

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 130007-EI
ORDER NO. PSC-13-0687-FOF-EI
ISSUED: December 31, 2013

The following Commissioners participated in the disposition of this matter:

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

ORDER ACKNOWLEDGING WITHDRAWAL OF NO₂ PETITION
AND
REVISING ENVIRONMENTAL COST RECOVERY FACTORS
FOR
FLORIDA POWER & LIGHT COMPANY

BY THE COMMISSION:

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 NO₂ 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. The 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 this docket not related to the Project. On November 19, 2013, by Order No. PSC-13-0606-FOF-EI, the Florida Public Service Commission (Commission) 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 NO₂ Compliance Project, and to permit our staff to recalculate factors that did not include costs related to the

Project (Motion to Postpone Hearing). By Order No. PSC-13-0636-PCO-EI, issued on December 2, 2013, the hearing dates for this Commission to address FPL's Petition were changed to January 29 and 30, 2014.¹ On December 4, 2013, FPL filed a Notice of Voluntary Dismissal Without Prejudice of NO₂ Project Petition, Intent to File Amended Petition, and Withdrawal of Motion to Postpone Hearing (Notice) which is the subject of this order.

Decision

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 a new 1-hour NO₂ 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 NO₂ standard have been proposed by FPL and DeSoto, and 2) the Florida Department of Environmental Protection (FDEP) has advised that additional data² is needed to confirm certain exceedances of the 1-hour NO₂ standard that are predicted by FPL's air-dispersion modeling. Relying on *Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc.*,³ 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 its 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 our 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 this 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 the Notice, its Motion to Postpone Hearing is moot and therefore withdrawn.

In considering a voluntary dismissal of a case, we have consistently determined that,

a plaintiff's right to take a voluntary dismissal is absolute⁴ and once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.⁵ Both of these

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

² Obtained through a limited period of monitoring actual air quality.

³ 630 So. 2d 1123 (Fla. 2nd DCA 1993).

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

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

legal principles have been recognized in administrative proceedings⁶ and are consistent with our past decisions.⁷

See Order No PSC-12-0254-FOF-TP.⁸ Thus, we shall 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 our action is neither appropriate nor necessary at this time with respect to this eventuality.

FPL states that it does not object to this Commission revising the Company's 2014 ECRC factors to remove NO₂ Compliance Project costs. Removal of NO₂ Compliance Project costs reduces FPL's 2014 environmental cost recovery amounts, including true-up amounts, by \$6.26 million.⁹ A summary of FPL's affected cost recovery amounts is shown in Attachment A of this Order. The \$6.26 million reduction, associated with removing NO₂ 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.¹⁰ A summary of FPL's revised ECRC factors for all rate schedules is set forth in Attachment B of this Order .

Circumstances have changed since FPL's Petition was filed on June 28, 2013. The changes may impact the timing and nature of potential NO₂ Compliance Project costs. Upon review, we find that it is reasonable to exclude the NO₂ Compliance Project costs from FPL's 2014 ECRC amounts. Our removal of the NO₂ Compliance Project costs does not preclude FPL from seeking recovery of future costs associated with the Project. Moreover, by this decision we have not determined whether costs associated with the NO₂ Compliance Project are eligible for recovery through the ECRC.

Based upon the foregoing, we shall approve FPL's revised 2014 ECRC factors, set forth in Attachment B of this order, to reflect the removal of costs associated with the Company's NO₂

⁶ *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).

⁷ 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.*

⁸ 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.*

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

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

Compliance Project. This revision will result in a \$0.06 reduction on a 1,000 kWh residential bill. The revised ECRC factors should be effective with the first billing cycle for 2014.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Notice of Voluntary Dismissal Without Prejudice of NO₂ Project Petition is hereby acknowledged. It is further,

ORDERED that Florida Power & Light Company's withdrawal of its Motion to Postpone Hearing is similarly acknowledged. It is further,

ORDERED that the hearing scheduled in this docket for January 29 and 30, 2014, is hereby cancelled. It is further,

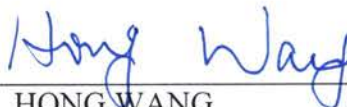
ORDERED that Florida Power & Light Company's 2014 environmental cost recovery factors are hereby revised to reflect the removal of costs associated with its proposed NO₂ Compliance Project. It is further,

ORDERED that the new environmental cost recovery factors shall become effective with the first billing cycle in 2014, which falls on January 2, 2014. It is further,

ORDERED that the approved factors are set forth in Attachment B of this Order. It is further,

ORDERED that this an on-going docket and shall remain open.

By ORDER of the Florida Public Service Commission this 31st day of December, 2013.



HONG WANG
Chief Deputy Commission Clerk
Florida Public Service Commission
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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.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Attachment A

Table 1: Revised Cost Recovery Amounts¹¹

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

¹¹ EXH 2, BSP 215.

¹² Negative value represents an under-recovery.

Attachment B

Table 2: Revised 2014 ECRC Factors¹³

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

¹³ EXH 2, BSP 219.