’s motion disregards the intent of the Commission to allow FPL a credit for the incremental portion of the customer refund. Intervenors state that FPL is asking us to excuse FPL from the responsibility for the outage related to the repair of the rod position indicator system, even if the repair work had nothing to do with the length of the outage.

Intervenors argue that FPL should not complain about the evidence the Commission used to determine the length of time the outage was extended due to the repair. Intervenors state that FPL did not provide any evidence at hearing, such as a critical path analysis to show the length of time the outage may have been extended due to the repair. Intervenors suggest that a Gantt chart analysis, a critical path analysis, or some other project time management tool analysis might have provided the answer. Intervenors state that FPL chose not to present the evidence and therefore cannot now show how long the outage was extended due to the repair. Intervenors conclude that by crediting FPL with 27 hours against the total restart time, we have already given FPL the “benefit of the doubt” because FPL failed to show that even the 27 hours credited by us were incremental to and not concurrent with other repair efforts for which we did hold FPL accountable. According to Intervenors, if we make any change to the Final Order, it should be to eliminate the credit for 27 hours.

The standard of review for a motion for reconsideration is whether there was a fact or law that we overlooked or failed to consider in reaching its decision. The standard of review for a motion for reconsideration, often cited by us when considering motions for reconsideration, is:

Whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See, Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817(Fla. 1st DCA 1958).²

In Diamond Cab, the Court stated:

The purpose of a petition for rehearing is merely to bring to the attention of the trial court, or in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or order

Id. at 891.

In Jaytex Realty, the court sets forth the limited nature of motions for reconsideration, stating:

The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision. Judges are human and subject to the frailties of humans. It follows that there will be occasions when a fact, a controlling decision or a principle of law even though discussed in the brief or pointed out in oral argument will be inadvertently overlooked in rendering the judgment of the court. There may also be occasions when a pertinent decision of the Supreme Court or of another District Court of Appeal may be rendered after the preparation of briefs, and even after oral argument, and not considered by the court. It is to meet these situations that the rules provide for petitions for rehearing as an orderly means of directing the court's attention to its inadvertence.

Jaytex Realty, 105 So. 2d at 818.

Furthermore, the court explained that it is not necessary to respond to every argument and fact raised by each party, stating:

² Order No. PSC-07-0783-FOF-EI, issued September 26, 2007, in Docket No. 050958-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company; Order No. PSC-07-0561-FOF-SU; issued July 5, 2007, in Docket No. 060285-SU, In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven; Order No. PSC-06-1028-FOF-EU, issued December 11, 2006, in Docket No. 060635-EU, In re: Petition for determination of need for electrical power plant in Taylor County By Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered.

It is not the purpose of these remarks to discourage the filing of petitions for rehearing in those cases in which they are justified. If we have, in fact, inadvertently overlooked something that is controlling in a case we welcome an opportunity to correct the mistake. But before filing a petition for rehearing a member of the bar should, as objectively as his position as an advocate will permit, carefully analyze the law as it appears in his and his opponent's brief and the opinion of the court, if one is filed. It is only in those instances in which this analysis leads to an honest conviction that the court did in fact fail to consider (as distinguished from agreeing with) a question of law or fact which, had it been considered, would require a different decision, that a petition for rehearing should be filed.

Id. at 819.

FPL contends that we overlooked or failed to consider FPL's testimony that the rod position indication repair took place over 126 hours of the 158 hours of the outage. FPL contends that the only evidence in the record is that the repair of the rod position indication system took 126 hours. While not specifically spelled out in the Final Order, we considered and rejected several different timelines and credits for the outage at Turkey Point 3. The table below identifies the potential outcomes we considered.

Outage Duration	Credit to FPL	Discussion of position	Total Hours to be refunded to customer
158	0	FIPUG and OPC positions	158
8	0	FPL. 8-hours reflects the period immediately following the outage until the transmission system stabilized.	8
158	151	FPL stated that it began repair of the rod position indication system 7 hours after the outage began	7

Outage Duration	Credit to FPL	Discussion of position	Total Hours to be refunded to customer
158	48	FPL witness Stall testified that 48 hours is the typical amount of time necessary to bring a single unit back on-line after an unexpected plant shut down	110
158	38 - 86	FPL witness Stall testified that following a dual unit trip, such as the February 26, 2008 outage, it typically takes 3 to 5 days to return the units to service	72 - 120
158	24 - 74	FPL witness Stall testified that after a dual trip, when adding the time for power ascension, the typical time to restore the dual tripped units to full output is approximately 84 – 134 hours.	84 - 134
158	27	FPL provided documentation in response to OPC's production of document request that identifies and describes the timing of the rod position indication system. The document provided by FPL identifies 27 hours in which activities related to repairing the rod position indication system were being performed.	131
158	126	The same document discussed above, Exhibit 31 BSP 405, shows the commencement and conclusion of the repairs. FPL contends that the entire time from commencement to repair is the time the outage was extended due to the rod position indication repair system.	32

It is the last consideration in the graph above that FPL states we overlooked or failed to consider. FPL was asked by OPC to provide all documents related to the timing of the rod position indication system repair. FPL's response consisted of three pages including a timeline of activities related to the rod position indication system repair. Our order was based on this timeline as well as record evidence which includes FPL's response to our staff's interrogatories, testimony of witnesses and the deposition of witness Stall. FPL's response to our staff's

interrogatory number 37 was placed in the hearing record. FPL was asked "How long did FPL's repair of the Rod Position Indication system take?" FPL responded:

The Rod Position Indication (RPI) System repair began on February 26, 2008 at 20:00 after the Equipment Clearance Order was issued. The RPI System repair was completed on March 3, 2008 at 01:59 when post maintenance testing was completed.

As described in FPL's motion for reconsideration, 126 hours elapsed between the commencement and conclusion of the RPI repairs. But the record also indicates that work associated with bringing the unit back on-line was happening at the same time. For instance, FPL witness Stall stated during deposition, that the repair of the rod position indication system was not a continuous nature job. Based on this statement, we found that it was not appropriate to only consider a start and end time.

There were other events (a trip due to the water level in a steam generator) at Turkey Point Unit 4 which we considered as delaying the startup of Turkey Point Unit 3. Although FPL could not confirm that the delay was precisely 30 hours as stated in an FPL event report addressing the water level event, the Company did acknowledge that the event had some impact on the startup of Turkey Point Unit 3. This factor was explained at our June 1, 2010, Agenda Conference during which our staff's May 19, 2010 recommendation and our decision regarding the facts adduced at the hearing, was discussed.

Our Final Order took into consideration all of the evidence discussed above in reaching the conclusion that FPL was responsible for all but the incremental time associated with the repair of the rod position indication system. The rod position indication system repair was being done simultaneously with other activities, including work on Turkey Point Unit 4, and normal ascension work.

Based upon the discussion above, it is our finding that we considered the facts of the record, including the one FPL argues that we overlooked or failed to consider. We determined that only the incremental costs associated with the repair of the rod position indicator were to be credited to FPL. While the exhibit and testimony referenced by FPL does indicate the timeline over which the repairs were done, the evidence also indicates that the repair work was done in conjunction with activities associated with the Flagami Transmission event outage. We used the exhibit to determine the amount of time actually spent on the repair work to calculate the incremental costs associated with the repair of the rod position indicated and determined that amount was to be credited to FPL. We issued a final order finding as such. Thus, we find that FPL has failed to identify a point of fact or law which we overlooked or which we failed to consider in rendering our decision. Therefore, we find that FPL's motion to reconsider the amount of credit to FPL for repair of the rod position indication system shall be denied.

Turkey Point Unit 4

FPL states that on February 28, while Turkey Point Unit 4 was returning to service, an automatic turbine shutdown occurred. According to FPL, a relay for the reverse power protective circuit malfunctioned, specifically, a set of mechanical contacts in the relay failed in the closed position. FPL states the malfunction was a random mechanical failure of the contacts, which was not caused by and occurred independently of the Flagami Transmission event. FPL asserts that replacing and testing the malfunctioning relay and returning to the startup sequence added about eight hours to the Turkey Point Unit 4 (Unit 4) outage. FPL argues that the repair was essential to the operation of Unit 4 and if the repair had not been performed, the shutdown would have occurred the next time Unit 4 came off line.

FPL argues that the Final Order re-affirms the standard enunciated in Order No. 23232³ for determining whether the calculation of replacement power costs should give a utility credit for outage time required to address other issues that arise during a power plant outage which are distinct from the issue that initiates the outage. FPL cited Order 23232 to support its point as follows:

The Turkey Point Unit 3 outage commencing March 29, 1989, was attributed to FPL's nuclear operator's failure to pass [an] NRC requalification exam. Because operator training is directly a management function, we find that this outage was the responsibility of FPL's management. However, the outage concurred with a previously scheduled outage for equipment safeguards testing that was set to begin April 1, 1989. During this planned outage, FPL identified and performed essential repairs. Thus, even though management was responsible for the outage, replacement fuel costs were prudently incurred commencing April 1.

Therefore, only replacement fuel costs for the period March 29 through April 1, 1989, should be disallowed.

(emphasis supplied)

According to FPL, we correctly determined that the outage time at Turkey Point Unit 3 should be reduced because of the repair of the rod position indication system but we failed to likewise adjust the replacement power costs by the 8-hour repair of the reverse power protection relay. FPL argues that the rationale used by us, that the failure was typical and not unusual in the operation of nuclear generators, overlooks or misapprehends Order No. 23232. FPL contends that the replacement of the reverse power protection relay was an essential repair within the meaning of Order No. 23232 and the Final Order in this docket. FPL asserts that nothing in the two orders turns on whether a repair is occasioned by a random mechanical failure. FPL also states that there is nothing in the record to indicate that the malfunction was typical and not unusual in the operation of nuclear generators. FPL urges us to reconsider our decision because

³ Order No. 23232, issued July 20, 1990, in Docket No. 900001-EI, In re: Fuel and purchase power cost recovery clause with generation performance incentive factor.

the unanticipated problem is important for a utility to correct when a unit is offline and so the utility should receive credit for that additional repair time.

The Intervenors argue that there is no evidence to show that the outage at Unit 4 was incrementally extended by 8 hours due to the relay failure. The Intervenors state the outage time of 107 hours at Unit 4 was well within the typical time frame suggested by FPL for restarting two nuclear units.

We determined that consideration would be given to the actions and events which followed the initial tripping of the units but mitigated FPL's refund responsibility based on record evidence. We did consider whether the two additional outages at Turkey Point Unit 4 were mitigating circumstances. We determined that those outages did not rise to the level established in Order No. 23232 or in the Final Order. These outages did not coincide with a prior planned outage as did the outage at Turkey Point Unit 3. Further, we evaluated the two additional shutdowns and determined that they were of a type typical of the restart of nuclear power plant. To confirm that we were correct in our analysis that this was a typical re-start of a dual tripped power plant, we relied on testimony that indicated that the typical time to return two nuclear units to full output was between 84 and 134 hours.

Therefore, we analyzed the application of prior Order No. 23232 on the problems FPL encountered in bringing Turkey Point 4 back on-line and determined that those operational problems did not rise to the level to mitigate the amount FPL must refund ratepayers for the Flagami Transmission event. We did not overlook or fail to consider Order No. 23232 in making its decision; therefore, FPL's motion for reconsideration shall be denied.

Corrections to the Refund

FPL asserts that we erred in calculating the hours associated with the repair of the rod position indication system and so should reduce the amount of hours of outage at Turkey Point Unit 3 to 32 hours with a resulting customer refund of \$5,418,842 for Turkey Point Unit 3. FPL contends that we erred in calculating the hours associated with the repair of the reverse power protection relay and so should reduce the amount of hours of outage at Turkey Point Unit 4 to 99 with a resulting customer refund of \$437,886. FPL concludes that the total it should refund to customers for the outage as a result of the Flagami Transmission event is \$7,840,675.

We find that we did not make an error in its decision. We considered all facts in the record to reach its conclusion that 27 incremental hours were associated with the repair of the rod position indication system. We correctly applied prior precedent in determining that the repair of the reverse power protection relay at Turkey Point Unit 4 did not rise to the standard established in the Final Order and in Order 23232. Accordingly, the refund to customers as established by Order No. PSC-10-0381-EI shall remain at \$13,854,054.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Motion for Reconsideration concerning the amount of credit to FPL for repair of the rod position indication system shall be denied. It is further

ORDERED that Florida Power & Light Company's Motion for Reconsideration concerning Order No. 23232, in requiring a refund for the full outage time at Turkey Point Unit 4, shall be denied. It is further

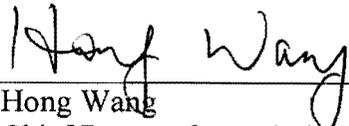
ORDERED that the refund to customers as established by Order No. PSC-10-0381-EI shall remain at \$13,854,054.

ORDERED that upon expiration of the time for appeal, if no appeal has been taken, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 28th day of February, 2011.

ANN COLE
Commission Clerk

By:



Hong Wang
Chief Deputy Commission Clerk

(S E A L)

KY

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 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.