



John T. Butler
 Managing Attorney
 Florida Power & Light Company
 700 Universe Boulevard
 Juno Beach, FL 33408-0420
 (561) 304-5639
 (561) 691-7135 (Facsimile)
 E-mail: john_butler@fpl.com

January 13, 2012

-VIA HAND DELIVERY -

Ms. Ann Cole
 Commission Clerk
 Florida Public Service Commission
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399-0850

Re: Docket No. 120007-EI

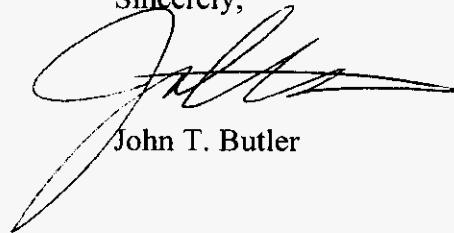
Dear Ms. Cole:

I am enclosing for filing in the above docket the original and seven (7) copies of Florida Power & Light Company's ("FPL's") Petition to modify FPL's approved Manatee Temporary Heating System Project to include a manatee temporary heating system for the Port Everglades Plant, together with a CD containing the electronic version of same.

Also enclosed for filing are the original and fifteen (15) copies of the prefiled testimony and exhibits of FPL witness Randall LaBauve in support of FPL's Petition.

If there are any questions regarding this transmittal, please contact me at 561-304-5639.

Sincerely,



John T. Butler

RECEIVED - FPSC
 12 JAN 13 PM 2:47
 COMMISSION
 CLERK

COM _____ Enclosures
 APA _____
 ECR 4 + 1 CD cc: Counsel for Parties of Record (w/encl.)
 GCL _____
 RAD _____
 SRC _____
 ADM _____
 OPC _____
 CLK _____
 anFPL Group company

DOCUMENT NUMBER-DATE
 00288 JAN 13 02
 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental Cost)
Recovery Clause. _____)

Docket No. 120007-EI
Filed: January 13, 2012

PETITION OF FLORIDA POWER & LIGHT COMPANY FOR APPROVAL OF ENVIRONMENTAL COST RECOVERY FOR MODIFICATION TO MANATEE TEMPORARY HEATING SYSTEM PROJECT

Florida Power & Light Company ("FPL"), pursuant to Section 366.8255, Florida Statutes and prior orders of the Commission, hereby petitions this Commission to modify FPL's approved Manatee Temporary Heating System Project (the "MTHS Project") to include a manatee temporary heating system ("MTHS") for FPL's Port Everglades Plant ("PPE"), such that prudent costs incurred after the date of this Petition for the PPE MTHS may be recovered as "environmental compliance costs" through the Environmental Cost Recovery Clause ("ECRC"). In support of this Petition, FPL states as follows:

1. FPL is a public utility subject to the regulatory jurisdiction of the Commission under Chapter 366, Florida Statutes. The Company's principal offices are located at 700 Universe Boulevard, Juno Beach, Florida, 33408.

2. All notices, pleadings and other communications required to be served on the petitioner should be directed to:

John T. Butler, Esq.
Managing Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: (561) 304-5639
Facsimile: (561) 691-7135
E-mail: John.Butler@fpl.com

3. Section 366.8255 authorizes the Commission to review and approve recovery through the ECRC of prudently incurred "environmental compliance costs," which are defined as "costs or expenses incurred by an electric utility in complying with environmental laws or

DOCUMENT NO. DATE
00288-12 1/13/12
FPSC - COMMISSION CLERK

regulations.” In turn, Section 366.8255 defines “environmental laws or regulations” broadly to 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.” The Commission has adopted the following test for determining whether costs qualify for ECRC recovery:

We find that the following policy is the most appropriate way to implement the intent of the environmental cost recovery statute:

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

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.

Order No. PSC-94-0044-FOF-EI, Docket No. 930613-EI, dated January 12, 1994, at 6-7.

4. Previously, this Commission has approved the MTHS Project to permit ECRC recovery of costs incurred to meet permit requirements for providing warm water refuges for manatees at FPL's Cape Canaveral and Riviera Plants while those plants were shutdown for modernization projects. Modification of the MTHS Project to include the PPE MTHS is being undertaken in order to comply with similar permit requirements to those which required warm water refuges at the Cape Canaveral and Riviera Plants. As explained below and in the testimony of FPL witness Randall R. LaBauve, which is being filed contemporaneously with this petition and is incorporated by reference herein, the PPE MTHS is required by “environmental laws or regulations,” and it meets the Commission's three-part test for ECRC cost recovery.

5. The purpose of the PPE MTHS is to provide a warm water habitat for endangered manatees at PPE and thus help FPL remain in compliance with FPL's PPE Manatee Protection Plan ("MPP"), which is Specific Condition I.D.10 to the Industrial Wastewater Facility ("IWWF") Permit Number FL0001538 issued by the Florida Department of Environmental Protection ("FDEP") for PPE on February 27, 2010. As explained below, the effect of the MPP will be triggered by the removal of the existing conventional steam units at PPE from active service, which requires active measures to comply with the MPP that have not previously been required.

6. PPE is an electric generating station in Port Everglades, Broward County, Florida, consisting of four oil and/or natural gas-fired units with a combined nominal output of 1200 MW. PPE presently has a once-through cooling water system that uses water to condense steam that is generated in the production of energy. The once-through cooling water discharges to the discharge canal and provides warm water to the manatees.

7. PPE's warm water discharge provides a needed safe refuge for endangered manatees. Manatees are known to inhabit the Intracoastal Waterway year-round and congregate in the PPE discharge canal area during periods of colder temperatures because of the warm water discharge described previously. During aerial surveys conducted by FPL and others, as many as 454 manatees have been observed near PPE in a single survey. The MPP requires the maintenance of a minimum water temperature in the area of the once-through cooling water discharge in order to provide a continual safe refuge for manatees. Compliance with the IWWF and MPP is a condition to the operation of PPE.

8. On November 21, 2011, FPL petitioned this Commission for a determination of need to undertake a major modernization project at PPE, which will replace the existing conventional steam units with a highly efficient, gas-fired advanced combined cycle unit (the "Modernization Project") to be named the Port Everglades Next Generation Clean Energy Center ("PEEC"). During

this construction period, the units will not be available to provide warm water for compliance with the MPP.

9. The proposed modification to the MTHS Project is to install an electric heating system at PPE in order to provide a temporary “manatee refuge” by discharging warm water into a portion of the discharge canal area when necessary, until the Modernization Project is completed. Primary activities integral to this modification include installing the pipes, heater and pump systems, interconnection to the FPL power system, and testing, operating, and monitoring the electric heating system and manatees. These activities will implement the requirements of the PPE MPP to maintain a minimum water temperature in the discharge canal to provide a safe habitat for manatees during the construction period for the Modernization Project.

10. There are specific “environmental laws or regulations” requiring the MTHS Projected activities at PPE:

a. IWWF Permit Specific Condition I.D.10 states the following:

The permittee shall continue compliance with the facility's Manatee Protection Plan approved by the Department on August 13, 1999 et seq.

A copy of the current IWWF for PPE is attached as Exhibit RRL-2 to the testimony of FPL witness LaBauve.

b. The MPP states, in pertinent part:

1. This Manatee Protection Plan will be in effect during the term of the permit. In order for the plant's warm water discharge to provide a safe, warm water refuge for the manatees and to comply with Specific Condition 20, FPL will take the following actions:

...

b) From November 15 through March 31 each year, to coincide with the time of greatest manatee abundance, if the ambient water temperature falls below 61°F., the FPL Port Everglades power plant shall endeavor to operate in a manner that maintains the water temperature in an adequate portion of the discharge canal at or above 68°F., until such time as the ambient water

temperature reaches 61°F., unless otherwise authorized by BPSM and the USFWS, or unless safety or reliability of the plant would be compromised.

A copy of the MPP for PPE is attached as Exhibit RRL-3 to the testimony of FPL witness LaBauve. Please note that the MPP refers to “Specific Condition 20” which has been renumbered as I.D. 10 in the current IWWF permit.

c. The manatee is protected by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, et. seq.), and the Endangered Species Act of 1973 (16 U.S.C. 1531, et.seq.). On December 16, 2011, the United States Fish and Wildlife Service (FWS) provided comments in a letter to FPL regarding the Modernization Project. In its letter, the FWS noted that the Marine Mammal Protection Act and the Endangered Species Act do not permit incidental takes. The FWS indicated that measures would be necessary to protect the manatees from cold water impacts during the transition period of the Modernization Project. A copy of the FWS letter to FPL is attached as Exhibit RRL-4 to the testimony of FPL witness LaBauve.

11. The current schedule for beginning work on the Modernization Project requires that PPE’s existing conventional steam units be taken out of service no later than January 2013. Accordingly, FPL must have the PPE MTHS ready to place into service by January 2013. Due to the time required to design, purchase, and install the heating system and perform integral activities such as making the interconnection to the FPL power system, FPL must begin work on the PPE MTHS immediately. Upon the commercial operation of the PEEC (scheduled for 2016), FPL expects to dismantle and remove the heating system because it will no longer be needed. The combined cycle unit that comprises the PEEC will provide a regular source of warm water to comply with the MPP. The dismantled equipment will be either sold for salvage or made available for MTHS needs at other FPL sites as needed.

12. The estimated capital cost for the PPE MTHS in 2012 dollars is \$3.25 million. This estimate includes expenditures for the equipment, design and engineering of the electric heating system, labor for installation, and interconnection to the FPL power system. Because FPL expects to dismantle and remove the PPE MTHS in 2016 when the Modernization Project is completed, FPL believes that it will be appropriate to amortize the capital cost over the 42-month period from January 2013 through June 2016. FPL expects to begin incurring O&M expenses to monitor the manatees in 2012. These monitoring expenses will continue throughout the period that the PPE MTHS is in service. In addition, once installation and commissioning of the PPE MTHS is completed in January 2013, FPL will incur O&M expenses associated with materials, supplies and services necessary to maintain the PPE MTHS. FPL's total O&M cost estimate for the PPE MTHS in 2012 – 2016 is approximately \$1.25 million (2012 dollars). These projected O&M costs do not include the cost of electricity to operate the PPE MTHS. FPL cannot predict how often the PPE MTHS will operate but does not expect the electrical costs for operating the system to be significant. Therefore, FPL is not seeking recovery through the ECRC process for the electrical costs. Additional activities may be required for compliance with PPE's IWWF and MPP in the future, but FPL is not aware of any such requirements at this time.

13. The estimated O&M expense for the PPE MTHS in 2012 is \$250,000. Estimated O&M expense for the PPE MTHS in 2012 includes costs associated with utilizing contracted consultants and others to perform baseline biological and environmental monitoring prior to and during the commissioning of the system. FPL does not expect to begin recovering capital costs for the PPE MTHS until the system goes into service in January 2013.


14. The foregoing modification to the MTHS Project satisfies the three-part test for ECRC eligibility set forth in Order No. PSC-94-0044-FOF-EI. All costs for the PPE MTHS will be incurred after April 13, 1993. The conditions triggering the activities required by the PPE IWWF

and MPP did not occur at the time of the last test year upon which FPL's rates are based. There are no costs for the activities required by the PPE MTHS included in FPL's 2010 test year Minimum Filing Requirements. Finally, FPL is not presently recovering PPE MTHS costs through base rates or any other recovery mechanism.

WHEREFORE, Florida Power & Light Company respectfully requests the Commission to approve modification of the MTHS Project to include the PPE MTHS as an "environmental compliance activity," such that prudent costs incurred for the PPE MTHS after the date of this Petition may be recovered through the ECRC.

Respectfully submitted,

R. Wade Litchfield, Esq.
Vice President and General Counsel
John T. Butler, Esq.
Managing Attorney
Scott A. Goorland, Esq.
Principal Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Telephone: 561-304-5639
Fax: 561-691-7135

for By: 
John T. Butler
Florida Bar No. 283479

CERTIFICATE OF SERVICE

Docket No. 120007-EI

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Petition for approval of Environmental Cost Recovery for modification to the Manatee Temporary Heating System Project has been furnished by hand delivery (*) or U.S. Mail on January 13, 2012, 2012 to the following:

Martha Brown, Esq. *
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

J. R Kelly, Esq
Patricia Christensen, Esq.
Charles Rehwinkel, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 W Madison St. Room 812
Tallahassee, FL 32399-1400

James D. Beasley, Esq.
J. Jeffrey Wahlen, Esq.
Ausley & McMullen
Attorneys for Tampa Electric
P.O. Box 391
Tallahassee, Florida 32302

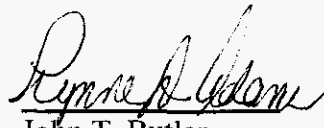
John T. Burnett, Esq.
Dianne Triplett, Esq.
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, Florida 33733-4042

Jeffrey A. Stone, Esq.
Russell A. Badders, Esq.
Beggs & Lane
Attorneys for Gulf Power
501 Commendencia Street
Pensacola, Florida 32502

Jon C. Moyle, Esq.
Vicki Kaufman, Esq.
Co-Counsel for FIPUG
Keefe, Anchors, Gordon & Moyle, P.A.
118 N. Gadsden St.
Tallahassee, FL 32301

Samuel Miller, Capt., USAF
USAF/AFLOA/JACL/ULFSC
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319
Attorney for the Federal Executive Agencies

Gary V. Perko, Esq.
Hopping Green & Sams
P.O Box 6526
Tallahassee, FL 32314
Attorneys for Progress Energy Florida

By: 
John T. Butler
Fla. Bar No. 283479