

1 BEFORE THE
2 FLORIDA PUBLIC SERVICE COMMISSION

3 In the Matter of:

4 DOCKET NO. 130007-EI

5 ENVIRONMENTAL COST
6 RECOVERY CLAUSE.
7 _____ /

8
9 PROCEEDINGS: COMMISSION CONFERENCE AGENDA
10 ITEM NO. 6

11 COMMISSIONERS

12 PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
13 COMMISSIONER LISA POLAK EDGAR
14 COMMISSIONER ART GRAHAM
15 COMMISSIONER EDUARDO E. BALBIS
16 COMMISSIONER JULIE I. BROWN

17 DATE: Tuesday, December 17, 2013

18 PLACE: Betty Easley Conference Center
19 Room 148
20 4075 Esplanade Way
21 Tallahassee, Florida

22 REPORTED BY: LINDA BOLES, CRR, RPR
23 Official FPSC Reporter
24 (850) 413-6734
25

P R O C E E D I N G S

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2 **CHAIRMAN BRISÉ:** Moving on to item number 6.

3 Okay. Mr. Murphy, you may go right ahead.

4 **MR. MURPHY:** Charles Murphy for Commission
5 staff.

6 Item 6 addresses FPL's notice of withdrawal of
7 its NO2 compliance project petition that was filed in
8 the 130007 docket. Staff recommends that the Commission
9 acknowledge the withdrawal and cancel the hearing
10 scheduled for January in this docket, approve a new ECRC
11 factor for FPL that has been recalculated to remove
12 amounts related to the NO2 project, and staff also
13 recommends that the docket not be closed.

14 OPC and FIPUG would like to address the
15 Commission regarding Issue 1.

16 **CHAIRMAN BRISÉ:** Okay. We can hear from them
17 at this time. The Office of Public Counsel.

18 **MR. REHWINKEL:** Thank you, Mr. Chairman.

19 Public Counsel is here to make a brief
20 statement on the record in support of the staff's
21 recommendation. The Public Counsel has no objection to
22 FPL taking a voluntary dismissal of the petition that it
23 made the choice to file in this docket. We also agree
24 with staff that the consequence of a voluntary dismissal
25 is the unconditional removal of the rate impact of that

1 petition from the capacity cost recovery factor.

2 We also agree with the staff that the
3 dismissal stands alone and is absolute and not subject
4 to the attachment of conditions regarding any
5 prejudgment of the method of recoverability of costs.

6 Further, the Public Counsel reserves the right
7 to assert that any successor petition is not properly
8 the subject of the environmental cost recovery clause.
9 As we understand it, any reference to amending the
10 petition contained in FPL's notice of voluntary
11 dismissal relates to FPL's own internal revision and
12 amendatory process and, if so done, will result in a new
13 filing. And I believe that FPL concurs in this as the
14 intent behind that term "amended" as used in paragraph
15 three of its notice.

16 Accordingly, the Public Counsel does not now
17 expressly or impliedly accept any notion that post
18 dismissal the now withdrawn petition has some ongoing
19 viability or presumptive validity that is going to be
20 awaiting an amendment while residing in the Commission
21 docket. And I say this, Commissioners, because this
22 statement is made on the record because the Public
23 Counsel's position is that the ECRC is an improper forum
24 for the recovery of costs related to the construction of
25 new generation resources or power plants.

1 In 1993 on the House of Representatives' floor
2 the sponsor of the amendment that became the ECRC stated
3 to the members on final passage two things. First, that
4 the clause was to be interpreted in the most, quote,
5 most restrictive fashion possible by the Florida Public
6 Service Commission, close quote. And, second, in
7 response to the following direct question from the
8 floor, quote, Is it the intent of this amendment that
9 the costs of a large capital item such as an entire
10 power plant could be recovered through this procedure,
11 close quote, the sponsor stated, quote, the answer to
12 that is no. The intent is not to authorize recovery
13 through this procedure of new power plant construction
14 costs, close quote.

15 Shortly after that undisputed colloquy on the
16 House floor, the chamber passed the bill 106 to nothing
17 and sent it to the Senate. This unequivocal legislative
18 history is the fundamental basis for the Public Counsel
19 taking the position that this or any future petition for
20 recovery of these new plant costs, if any, must be
21 considered as a base rate request, the same recovery
22 basis as the power plants that they are proposed to
23 replace, and only then as allowed by the law at the time
24 of such filing.

25 This concludes the Public Counsel's statement

1 on the record. And, Commissioners, I have copies of the
2 legislative history, if you so desire to see it. Thank
3 you.

4 **CHAIRMAN BRISÉ:** Thank you very much.

5 FIPUG, Mr. Moyle.

6 **MR. MOYLE:** Thank you. Thank you,
7 Mr. Chairman. Jon Moyle on behalf of the Florida
8 Industrial Power Users Group. And thank you for the
9 chance to share a few comments with you.

10 I mean, what, what is before you today is
11 FPL's notice of voluntary dismissal. And I don't think
12 ordinarily that would prompt a conversation except that
13 their pleading had more to it than that. It had a
14 notice of intent to refile and was, you know, two or
15 three pages. Most voluntary dismissals that I have seen
16 is kind of a one sentence and you're off, off and done.
17 So that has kind of prompted FIPUG to make sure we
18 understand procedurally where this puts us, and it's
19 important for a number of reasons.

20 FIPUG filed a motion that the Prehearing
21 Officer consider to spin off the issues related to, to
22 these new peaking power plants and set forth a whole
23 bunch of reasons why it should be spun off. I mean, it
24 involves \$822 million, there's something like 40
25 something power plants that, peaking power plants that

1 FP&L has taken offline, and they're going to replace all
2 of them. There's issues about whether, as Mr. Rehwinkel
3 said, this is even appropriately considered in the
4 environmental cost recovery clause, and we support his
5 comments and think it's not. The legislative history
6 that he provided I think is, you know, is a clear
7 indication that this should be considered in a separate
8 docket.

9 And we were able to work out the situation
10 when FIPUG filed its motion to spin off the docket with
11 some conversations with FP&L and others, and an order
12 was entered saying, yes, this should be separately
13 considered and it was. It wasn't part of the
14 environmental cost recovery proceeding when we had that
15 proceeding, but it was segregated.

16 FPL -- we were supposed to go to hearing in
17 December, then January. Now FPL has said, well, it's
18 not yet ready for hearing; more time is needed. Which,
19 which is okay, but if and when it comes back, we would
20 hope that it would be established as a separate
21 proceeding and the order that the Prehearing Officer
22 entered saying, yes, this is going to be considered
23 separately would be given validity and respected. And
24 we think it should not even be in the environmental cost
25 recovery clause because that kind of presumes that it's

1 appropriately considered there. We don't think it's
2 appropriately considered there, there's a host of issues
3 that are raised by it, and think it's better considered
4 as a separate proceeding and a separate docket if and
5 when it comes back.

6 So that was the point we wanted to raise to
7 kind of seek some clarification on that as compared to,
8 just, okay, we accept the voluntary dismissal and then
9 have there be uncertainty about, you know, how this may
10 be treated, you know, if it, if it comes back. So thank
11 you for the chance to make some comments.

12 **CHAIRMAN BRISÉ:** All right. Thank you.

13 Mr. Wright.

14 **MR. WRIGHT:** Thank you. Thank you, Mr.
15 Chairman. Schef Wright representing Desoto County
16 Generating Company.

17 We support the staff recommendation, and I'm
18 mainly here to answer questions and participate as
19 necessary. Thank you, Mr. Chairman.

20 **CHAIRMAN BRISÉ:** Thank you.

21 Mr. Butler.

22 **MR. BUTLER:** Thank you, Mr. Chairman. We too
23 support the staff recommendation. We're available to
24 answer questions.

25 If I may, I'd like to respond very briefly to

1 the comments that Mr. Rehwinkel and Mr. Moyle made
2 without, hopefully, turning this into a more extended
3 debate.

4 We're a little surprised to have had such
5 extensive comments on a notice of voluntary dismissal.
6 I think all the parties recognize it's something that
7 we're entitled to do as a matter of right. So these are
8 truly in the obiter dicta category.

9 But having said that, just note briefly that,
10 one, I think that Mr. Rehwinkel's reading of the
11 legislative history is selective. If we get back here
12 before you, we will be debating, I'm sure, that point in
13 greater detail. I would confirm that, yes, we are
14 withdrawing our petition. The reference to an amended
15 petition in our notice is simply indicating it will be
16 revised. We expect that because of changes of
17 circumstances we'll, you know, have different
18 information in the petition, different supporting
19 testimony. We'd expect that whole package to be
20 considered afresh.

21 To Mr. Moyle's comments, you know, this was
22 not spun off. There was a separate hearing set for,
23 considering the NO2 compliance project, but it was in
24 the '07 docket. And, in fact, that's the docket we're
25 talking about today. We do intend, as our notice

1 indicated, to reach out to the parties and to staff at
2 the time that we refile. And kind of depending on
3 what's filed, when it's filed, you know, the appropriate
4 procedural vehicle is something that hopefully we can
5 work through at that point in time.

6 But, you know, if we proceed down a similar
7 path, we'll be asking for ECRC recovery. So the
8 connection to the ECRC docket is fairly apparent. I
9 think the question of spinoff would simply be a matter
10 of whatever was the procedurally convenient thing to do,
11 and we'll, we'll see when we get there.

12 But thank you for your attention. And if you
13 have any questions of me, I'd be happy to answer them.

14 **CHAIRMAN BRISÉ:** Thank you.

15 Commissioners, any questions?

16 All right. If not, I think we're ready to
17 entertain a motion. Commissioner Edgar.

18 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

19 I move staff recommendation on all issues.

20 **COMMISSIONER BALBIS:** Second.

21 **COMMISSIONER BROWN:** Second.

22 **CHAIRMAN BRISÉ:** Okay. It's been moved and
23 seconded. Any further discussion?

24 All right. All in favor, say aye.

25 (Vote taken.)

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Okay. Thank you.
(Agenda item concluded.)

* * * * *

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 19th day of December,
19 2013.

20
21 Linda Boles

22 LINDA BOLES, CRR, RPR
23 FPSC Official Commission Reporters
24 (850) 413-6734
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