

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** December 9, 2013

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Graves) *EG*  
Division of Economics (Draper, Wu) *EDW*  
Office of the General Counsel (Murphy) *J.W.D. Cm AT*

**RE:** Docket No. 130007-EI – Environmental cost recovery clause.

**AGENDA:** 12/17/13 – Regular Agenda – Parties May Participate in Issue 1 Only.

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Balbis

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On June 28, 2013, Florida Power & Light Company (FPL or Company) filed a Petition for Approval of Environmental Cost Recovery (Petition) for costs related to a proposed NO<sub>2</sub> compliance program (Project). On October 3, 2013, Florida Industrial Power Users Group (FIPUG) filed a Motion to Establish Separate “Spin-Off” Docket to examine FPL’s Petition. FIPUG’s Motion was supported by the Office of Public Counsel (OPC) and DeSoto County Generating Company, LLC, (DeSoto).

By Order No. PSC-13-0490-PCO-EI, issued on October 16, 2013, testimony related to the Project was scheduled to be heard at a December 19 and 20, 2013 hearing. This Order also provided that, “[p]ending a final Commission decision regarding the Project, FPL’s projected 2013 and 2014 Project costs shall be included in setting the 2014 factor” and that, “[i]f the Commission does not approve the Project, FPL shall be required to refund the costs that have been recovered, with interest, through the true-up process.”

A hearing was held on November 4, 2013, addressing all issues in the docket not related to the Project. On November 19, 2013, the Florida Public Service Commission (Commission) issued Order No. PSC-13-0606-FOF-EI, which established 2014 Environmental Cost Recovery (ECRC) factors for FPL that included, subject to refund, costs associated with the Project.

On November 27, 2013, FPL filed a Motion to Postpone Hearing on NO<sub>2</sub> Compliance Project, and to permit Commission staff to recalculate factors that did not include costs related to the Project (Motion to Postpone). By Order No. PSC-13-0636-PCO-EI, issued on December 2, 2013, the hearing dates for the Commission to address FPL's Petition were changed to January 29 and 30, 2014.<sup>1</sup> On December 4, 2013, FPL filed a Notice of Voluntary Dismissal Without Prejudice of NO<sub>2</sub> Project Petition, Intent to File Amended Petition, and Withdrawal of Motion to Postpone Hearing (Notice) which is the subject of the instant staff recommendation.

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<sup>1</sup> This rescheduling was undertaken independently of, and did not address, FPL's Motion to Postpone Hearing.

## **Discussion of Issues**

**Issue 1:** Should the Commission acknowledge FPL's Notice of Voluntary Dismissal Without Prejudice of NO<sub>2</sub> Project Petition, Intent to File Amended Petition, and Withdrawal of Motion to Postpone Hearing?

**Recommendation:** Yes. The Commission should acknowledge FPL's Notice of Voluntary Dismissal Without Prejudice of NO<sub>2</sub> Project Petition, Intent to File Amended Petition, and Withdrawal of Motion to Postpone Hearing. (Murphy)

**Staff Analysis:** In its Notice, FPL gives notice of its voluntary dismissal without prejudice of its Petition, its intent to file an amended petition for environmental cost recovery of costs incurred to comply with the new 1-hour NO<sub>2</sub> standard, and withdrawal of its Motion to Postpone.

In support of its Notice, FPL states that 1) since its Petition was filed, alternatives to meet the 1-hour NO<sub>2</sub> standard have been proposed by FPL and DeSoto, and 2) the Florida Department of Environmental Protection (FDEP) has advised that additional data<sup>2</sup> is needed to confirm certain exceedances of the 1-hour NO<sub>2</sub> standard that are predicted by FPL's air-dispersion modeling. Relying on *Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc.*,<sup>3</sup> FPL asserts that it is entitled to voluntarily dismiss its petition at any time prior to completion of the fact-finding process. FPL avers that the fact-finding process concerning FPL's Petition has not been completed. FPL states that the required monitoring could extend up to a year, but may be completed in a considerably shorter period of time. FPL is voluntarily withdrawing its Petition and intends to refile an amended petition and supporting testimony once the results of the monitoring are known. Thereafter, FPL will work with Commission staff and the parties to propose an appropriate hearing schedule to address the matter.

Order No. PSC-13-0490-PCO-EI provides that "pending a final Commission decision regarding the Project, FPL's projected 2013 and 2014 Project costs shall be included in setting the 2014 factor." However, in view of FPL's voluntary dismissal of the Petition and subject to the normal true up process, the Company does not object to the Commission approving revised 2014 ECRC factors that do not include Project costs. FPL suggests that information needed to revise its ECRC factors is included in the hearing record.

Finally, the Company asserts that by filing this Notice, its Motion to Postpone Hearing is moot and therefore withdrawn.

In considering a voluntary dismissal of a case, the Commission has consistently determined the following:

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<sup>2</sup> Obtained through a limited period of monitoring actual air quality.

<sup>3</sup> 630 So. 2d 1123 (Fla. 2<sup>nd</sup> DCA 1993).

a plaintiff's right to take a voluntary dismissal is absolute<sup>4</sup> and once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.<sup>5</sup> Both of these legal principles have been recognized in administrative proceedings<sup>6</sup> and are consistent with our past decisions.<sup>7</sup>

*See* Order No PSC-12-0254-FOF-TP.<sup>8</sup> Thus, staff recommends that the Commission acknowledge FPL's voluntary dismissal, without prejudice, and cancel the hearing that is scheduled in this docket for January 29 and 30, 2014. As suggested by the Company, this makes its Motion to Postpone Hearing moot. Finally, although the Company has provided notice of its intent to refile an amended petition, such a petition will necessarily be evaluated on its own merits when filed and Commission action is neither appropriate nor necessary at this time with respect to this eventuality.

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<sup>4</sup> *Fears v. Lunsford*, 314 So. 2d 578, 579 (Fla. 1975).

<sup>5</sup> *Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc.*, 360 So. 2d 68, 69 (Fla. 1978).

<sup>6</sup> *Orange County v. Debra, Inc.*, 451 So. 2d 868 (Fla. 1st DCA 1983); *City of Bradenton v. Amerifirst Development Corporation*, 582 So. 2d 166 (Fla. 2d DCA 1991); *Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc.*, 630 So. 2d 1123 (Fla. 2d DCA 1993) *aff'd*, 645 So. 2d 374 (Fla. 1994).

<sup>7</sup> *See* Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, *In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI*; Order No. PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, *In Re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa*; Order No. PSC-08-0822-FOF-WS, issued December 22, 2008, in Docket No. 080500-WS, *In Re: Application for transfer of majority organizational control of Indiantown Company Inc., holder of Certificate Nos. 387-W and 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC*; Order No. PSC-08-0493-FOF-TP, In Docket 070408-TP, *In re: Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution.*

<sup>8</sup> Issued on May 24, 2012, in Docket No. 110056-TP, *In re: Complaint against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC.*

**Issue 2:** Should the Commission revise FPL's 2014 ECRC factors to reflect the removal of costs associated with the Company's NO<sub>2</sub> Compliance Project?

**Recommendation:** Yes, the Commission should revise FPL's 2014 ECRC factors to reflect the removal of costs associated with the Company's NO<sub>2</sub> Compliance Project. The new ECRC factors should become effective with the first billing cycle in 2014, which falls on January 2, 2014. The recommended ECRC factors are presented in Attachment B. (Draper, Graves, Wu)

**Staff Analysis:** At Paragraph 4 of its Notice, FPL states that it does not object to the Commission revising FPL's 2014 ECRC factors to not include NO<sub>2</sub> Compliance Project costs. Removal of NO<sub>2</sub> Compliance Project costs reduces FPL's 2014 environmental cost recovery amounts, including true-up amounts, by \$6.26 million.<sup>9</sup> A summary of FPL's affected cost recovery amounts is shown in Attachment A. The \$6.26 million reduction, associated with removing NO<sub>2</sub> Compliance Project costs from FPL's 2014 environmental cost recovery amounts, results in a \$0.06 reduction on a 1,000 kilowatt-hour (kWh) residential bill.<sup>10</sup> A summary of FPL's revised ECRC factors for all rate schedules is shown in Attachment B.

As summarized in Issue 1, certain circumstances have changed since FPL's Petition was filed on June 28, 2013. The changes described may impact the timing and nature of potential NO<sub>2</sub> Compliance Project costs. Staff believes that it is reasonable to exclude the NO<sub>2</sub> Compliance Project costs from FPL's 2014 ECRC amounts at this time because of these potential impacts. Staff would note that removing the NO<sub>2</sub> Compliance Project costs at this time does not preclude FPL from seeking recovery of future costs associated with the Project. Furthermore, staff's recommendation is not intended to address whether or not costs associated with the NO<sub>2</sub> Compliance Project are eligible for recovery through the ECRC.

### **Conclusion**

Staff recommends that the Commission approve FPL's revised 2014 ECRC factors, shown in Attachment B, to reflect the removal of costs associated with the Company's NO<sub>2</sub> Compliance Project. The recommended revision will result in a \$0.06 reduction on a 1,000 kWh residential bill. Additionally, staff recommends that the revised ECRC factors should be effective with the first billing cycle for 2014.

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<sup>9</sup> Value calculated by comparing EXH 2, BSP 215, with Commission Order No. PSC-13-0606-FOF-EI, at pages 3 and 4.

<sup>10</sup> Value calculated by comparing EXH 2, BSP 219, with Commission Order No. PSC-13-0606-FOF-EI, at page 6.

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**Issue 3:** Should this docket be closed?

**Recommendation:** No. The Environmental Cost Recovery Clause is an on-going docket and should remain open. (Murphy)

**Staff Analysis:** The Environmental Cost Recovery Clause is an on-going docket and should remain open.

**Attachment A**

**Table 1: Revised Cost Recovery Amounts<sup>11</sup>**

<b>Estimated/Actual True-up ECRC Amounts for the Period January 2013 through December 2013</b>	<b>(\$3,592,651)<sup>12</sup></b>
<b>Projected ECRC Amount for the Period January 2014 through December 2014</b>	<b>\$211,987,844</b>
<b>ECRC Amount, Including True-up Amounts, for the Period January 2014 through December 2014</b>	<b>\$214,507,080</b>

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<sup>11</sup> EXH 2, BSP 215.

<sup>12</sup> Negative value represents an under-recovery.

## Attachment B

Table 2: Revised 2014 ECRC Factors<sup>13</sup>

Rate Class	Environmental Cost Recovery Factor (\$/kWh)
RS1/RTR1	0.00224
GS1/GST	0.00191
GSD1/GSDT1/HLFT1	0.00184
OS2	0.00174
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.00183
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.00160
GSLD3/GSLDT3/CS3/CST3	0.00156
SST1T	0.00173
SST1D1/SST1D2/SST1D3	0.00168
CILC D/CILC G	0.00155
CILC T	0.00147
MET	0.00182
OL1/SL1/PL1	0.00070
SL2, GSCU1	0.00151

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<sup>13</sup> EXH 2, BSP 219.