

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 140001-EI
ORDER NO. PSC-14-0665-PCO-EI
ISSUED: November 17, 2014

ORDER DENYING FLORIDA INDUSTRIAL POWER USERS GROUP'S CORRECTED
MOTION TO STRIKE FLORIDA POWER & LIGHT COMPANY'S REQUEST TO
ESTABLISH GUIDELINES RELATED TO OIL AND GAS EXPLORATION AND
PRODUCTION AND ACCOMPANYING TESTIMONY

By its Order Establishing Procedure, Order No. PSC-14-0084-PCO-EI (OEP), issued February 4, 2014, the Florida Public Service Commission (Commission) set hearing dates for October 22-24, 2014, to consider the fuel and generating performance incentive factors (Fuel Clause) for Florida's investor-owned electric utilities. On June 25, 2014, Florida Power & Light Company (FPL) filed a petition (Petition) in the Fuel Clause seeking approval of a natural gas reserve project (Gas Reserve Issues). On August 1, 2014, FPL and the Office of Public Counsel (OPC) filed a joint motion to modify the OEP's schedule for discovery, prefiled testimony, and briefs so that the Gas Reserve Issues raised in FPL's Petition could be heard at the hearing on October 22-24, 2014, and a vote be taken before the end of the calendar year.¹ By Order No. PSC-14-0439-PCO-EI, issued August 22, 2014, the Gas Reserve Issues in FPL's Petition were deferred and a separate schedule was set for discovery, intervenor testimony, prehearing statements, and post hearing briefs, as well as a separate prehearing conference (Deferred Proceeding). The prehearing conference for the Deferred Proceeding was held on November 6, 2014, and the hearing is scheduled for December 1st and 2nd, 2014.

In its Petition, FPL seeks Commission review and approval of a specific oil and gas exploration and production project called the Woodford Project. FPL also requests that the Commission "establish guidelines under which FPL could participate in future gas reserve projects and recover their costs through the Fuel Clause without prior Commission approval, subject to the Commission's established process for reviewing fuel-related transactions in Fuel Clause proceedings."

On November 5, 2014, the Florida Industrial Power Users Group (FIPUG) filed a Corrected Motion to Strike FPL's Request to Establish Guidelines Related to Oil and Gas Exploration and Production and Accompanying Testimony (FIPUG Motion). Within the FIPUG Motion, FIPUG argued that the FPL Petition raised issues, which, if granted, could have "considerable impact on ratepayers, not just of FPL, but of other utilities who may decide to likewise venture into the oil and gas exploration and production business." On November 12, 2014, FPL filed a response in opposition to the FIPUG Motion (FPL Response). This Order addresses the FIPUG Motion and FPL Response, pursuant to Rule 28-106.211, Florida Administrative Code, (F.A.C.).

¹The hearing on the non-deferred fuel clause issues was held on October 22, 2014.

FIPUG's Argument

In its Motion, FIPUG proffers that the question of whether to adopt and approve FPL's guidelines is more akin to adopting and approving a rule, and therefore the Gas Reserve Issue should be more appropriately considered within a Section 120.54(1)(a), Florida Statutes (F.S.), rulemaking proceeding. FIPUG contends that FPL's request regarding the Woodford Project, if approved, would have the force and effect of an administrative rule. FIPUG also argues that if the Commission grants FPL's Petition in its entirety, the Commission will be unable to deny a petition from another similarly-situated Florida investor-owned utility which seeks approval of the same guidelines.

FIPUG further contends that FPL cannot, in good faith, suggest that FPL's proposed guidelines, if adopted, will not be considered by FPL or other regulated investor-owned utilities, to be Commission statements that "implement policy" or "describe the procedure or practice requirements" of the Commission with regard to future oil and gas projects. Both of these actions, FIPUG argues, are within the statutory definition of a rule. FIPUG concludes that if FPL's requested guidelines are adopted and approved, then the Commission and future Florida Commissions would be bound to allow FPL to invest up to \$750 million dollars per year in oil and gas exploration and production projects.

FPL's Response

In the FPL Response, FPL argues that FIPUG's Motion is premised upon the erroneous proposition that the Commission must conduct rulemaking to approve FPL's proposed guidelines. FPL also contends that the guidelines sought by FPL are Company-specific and do not apply to other investor-owned utilities, nor require approval by a Section 120.54(1)(a), F.S., rulemaking proceeding. FPL further asserts that even if its guidelines were industry-wide standards or statements of general applicability, which they are not, the Commission is specifically exempted by the Legislature from rulemaking in recovery clause proceedings, pursuant to Section 120.80(13)(a), F.S. FPL contends that it is the only utility that has expressed any interest or intent in pursuing gas reserve transactions designed to reduce customers' fuel costs, and it would be a waste of resources and time for the Commission to convene an industry-wide rulemaking when FPL may be the only utility that ever pursues such transactions.

FPL also argues that the FIPUG's Motion is untimely, fails to meet the minimum requirements of Rule 28-106.20, F.A.C., misrepresents the relief sought by FPL, and is supported by minimal case law which does not address the facts and circumstances before this Commission.

Analysis

Having considered FIPUG's Motion, FPL's Response to FIPUG's Motion, FPL's and FIPUG's oral arguments at the Prehearing Conference for the Deferred Proceeding, applicable statutes, and relevant case law, FIPUG's Corrected Motion to Strike FPL's Request to Establish Guidelines Related to Oil and Gas Exploration and Production and Accompanying Testimony is

hereby denied. First and foremost, electric cost recovery clauses are specifically exempt from rulemaking under Section 120.80(13)(a), F.S., as provided:

Agency statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to chapter 366, relating to public utilities are exempt from the provisions of s. 120.54(1)(a).

As such, pursuant to Section 120.80(13)(a), F.S., rulemaking is not required to address FPL's request for guidelines on the Gas Reserve Issues.

Moreover, FIPUG's Motion appears to be an untimely motion to dismiss a portion of FPL's Petition. Rule 28-106.204, F.A.C., requires that motions to dismiss shall be filed within 20 days of assignment of the presiding officer. Although FIPUG's Motion on its face appears to address a specific issue incorporated into FPL's Petition, it is in essence a motion to dismiss, which was served months after FPL's Petition was filed, and is therefore deemed untimely.

Based on the foregoing, it is hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Florida Industrial Power Users Group's Corrected Motion to Strike Florida Power & Light Company's Request to Establish Guidelines Related to Oil and Gas Exploration and Production and Accompanying Testimony is hereby denied.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 17th day of November, 2014.



JULIE I. BROWN
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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.