BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company to recover Scherer Unit 4 Turbine Upgrade costs through environmental cost recovery clause or fuel cost recovery clause.	DOCKET NO. 100404-EI ORDER NO. PSC-11-0080-PAA-EI ISSUED: January 31, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING PETITION TO RECOVER SCHERER UNIT 4 TURBINE UPGRADE COSTS THROUGH THE ENVIRONMENTAL COST RECOVERY CLAUSE OR THE FUEL COST RECOVERY CLAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Florida Power & Light Company (FPL) has requested approval to recover the costs associated with a turbine upgrade to the Scherer Unit 4 coal generating facility through either the Environmental Cost Recovery Clause (ECRC) or the Fuel Cost Recovery Clause (Fuel Clause). FPL asserts that with the installation of a new high pressure rotor to the Unit 4 turbine-generator, the plant will be able to generate approximately 35 MW of additional electricity output, which, in turn, will substantially offset the parasitic load imposed by the plant's environmental equipment which is being installed to comply with the Environmental Protection Agency's (EPA) Clean Air Interstate Rule (CAIR) and the Georgia Multipollutant Rule. The environmental equipment to be installed at Unit 4 includes a baghouse, a scrubber, and a selective catalytic reduction system. FPL expects to incur approximately $5-7 million in capital costs for the turbine upgrade, and asserts that the upgrade will result in net present value fuel savings to customers of approximately $240 million through 2045.

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FPL originally planned to perform the turbine upgrade at the same time that the environmental equipment is installed at the unit, scheduled to take place during an outage in 2012. In May 2010, however, the EPA issued a new greenhouse gas tailoring rule that FPL believes may require a New Source Review of Scherer Unit 4 for greenhouse gas emissions unless construction begins on the turbine upgrade prior to July 1, 2011. (75 Fed. Reg. 31513 et seq). Therefore, FPL is presently planning to arrange for delivery of the high pressure rotor in June 2011, with installation to commence shortly thereafter.

As explained in detail below, we find that the costs of the turbine upgrade are not eligible for recovery through either the ECRC or the Fuel Clause. We have jurisdiction over this subject matter pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, 366.06, 366.825, and 366.8255.

DECISION

ECRC Eligibility

The ECRC, established in 1993 by the Florida Legislature, provides an investor-owned utility the opportunity to recover the costs associated with incremental changes in environmental regulations between rate cases. Pursuant to Section 366.8255, F.S., only the utility's prudently incurred environmental compliance costs may be recovered through the ECRC. Environmental compliance costs include " all costs or expenses incurred by an electric utility in complying with environmental laws or regulations . . ." Section 366.825(1)(d), F.S. Environmental laws or regulations include "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment." Section 366.8255(1)(c), F.S. The statute authorizes us to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. A utility may submit a petition to us describing its proposed environmental compliance activities and projected costs, and if the activities are approved, we "shall allow recovery of the utility's prudently incurred environmental compliance costs, including the costs incurred in compliance with the Clean Air Act, and any amendments thereto or any change in the application or enforcement thereof. . . ." Section 366.8255(2), F.S. The statute provides that any costs recovered in base rates may not also be recovered in the ECRC. Section 366.8255(5), F.S.

We first implemented the provisions of Section 366.8255, F.S., in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes (Gulf Order).[1] There, we identified the criteria required to demonstrate eligibility for cost recovery under the ECRC. We interpreted the statute to prescribe three requirements for recovery of environmental compliance costs through the clause. In the Gulf Order at page 6, we said:

> Upon petition, we shall allow the recovery of costs associated with an environmental compliance activity if:

[1] Order No. PSC-94-0044-FOF-EI, issued January 12, 1994.

1. such costs were prudently incurred after April 13, 1993;

2. the activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based; and,

3. such costs are not recovered through some other cost recovery mechanism or through base rates.

Beginning with the Gulf Order, and in several other decisions over the years, we have considered proposals for recovery of environmental compliance costs on a case-by-case basis, and with some flexibility; but, we have required fundamental compliance with the provisions of Section 366.8255, F.S. As the following review of our decisions indicates, and of particular importance to this case, we have consistently enforced the requirement that projects eligible for ECRC cost recovery must be required to comply, or remain in compliance with, a governmentally imposed environmental regulation.

The Gulf Order allowed recovery through the ECRC of Gulf's Environmental Auditing Program because the program ensured the efficient management of approved environmental programs to ensure cost-effective compliance with environmental regulations.[2] It also allowed recovery for general air quality costs and emission monitoring costs associated with changes in the scope of compliance with existing environmental regulations and new environmental regulations.[3] It denied recovery of Gulf's Clean Coal Technology program, however, because the program was a discretionary, voluntary research and development program not needed for compliance with any environmental regulations.

In Docket No. 990667-EI, In re: Petition by Gulf Power Company for approval of Plant Smith Sodium Injection System as new program for cost recovery through environmental cost recovery clause,[4] we approved the project both to comply with new Clean Air Act Amendment (CAAA) Phase II requirements and to maintain compliance with existing air permit requirements. In Docket No. 980007-EI, In re: Environmental Cost Recovery Clause,[5] we approved Gulf's additional groundwater monitoring equipment to continue to comply with an existing environmental requirement, because greater treatment capacity was needed. In that docket, we also approved two additional coal crushers that contributed to overall compliance with the CAAA at the Tampa Electric Company (TECO) Gannon station even though it was not clear that the additional crushers had initially been a part of TECO's overall NOx compliance strategy for Phase II of the CAAA.

In Docket No. 020648-EI, In re: Petition for approval of environmental cost recovery of St. Lucie Turtle Net Project for period of 4/15/02 through 12/31/02 by Florida Power & Light Company,[6] FPL's Nuclear Regulatory Commission (NRC) license to operate the St. Lucie

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[2] Gulf Order at 19.
[3] Gulf Order at 17.
[4] Order No. PSC-99-1954-PAA-EI, issued October 5, 1999.
[5] Order No. PSC-98-1764-FOF-EI, issued December 31, 1998.
[6] Order No. PSC-02-1421-PAA-EI, issued October 17, 2002.

nuclear power plant included Appendix B, which imposed certain requirements on FPL to protect several species of endangered sea turtles from entrapment in the cooling water intake canals of the plant. The NRC requirements included installation and maintenance of a five-inch mesh barrier net across the intake canal. Although the NRC requirements had not changed, FPL requested recovery of the costs for a new turtle net project, which included installation of a new net of sturdier material and support structures, conducting a bottom survey of the intake canal, maintenance dredging the canal in the vicinity of the net, and installing a sand pump near the net. These additional activities were not specifically required by Appendix B, but FPL explained that they were necessary to ensure that the net worked properly so that it could continue to comply with its NRC license. In this year's ECRC docket FPL has requested approval of additional modifications to its Turtle Net Project, which FPL asserts are necessary to remain in compliance with the requirements of Appendix B.

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,[7] we approved a new flue gas desulphurization system reliability program to amplify an existing program that we had approved earlier, because the program would allow TECO to comply with additional requirements of its Consent Decree with the EPA, even though the specific project TECO engineered was not required by the Consent Decree.

Finally, in Docket No. 060162-EI, In re: Petition by Progress Energy Florida, Inc. for approval to recover modular cooling tower costs through environmental cost recovery clause,[8] we approved Progress Energy Florida's (PEF) modular cooling tower project in order to continue compliance with wastewater discharge standards required by the Florida Department of Environmental Protection (DEP). PEF's discharge permit limits the temperature of discharge water into the Gulf of Mexico from the Crystal River plants to 96.5 degrees Fahrenheit. Increased inlet water temperatures from the Gulf during the summers of 2004 and 2005 forced PEF to reduce the output of the plants in order to remain in compliance with its discharge permit. The modular cooling towers along the discharge canal provided additional cooling capacity that allowed PEF to comply with its permit and avoid numerous, expensive derates of its base load generating units.

The Office of Public Counsel (OPC) argued that the cooling towers project was not eligible for cost recovery through the ECRC. OPC put forth several reasons for its position, but OPC's fundamental concern was that utilities were attempting to inappropriately expand the use of the clause dockets to recover costs that should be addressed in base rate proceedings. In Order No. PSC-07-0722-FOF-EI (Cooling Tower Order), we acknowledged OPC's concern, but asserted the need for flexibility in the application of the ECRC statute, as long as the basic criteria of the statute were met. At page 8 of the Cooling Tower Order, we said:

> We believe that this interpretation is consistent with our prior decisions, and with the intent of section 366.8255, Florida Statutes, which permits recovery of a wide variety of costs associated with compliance with governmentally imposed

[7] Order No. PSC-07-0499-FOF-EI, issued June 11, 2007.
[8] Order No. PSC-07-0722-FOF-EI, issued September 5, 2007.

> environmental requirements, if the costs were incurred after section 366.8255 was enacted, and if the costs are not being recovered in base rates or another cost recovery mechanism. We understand OPC's concern that utilities have the incentive to pass many costs through cost recovery mechanisms, and we are attuned to that concern, but that cannot lead us to restrict the eligibility of environmental costs beyond what the statute contemplates. . . . Further, we are not persuaded that a decision to approve the eligibility of the modular cooling towers project would lead to the scenario OPC's witness Hewson describes, as long as we continue to require a direct nexus between the project, its compliance costs, and the relevant environmental requirement.

FPL relies heavily on our decision in the Cooling Tower Order to support its request for recovery of the turbine upgrade costs in this case. According to FPL, PEF's modular cooling tower project avoided reductions in generating plant output from discharge temperature requirements, and FPL argues that its turbine uprate project will offset reductions in generating unit output due to the installation and operation of pollution controls at the Scherer plant. FPL does not take into account, however, the critical distinguishing fact between the two cases. The modular cooling tower project was designed to allow PEF to run its Crystal River plants in compliance with a governmentally imposed environmental requirement, DEP's wastewater discharge permit. If PEF did not comply with the temperature requirements, it could not run its plants. FPL's turbine upgrade is not designed to allow FPL to run Scherer Unit 4 in compliance with a governmentally imposed environmental requirement. Without the turbine upgrade, it can still run its plant. When the baghouse, scrubber, and selective catalytic reduction system, whose costs we have approved for recovery through the ECRC, are installed in 2012, FPL will be in compliance with applicable environmental regulations, with or without the turbine upgrade. In its response to our staff's 4th Set of Interrogatories No. 44 in Docket. No. 100007-EI, FPL agreed that "not proceeding with the upgrade of the steam turbine would not violate any federal, state or local environmental rule or regulation." Allowing recovery of FPL's turbine upgrade project to offset parasitic load from environmental equipment through the ECRC would open up a whole new, perhaps extensive, subset of recoverable costs. Virtually every pollution control system creates a parasitic load for a generating unit. We find that this new subset of costs is not contemplated by Section 366.8255, F.S., or our orders implementing the statute.

As this review of our ECRC decisions indicates, the facts and circumstances of environmental compliance projects eligible for cost recovery vary considerably, but the principle that connects them is our consistent insistence that the projects comply with the essential criteria of the statute and the Gulf Order, in particular here, the requirement that the projects be required to comply, or remain in compliance with, a governmentally imposed environmental regulation. FPL's Scherer Unit 4 turbine upgrade is a discretionary, voluntary project, and the costs associated with it are not environmental compliance costs required by any known environmental rule or regulation. Thus there is no "direct nexus between the project, its compliance costs, and the relevant environmental requirement." We find that the proposed project does not meet established criteria for recovery through the ECRC.

Fuel Clause Eligibility

The fuel clause is a regulatory tool designed to pass through to utility customers the costs associated with fuel purchases. The purpose is to prevent regulatory lag, which occurs when a utility incurs expenses but is not allowed to collect offsetting revenues until the regulatory body approves cost recovery. Regulatory lag has historically been a problem for utilities because of the volatility of fuel costs. It is not as much of a problem, however, when expenses, such as capital improvements, and operations and management costs, can be planned for and included in base rate calculations. Different states have addressed volatile fuel costs and the problem of regulatory lag in differing ways. Several jurisdictions, like Florida, have allowed recovery of fuel costs in a fuel adjustment clause, and in Florida the implementation of the fuel clause has changed and developed over the years.

From 1925 to 1951, before the Legislature granted us jurisdiction over investor-owned electric utilities, Florida's electric utilities benefited from a monthly fuel adjustment clause. Starting in 1951, when we obtained jurisdiction over them, the utilities applied a Commission-approved formula and placed the resulting charge on customers' bills. While some auditing functions were performed by our staff, no formal public hearing was held. In 1973-1974, a foreign oil embargo substantially increased the cost of oil, leading to increased consumer concern over fuel adjustment charges. On October 7, 1974, we opened a docket to fully review the clause process.[9] Two days later, on October 9, 1974, the Attorney General issued an advisory opinion which stated that the practice of allowing changes in the fuel adjustment charges without a public hearing was illegal under Florida law. 74 Op. Att'y. Gen. Fla. 309 (1974). On October 11, 1974, the first fuel adjustment clause hearing was held, which led to the approval of a stipulation that provided for a monthly hearing format on all fuel adjustment clauses.[10] During the 1974 proceeding, we also considered recommendations on the modification of the clause, and implemented a two-month lag between utilities filing for fuel clause recovery and the decision on cost recovery. The two month lag was intended as an incentive to the utilities to optimize fuel costs.

In 1980, we modified the clause again.[11] In Order No. 9273, we allowed the utilities to collect fuel and fuel-related expenses on a current basis. We subsequently modified the recovery clauses to allow recovery on the projections of future fuel and fuel-related expenditures subject to a true-up hearing in which the utilities' projected fuel expenditures are adjusted to recover only actual expenditures. From 1980 to 1998, we changed the fuel adjustment hearing schedule from once a month, to every six months, to the current yearly schedule.

In 1985, we amended the fuel clause process to better describe those items that would be recoverable under the fuel clause. Prior to the August 1985 fuel hearing, we instructed the parties and our staff to "provide information necessary for the Commission to be able to consider

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[9] Order No. 6357, issued November 26, 1974, in Docket No. 74680, In re: General Investigation of Fuel Adjustment Clauses of Electric Companies.

[10] Id.

[11] Order No. 9273, issued March 7, 1980, in Docket No. 74680, In re: General Investigation of Fuel Cost Recovery Clause. Consideration of Staff's Proposed Projected Fuel and Purchased Power Cost Recovery Clause with an Incentive Factor.

at the August 1985 fuel adjustment hearing whether the utilities were passing appropriate fixed and variable costs associated with fuel receipts through their fuel adjustment clauses."[12] Order No. 14546 approved a stipulation between OPC, FPL, TECO, Gulf, and FPC (now PEF) after a workshop exploring the issue. The policy outlined in Order No. 14546 consisted of two essential points regarding the scope and application of the fuel adjustment clause:

> 1. When similar circumstances exist, the Commission should attempt to treat, for cost recovery purposes, specific types of fossil fuel-related expenses in a uniform manner among the various electric utilities. At times, however, it may be appropriate to treat similar types of expenses in dissimilar ways.
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> 2. Prudently incurred fossil fuel-related expenses which are subject to volatile changes should be recovered through an electric utility's fuel adjustment clause. The volatility of fossil fuel-related costs may be due to a number of factors including, but not necessarily limited to: price, quantity, number of deliveries, and distance. Except as noted below, these volatile fossil fuel-related charges are incurred by the utility for goods obtained or services provided prior to the delivery of fuel to the electric utility's dedicated storage facilities. (Dedicated storage facilities mean storage facilities which are used solely to serve the affected electric utility.) All other fossil fuel-related costs should be recovered through base rates.[13]

Order 14546 then discussed the parties' specific applications of the articulated policy, including, for example, the description of "invoiced fuel charges." It was determined that invoiced fuel charges should include all price revisions and adjustments relating to volume and quality of fuel. After discussing several specific applications of the policy, the parties agreed that our policy on fuel clause recovery should be flexible enough to cover some items that would normally go through base rates, and we approved that position. We discussed this fuel clause exception to base rate recovery as follows:

> In addition to stipulating to the foregoing applications of policy, the parties also recommended to the Commission that the policy it adopts be flexible enough to allow for recovery through fuel adjustment clauses of expenses normally recovered through base rates when utilities are in a position to take advantage of a cost-effective transaction, the costs of which were not recognized or anticipated in the level of costs used to establish the utility's base rates. One example raised was the cost of an unanticipated short-term lease of a terminal to allow a utility to receive a shipment of low cost oil. The parties suggest that this flexibility is appropriate to encourage utilities to take advantage of short-term opportunities not reasonably anticipated or projected for base rate recovery. In these instances, we will require that the affected utility shall bring the matter before the Commission at the first available fuel adjustment hearing and request cost recovery through the fuel adjustment clause on a case by case basis. The Commission shall rule on the

[12] Order No. 14546, p. 1
[13] Order No. 14546, p. 2

> appropriate method of cost recovery based upon the merits of each individual case.[14]

In Order No. 14546 we approved the stipulation of the parties and adopted them as our own. We found that the stipulated provisions (including the fuel clause exception to base rate recovery), were an appropriate extension of the policy established by Order No. 6357.[15] As a result of the policy determinations, we made two lists. One list included charges properly considered in the computation of the average inventory price of fuel. The other list contained items that were more appropriately considered in the determination of base rates. It should be noted that each item on the lists was a shortened reference to the detailed description of the types of costs discussed earlier in the Order.[16]

It is Order No. 14546 that FPL relies upon to contend that the upgrade of the steam turbine (turbine upgrade) at the Plant Scherer Unit 4 coal plant is eligible for recovery through the Fuel Clause. The turbine upgrade will offset the loss in unit output resulting from the installation of required pollution control equipment at the generating unit. Scherer Unit 4's heat rate will also be improved by a rate of more than 400 Btu/kWh as a result of the turbine upgrade, meaning the unit will be able to generate electricity more efficiently in addition to increasing its output. FPL witness T.J. Keith states in FPL's September 1, 2010 testimony, that the turbine upgrade will result in fuel savings of approximately $240 million on a net present value basis, compared to a cost of about $7 million to upgrade the steam turbine.

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[14] Order No. 14546, p. 3

[15] In Order No. 6357, we discussed the purpose of the fuel adjustment clause as follows: "A fuel adjustment clause is intended to compensate for day-to-day fluctuations in the cost of fuel which cannot be anticipated in the base rates. It should be constructed and applied so as to reimburse the utility for the increase in the cost of fuel as related to generation. It also operates so as to pass on to the customer any savings realized by the utility from decreased cost of fuel. (Order No. 2515-A, dated April 24, 1959). . . It should be emphasized that a utility does not make a profit on its fuel costs. . . . The charge reflected on a customer's bill each month is designed only to provide for the recovery of fuel costs experienced by the utility in generating the customer's power. Conversely, it can and has resulted in a credit to the customer's bill when the price falls below the base cost of fuel. While some may question the propriety of allowing fuel costs to be recovered through an automatic adjustment clause, recent events underscore the basic reasons why such is done for this particular cost item as opposed to others. First, electric utilities rely largely upon fossil fuels to generate power; only Florida Power and Light Company now has a nuclear unit on the line and in service. Thus, their dependency on purchasing large quantities of fossil fuels will continue to exist for many years. Presently, fuel costs represent a substantial portion of operating costs; in some instances, fuel costs alone comprise more than half of a company's total operating costs. Any fluctuation, then, in fuel costs will have a significant impact on a company's earnings and can work to the detriment of the ratepayer or the utility depending on the direction of the movement unless some means exists to recoup those increased costs or refund those savings as quickly as possible. Rate cases are time consuming and expensive, and do not lend themselves to these objectives. Second, fuel costs are a highly volatile cost item unlike other costs of the utilities, such as wages and maintenance. When the volatility factor is coupled with the magnitude of fuel costs, one can readily conclude that the fuel adjustment clause is both a necessary and proper regulatory tool to insure that both the customer and the utility receive the benefits of responsive recognition to changes in the cost of generating electricity. We do not have the slightest doubt that a type of recovery clause should be retained by the utilities in order to accomplish this goal." Order No. 6357, issued November 26, 1974, in Docket No. 74680-CI, In re: General investigation of fuel adjustment clauses of electric companies.

[16] For instance, the discussion of invoiced fuel charges appears on the approved fuel clause recovery lists as items 1, 2 and 3. The fuel clause exception appears on the list as item number 10.

As Order No. 14546 states, recovery may be allowed for:

> Fossil fuel-related costs normally recovered through base rates but which were not recognized or anticipated in the cost levels used to determine current base rates and which, if expended, will result in fuel savings to customers. Recovery of such costs should be made on a case by case basis after Commission approval.

We find that the appropriate interpretation of this section of Order No. 14546 is that capital projects eligible for cost recovery through the Fuel Clause should produce fuel savings based on lowering the delivered price of fossil fuel, or otherwise result in burning lower price fuel at the plant. We note that the order discusses a "cost effective transaction," and gives as an example, "the cost of an unanticipated short-term lease of a terminal, to allow a utility to receive a shipment of low cost oil." (Order No. 14546, p. 3) This example clearly connects fuel savings to a project that lowers the delivered price of fossil fuel (i.e., the input price). Similarly, in Order No. PSC-95-1089-FOF-EI, issued on September 5, 1995,[17] we approved FPL's purchase of 462 high capacity aluminum rail cars for delivery of coal to Plant Scherer, a capital project that lowered the delivered price of fuel. The purchase of the rail cars enabled FPL to obtain favorable transportation rate savings from railroad companies that exceeded the recoverable cost of the purchase. That capital investment provided FPL customers an estimated $24 million in fuel savings, in the form of reduced fuel costs to FPL's customers, by lowering the delivered price, or input price, of coal. In contrast, the turbine upgrade increases the output and efficiency of the coal plant, resulting perhaps in less fuel burned per kWh, but it has no effect on the delivered price of coal.

As Order No. 14546 states, projects that request recovery of costs through the Fuel Clause should be "fossil fuel related." The turbine upgrade is a capital project that increases output and efficiency but is not specific to fossil fuel. Such an upgrade could as well be made to a nuclear plant's steam turbine. We do not consider the turbine upgrade to be a "fossil fuel-related cost," and therefore we find that it should not be recovered through the Fuel Clause.

In Attachment A to this Order, we have included a complete review of the capital costs that have been recovered through the fuel clause pursuant to Order 14546. As can be seen from that Attachment, all but two of the orders are consistent with our interpretation of Order 14546. One of these orders deals with incremental security costs incurred by utilities at nuclear power plants following the September 11, 2001 terrorist attacks. This was a unique circumstance, however, and we note that those security costs were subsequently removed from the fuel clause and included in the capacity cost recovery clause. FPL argues that the other order, Order No. PSC-96-1172-FOF-EI, issued on September 19, 1996,[18] supports its position that the turbine upgrade should be included in the fuel cost recovery clause. Order No. PSC-96-1172-FOF-EI did approve recovery through the Fuel Clause of costs associated with the thermal power uprate at FPL's Turkey Point nuclear-powered Units 3 and 4, a "non-fossil fuel-related" project. Order No. 14546 states, however, that a cost must be "fossil fuel-related" to be eligible for Fuel Clause

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[18] Docket No. 950001-EI
[18] Docket No. 960001-EI

recovery. Order No. 14546 also states that; "recovery of such costs should be made on a case-by-case basis. . . ." While it is true that we granted recovery of "non-fossil fuel-related" costs through the Fuel Clause in those two discreet instances, we believe that the appropriate policy going forward is to restrict capital project cost recovery through the Fuel Clause to projects that are "fossil fuel-related" and that lower the delivered price, or input price, of fossil fuel. At the same time, we reaffirm our practice of reviewing the eligibility of projects for recovery on a case-by-case basis.

The turbine upgrade appears to be a cost effective project that would benefit FPL and its ratepayers, but for the reasons stated above, we find that it is not eligible for recovery through either the ECRC or the Fuel Clause.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that for the reasons set out in the body of this Order, the Petition by Florida Power & Light Company to recover Scherer Unit 4 Turbine Upgrade costs through the environmental cost recovery clause or the fuel cost recovery clause is denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 31st day of January, 2011.

ANN COLE
Commission Clerk

(S E A L)

MCB

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 21, 2011.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Docket No. Order No.	Project	Reasons for approval
930001-EI PSC-93-1331-FOF-EI	Martin gas pipeline lateral	Commission has the flexibility to review fossil fuel related costs on a case-by-case basis to determine whether those costs are appropriate for recovery through the fuel clause. Martin gas pipeline lateral has reduced costs, or at the very minimum, not resulted in any increased costs, and the decision was made with the ratepayers' interest in mind, which is to minimize cost. Recognizing the unique facts and circumstances regarding FPL's decision to construct the lateral, to alleviate regulatory lag, and to encourage utilities to take actions to reduce fuel costs to customers, we find that it is appropriate in this case to recover the depreciation and return on investment in the Martin gas pipeline lateral through the fuel recovery clause until FPL's next rate case.
940391-EI PSC-94-1106-FOF-EI	Conversion by FPL of Manatee units to burn orimulsion	By party stipulation and subject to conditions, Commission allowed fuel clause recovery pursuant to Order 14546 of conversion of Manatee Units 1 and 2 to burn orimulsion. The burning of orimulsion represented the most economical alternative to burning oil. The recovery amount was $72 million with a recovery period of the used and useful life of the assets. **The project was never commenced.*
951096-EI PSC-95-1299-NOR-EI	Oil Backout Rule	Was repealed because if a utility justifies a project that will result in fuel savings to its ratepayers, those oil backout costs will generally be recoverable through the fuel clause on a case-by-case basis.
950001 PSC-95-1089-FOF-EI	FPL's recovery of rail cars	By stipulation, Commission granted rail cars. Unanticipated fuel-related costs not included in the computation of base rates when economically beneficial to a utility's ratepayers, the cost of purchasing or leasing rail cars. FPL projects that the $24,024,000 cost will save ratepayers more than $24 million above the cost of the cars over a 15 year period. The purchase enabled FPL to obtain favorable transportation rate savings from railroad companies and thus lower the delivered price of fuel.
	FPC conversion of Intercession City combustion turbine units P7 and P9 to burn natural gas.	By stipulation. Order No. 14546 . . . allows a utility to recover fossil-fuel related costs that result in fuel savings, even if those costs were not previously addressed in determining base rates. Each oil CT was converted to gas and the conversion resulted in fuel savings. The conversions were to produce an estimated savings of $2.5 million with a recovery amount of $20 million over a 5 year recovery period.
950001-EI PSC-95-0450-FOF-EI	FPL modifications to Cape Canaveral Units 1 and 2, Fort Myers Unit 2, Riviera Units 3 and 4, and Sanford Units 3, 4, and 5 to use a more economic grade of residual fuel oil	FPL stated costs would be $2,754,502, and estimated savings of $80 million. These fuel savings result from the use of a more economic grade of residual fuel oil. In approving the fuel clause exception to base rates for these conversions, Commission quoted from Order 14546. We recognized that certain unanticipated costs may be appropriate for recovery through the fuel clause. Order 14546 allows fuel related expenditures that are not being recovered through a utility's base rates. . . . "While it is the Commission's intent in this order to establish comprehensive guidelines for the treatment of fossil fuel related costs, it is recognized that certain unanticipated costs may have been overlooked. If any utility incurs, or will incur, a fossil fuel related cost which was not addressed in this order and the utility seeks to recover such cost through its fuel adjustment clause, the utility should present testimony justifying such recovery in an appropriate fuel adjustment hearing." We have allowed in the past, when those expenditures result in significant savings to the utility ratepayers.
960001-EI PSC-96-1172-FOF-EI	FPL's uprate of Turkey Point Units 3 and 4	The thermal power uprate was estimated to produce $198 million in savings with a recovery amount of $10 million over 2 years. The savings are due to the difference between low cost nuclear fuel replacing higher cost fossil fuel.
960001-EI PSC-96-0353-FOF-EI	FPC conversion of Intercession city P8 and P10 turbine units to burn natural gas.	By stipulation. Order 14546 allows a utility to recover fossil-fuel related costs that result in fuel savings, even if those costs were not previously addressed in determining base rates. Each oil CT was converted to gas and the conversion resulted in fuel savings. The conversions were to produce an estimated savings of $16 million with a recovery amount of $2.6 million over a 5 year recovery period.
970001-EI PSC-97-1045-FOF-EI	FPC's conversion of Debary Unit 9 to burn natural gas	Order 14546 allows a utility to recover fossil-fuel related costs which result in fuel savings when those costs were not previously addressed in determining base rates. The oil CT was converted to gas and the conversion resulted in fuel savings. The conversion was to produce an estimated savings of $2.1 million with a recovery amount of $734,000 over a 5 year recovery period.
970001-EI PSC-97-0359-FOF-EI	FPC conversion of Debary 7, Bartow 3 and 4, Suwannee 1 to	By stipulation. Order 14546 allows a utility to recover fossil-fuel related costs which result in fuel savings when those costs were not previously addressed in determining base rates. Each oil CT was converted to gas and the conversion resulted in fuel savings. The conversions were to produce an estimated savings of $22 million with a recovery amount

Docket No. Order No.	Project	Reasons for approval
	burn natural gas	of $7.5 million over a 5 year recovery period.
970001-EI PSC-97-0359-FOF-EI	FPL's investment on rail cars	By stipulation. Recover the depreciation expense and return on investment for rail cars purchased to deliver coal to the Scherer Plant. Pursuant to Order 14546 unanticipated fuel-related costs not included in the computation of base rates may be considered for recovery through a utility's fuel clause. When economically beneficial to a utility's ratepayers, the cost of purchasing or leasing rail cars is considered to be a fuel-related expense that should be recovered through the fuel clause.
	FPL's modifications to generating plants and fuel storage facilities to use low gravity fuel oil.	By stipulation. These modifications will allow FPL to operate these plants and using a heavier more economic grade of residual fuel oil. Order 14546 allows a utility to recover fossil-fuel related costs which result in fuel savings when those costs were not previously addressed in determining base rates. The modifications were to produce an estimated savings of $19 million with a recovery amount of $2 million over a 3 year recovery period.
980001-EI PSC-98-0412-FOF-EI	FPC's conversion of Suwannee 3 to burn natural gas.	Order 14546 allows a utility to recover fossil-fuel related costs which result in fuel savings when those costs were not previously addressed in determining base rates. The oil CT was converted to gas and the conversion resulted in fuel savings. The conversion was to produce an estimated savings of $3.25 million with a recovery amount of $2.45 million over a 5 year recovery period.
980001-EI PSC-98-1715-FOF-EI	FPC's conversion of Debary 8 to burn natural gas	Order 14546 allows a utility to recover fossil-fuel related costs which result in fuel savings when those costs were not previously addressed in determining base rates. The oil CT was converted to gas and the conversion resulted in fuel savings. The conversion was to produce an estimated savings of $3.4 million with a recovery amount of $1.8 million over a 5 year recovery period.
010001-EI PSC-01-2516-FOF-EI		By stipulation. Parties restated that regulatory treatment of capital costs that are expected to reduce long-term fuel costs is the treatment prescribed in Order 14546 where we listed the types of costs that are recoverable through the Fuel Cost Recover Clause. . . . Parties also stipulated that the appropriate rate of return on the unamortized balance of capital projects with an in-service date on or after Jan 1, 2002, is the utility's cost of capital based on the midpoint of its authorized return on equity. We approve these stipulations as reasonable.
	Incremental Power Plant Security Costs request by FPL	We find that recovery of this incremental cost through the fuel clause is appropriate in this instance because there is a nexus between protection of FPL's nuclear generation facilities and the fuel cost savings that result from the continued operation of those facilities. Further, we believe that this type of cost is a potentially volatile cost, making it appropriate for recovery through the fuel clause. . . . In addition, we find that recovery of this cost through the fuel clause provides a good match between the timing of the incurrence and recovery of the cost. . . . We believe that approving recovery of this incremental power plant security cost through the fuel clause sends and appropriate message to Florida's investor-owned electric utilities that we encourage them to protect their generation assets in extraordinary, emergency conditions as currently exist. ** Incremental Security costs were moved into the capacity clause in Docket No. 020001-EI by Order No. PSC-02-1761-FOF-EI issued on December 13, 2002.*
050001-EI PSC-05-1252-FOF-EI	FPL sleeving project at St. Lucie No. 2	By Order 14546 we set forth certain criteria for establishing the types of expenses that are eligible for recovery through the fuel clause. In particular, a utility must show that a cost will not be recognized or is not anticipated to be recovered in current base rates. We believe that FPL knew about the potential to sleeve the tubes when it filed its minimum filing requirements for its most recent rate case. ** The FPL sleeving project was denied. The project was anticipated prior to FPL's rate case and should have been requested for recovery in base rates.*