BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.	DOCKET NO. 20180007-EI
	DATED: November 16, 2018

SOUTHERN ALLIANCE FOR CLEAN ENERGY'S POSTHEARING STATEMENT AND BRIEF

Pursuant to Order No. PSC-2018-0090-PCO-EI filed February 19, 2018, and Order No. PSC-2018-0515-PHO-EI, filed October 31, 2018, Southern Alliance for Clean Energy ("SACE") files its Posthearing Statement and Brief in the above-styled docket. References to the hearing transcript will be denoted by "T." page number. References to exhibits will be denoted as "Ex." Exhibit number, "p." page number.

SACE's Statement of Basic Position

SACE contests Florida Power and Light's ("FPL") request for continued rate recovery for remediation compliance costs related to the Turkey Point Cooling Canal Management Plan Project ("TPCCMP"). FPL knew or should have known in 1978, or by 1992 at the latest, that its cooling canal system at the Turkey Point plant was causing an underground hyper-saline contamination plume spreading well beyond the cooling canal system ("CCS") boundary and harming adjacent waters and the Biscayne Aquifer. FPL's imprudent operation of the CCS violated drinking water standards which has led to environmental compliance requirements being placed upon it by the Department of Environmental Protection ("DEP") and Miami-Dade County Division of Environmental Resources Management ("DERM") to remediate the hyper-saline plume and other contaminants. It seeks to recover those compliance costs from customers – the price tag is over $200 million. FPL customers should not have to pay for FPL's legacy of negligence in the operation of the CCS. Nevertheless, the Commission last year approved rate

recovery from families and businesses served by FPL by Order No. PSC-2018-0014-FOF-EI. The Commission's order is appropriately being appealed by the Office of Public Counsel. As such, SACE, in this docket, maintains its position from the 2017 Environmental Cost Recovery Clause ("ECRC") docket that costs from FPL's CCS remediation activities should not be recoverable from FPL customers.

Additionally, FPL has not met its burden of proof to show that projected costs are reasonable. While the Commission does not have jurisdiction over DEP and DERM environmental compliance requirements, it does have jurisdiction over rate recovery for the costs of FPL's compliance actions intended to meet the DEP Consent Order and DERM Consent Agreement ("CA") and Consent Agreement Addendum ("CAA") provisions. In this year's ECRC docket, FPL is not only requesting a prudency determination for already-incurred CCS remediation costs, but asking for rate recovery for ***projected costs*** for remediation activities to take place next year, in 2019. Yet, FPL provides little detail on its timely progress in meeting the provisions in the DEP Consent Order, or the DERM CA or the CAA. Timely progress in meeting compliance provisions is an integral part of a reasonableness determination;[1] without which, customers are effectively providing a blank check to FPL. Other than a short summary paragraph, the Company has not provided direct testimony or exhibits to show that it is timely meeting its compliance requirements. Ex. 14-42-5P, p. 112. In fact, the Company is ***not*** in compliance with provisions of the CAA. The company could face the assessment of penalties as outlined in the Consent Agreement. Therefore, rate recovery for FPL's TPCCMP remediation activities should be denied for the above stated reasons.

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[1] Order No. PSC-2018-0014-FOF-EI at p. 12 (The test used by this Commission for projected costs is "a reasonableness test for cost recovery, with prudency to be determined in a future ECRC proceeding as part of the traditional true-up mechanism.")

List of Contested Issues and Positions

ISSUE 1: What are the final environmental cost recovery true-up amounts for the period January 2017 through December 2017?

SACE: ***The Commission should not approve FPL's request for cost recovery of TPCCMP remediation activities. FPL's negligence in the operation of the CCS led to violations of law and compliance requirements being placed on it. Additionally, FPL is not making timely progress in meeting its compliance requirements. See Issue 3.***

ISSUE 2: What are the estimated/actual environmental cost recovery true-up amounts for the period January 2018 through December 2018?

SACE: ***The Commission should not approve FPL's request for cost recovery of TPCCMP remediation activities. FPL's negligence in the operation of the CCS led to violations of law and compliance requirements being placed on it. Additionally, FPL is not making timely progress in meeting its compliance requirements. See Issue 3.***

ISSUE 3: What are the projected environmental cost recovery amounts for the period January 2019 through December 2019?

SACE: ***The Commission should not approve FPL's request for cost recovery of TPCCMP remediation activities. FPL's negligence in the operation of the CCS led to violations of law and compliance requirements being placed on it. Additionally, FPL is not making timely progress in meeting its compliance requirements.***

Argument

FPL knew or should have known in 1978, or by 1992 at the latest, that its cooling canal system at the Turkey Point plant was causing an underground hyper-saline contamination plume spreading well beyond the CCS boundary and harming adjacent waters and the Biscayne Aquifer. FPL's imprudent operation of the CCS violated drinking water standards which has led to environmental compliance requirements being placed upon it by the DEP and DERM to remediate the hyper-saline plume and other contaminants. FPL customers should not have to pay for FPL's mistakes. Through 2019, the Company will have recovered $70.933 million in

Operations and Maintenance ("O&M") costs, and spent $47.339 million in capital investments for Commission-approved TPCCMP remediation activities. Ex. 11, 12, 13, 14. The Company's revenue requirement in 2019 is $6.534 million. Ex. 14-42-5P, p.113. Given FPL's debt/equity ratio and 10.55% midpoint Return on Equity ("ROE"), ***more than half of the $6.534 million will go to shareholder profits.*** It is unfair that FPL is permitted to recover millions of dollars in profits annually from customers because of investments FPL had to make because it violated the law.

The Commission's Order No. PSC-2018-0014-FOF-EI in the 2017 ECRC docket granting rate recovery for FPL's costs to comply with DEP and DERM requirements was appropriately appealed to the Florida Supreme Court and a ruling on the appeal is pending. SACE readopts its position from last year's ECRC docket and opposes cost recovery for TPCCMP remediation activities.[2] Additionally, it opposes FPL's request for projected cost recovery because FPL has not met its evidentiary burden to show that projected costs are reasonable.

While the Commission does not have jurisdiction over DEP and DERM environmental compliance requirements, it does have jurisdiction over FPL's requested rate recovery for the costs of FPL's compliance actions intended to meet the DEP Consent Order and DERM CA and CAA requirements.[3] In this year's ECRC docket, FPL is not only requesting a prudency determination for already-incurred CCS remediation costs, but asking for rate recovery for ***projected costs*** for remediation activities to take place next year, in 2019.The test used by this Commission for projected costs is "a reasonableness test for cost recovery," with prudency to be

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[2] *See SACE's Post Hearing Brief, Findings of Fact, Conclusions of Law*, Docket No. 20170007, November 13, 2017.
[3] *See* Section 366.8255, F.S.

determined in a future ECRC proceeding as part of the traditional true-up mechanism. Order No. PSC-2018-0014-FOF-EI at p. 12. Timely progress in meeting compliance provisions is an integral part of a reasonableness test for recovery. Without such information, the Commission is effectively writing a blank check to the Company, at customers' expense. The Commission uses updates and performance metrics in determining reasonableness in other cost recovery dockets. For instance, in the annual Nuclear Cost Recovery Clause docket, the Commission considers detailed forward looking descriptions of fuel costs, environmental compliance costs, and reasonable alternatives before granting a projected cost recovery request.[4] Likewise, utilities routinely provide descriptions of energy efficiency programs and program progress in support of projected cost recovery requests in the Energy Conservation Cost Recovery docket.[5] Yet, in this instance, FPL has provided no more than a summary paragraph alleging that it is moving forward on compliance, including with the provisions of the CAA. Ex. 14-42-5P, p.112. The Company is in-fact ***not*** making timely progress in meeting the provisions of the CAA as outlined below.

DERM issued a Notice of Violation dated October 2, 2015 to FPL for violations of Chapter 24 of Miami-Dade County dealing with water quality standards. T. 375. FPL entered into a Consent Agreement ("CA") with DERM on October 7, 2015, and subsequently entered into a Consent Agreement Addendum ("CAA") on August 15, 2016. T. 376; Ex. 53. The CAA requires FPL to take action to address violations of water quality standards and cleanup target levels relating to the exceedance of ammonia. More than 2 years later, FPL has not complied with the CAA.

Paragraph 34 of the CAA contemplates a 3-step compliance process.

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[4] *See* Order No. PSC-15-0521-FOF-EI.
[5] *See* Testimony and Exhibits of FPL Witness Anita Sharma, Docket No. 20160002, August 19, 2016.

> Within thirty (30) days of the execution of Addendum 1 of this Consent Agreement, the Respondent shall submit a ***Site Assessment Plan*** to DERM for review and approval . . . [w]ithin sixty (60) days of DERM's approval of the Site Assessment Plan, the Respondent shall implement said plan and submit to DERM a ***Site Assessment Report*** for review and approval . . . [w]ithin ninety (90) days of approval of the Site Assessment Report, the Respondent shall submit to DERM for review and approval a ***Corrective Action Plan*** (CAP)…. (emphasis added) Ex. 53 p. 1-2.

FPL submitted a Site Assessment Plan in December of 2016. T. 378. Then FPL subsequently submitted, pursuant to the requirements in Paragraph 34 of the CAA above, a Site Assessment Report on March 17, 2017. T. 379-80. Yet, in a DERM letter to FPL dated July 7, 2017, DERM states that it "does not concur" with the conclusions and recommendation in the FPL Site Assessment Report. Ex. 54, p. 1; T. 380-81. DERM cited specifically to references in FPL's Site Assessment Report that minimized the Turkey Point facility's contribution to ammonia exceedances. Id. DERM required FPL to provide additional data and information within 90 days regarding FPL's assertions of minimal impact by the Turkey Point facility. Ex. 54, p. 3; T. 381-82. There were informal conversations that ensued with DERM and FPL to resolve the impasse on ammonia causation. T. 391. But, on July 10, 2018, DERM sent a letter to FPL ***once again*** identifying areas of continuing surface water ammonia exceedances in the Turtle Point Canal, Barge Basin, Card Sound Canal, S-20 Get Away Canal, and the Sea-Dade Canal. Ex. 55, p. 1. DERM even raised the possibility that additional canals might have to be filled to address water quality impacts. Id. at 2. Such additional compliance requirements, beyond the filling in of the Barge Basin and Turtle Point Canal, would add significant cost to the proposed remediation. For example, the fill activities for the Barge Basin is projected to cost $13.128 million alone. T. 362-63; Ex. 52. The letter required a ***report*** (*not a plan*) to be submitted within 90 days. Ex. 55, p. 3. It further advised FPL that failure to comply with the letter may result, at a minimum, in the assessment of penalties as outlined in the CAA. Id. It is

important to note that the DERM letter contains no affirmative statement of approval of the previous Site Assessment Reports. FPL sent a letter October 8, 2018 to DERM that primarily lists actions that the Company is already undertaking that it believes are addressing ammonia concerns. Ex. 57. As of today, FPL has received neither an affirmative Site Assessment Report approval from DERM or a Corrective Action Plan approval from DERM. Ex. 55; T. 391, 393. This is contrary to FPL's statement that it is moving "forward" on compliance. Ex. 14-42-5P, p.112. In fact, Witness Sole acknowledges that even at this time there is disagreement by DERM regarding FPL's conclusions in its Site Assessment Report. T. 381. Moreover, penalties could be assessed against FPL. At the time of the hearing, Witness Sole could not rule out that FPL would file a request for rate recovery from customers for penalty costs. T. 394. FPL's failure to timely comply with the CAA can unnecessarily delay project accomplishments and subject the company and its customers to additional costs.

The Commission must continue to monitor whether FPL is making timely progress in meeting all its compliance requirements. There is apparent deep disagreement between FPL and DERM regarding FPL's compliance with the CAA. FPL not only failed to meet its evidentiary burden to this Commission to show that projected costs are reasonable – by showing that it is timely complying with DERM and DEP requirements, but the Company also failed to disclose that it is ***not*** timely complying with the CAA. On this basis alone, the Commission should find that allowing the company continued cost recovery from customers is not reasonable. For all the reasons stated above, SACE requests that the Commission deny FPL's request for cost recovery for TPCCCMP remediation activities.

ISSUE 4: What are the environmental cost recovery amounts, including true-up amounts, for the period January 2019 through December 2019?

SACE: ***The Commission should not approve FPL's request for cost recovery of TPCCMP remediation activities. FPL's negligence in the operation of the CCS led to violations of law and compliance requirements being placed on it. Additionally, FPL is not making timely progress in meeting its compliance requirements. See Issue 3.****

ISSUE 7: What are the appropriate environmental cost recovery factors for the period January 2019 through December 2019 for each rate group?

SACE: ***For FPL, the factor amount should not include any cost recovery for remediation activities related to the TPCCMP.****

ISSUE 10A: Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modifications to its Manatee Temporary Heating System project?

SACE: ***No position.****

ISSUE 10B: Should FPL be allowed to recover, through the ECRC, prudently incurred costs associated with its proposed modifications to its National Pollution Discharge Elimination System Permit Renewal Requirements project?

SACE: ***No position.****

Respectfully submitted this 16th day of November, 2018 by

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 16th day of November, 2018 to the following:

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