

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for authority to use deferral accounting and for creation of a regulatory asset for prudently incurred preconstruction costs associated with development of clean coal project, by Florida Power & Light Company.

DOCKET NO. 070432-EI
ORDER NO. PSC-09-0013-PAA-EI
ISSUED: January 5, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING ACCOUNTING TREATMENT FOR PRUDENTLY INCURRED
PRECONSTRUCTION COSTS ASSOCIATED WITH THE DEVELOPMENT OF THE
GLADES POWER PARK GENERATING UNITS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On February 1, 2007, Florida Power & Light Company (FPL or company) filed a petition in Docket No. 070098-EI for a determination of need for the proposed Glades Power Park (GPP) Units 1 and 2 electrical power plants in Glades County, pursuant to Section 403.519, Florida Statutes (F.S.), and Rule 25-22.080, Florida Administrative Code (F.A.C.).¹ FPL proposed two ultra-supercritical pulverized coal (USCPC) generating units, each having summer net capacities of approximately 980 megawatts (MW) for a combined net capacity of 1,960 MW, with proposed in-service dates of 2013 and 2014. The proposed location of the units was a 4,900-acre site located west of Lake Okeechobee, approximately four miles northeast of the town of Moore Haven in an unincorporated area of Glades County. A formal administrative hearing was held on

¹ Docket No. 070098-EI, In re: Petition for determination of need for Glades Power Park Units 1 and 2 electrical power plants in Glades County, by Florida Power & Light Company.

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April 16-17, 25-26, and 30, 2007. At the June 5, 2007, Agenda Conference, we denied FPL's petition for a determination of need for the USCPC generating units at the GPP site,² stating:

FPL has failed to demonstrate that the proposed plants are the most cost-effective alternative available, taking into account the fixed costs that would be added to base rates for the construction of the plants, the uncertainty associated with future natural gas and coal prices, and the uncertainty associated with currently emerging energy policy decisions at the state and federal level.

On July 17, 2007, FPL filed a petition for authority to use deferral accounting and for the creation of a regulatory asset for its incurred preconstruction costs associated with the development of the clean coal project at the GPP. In its petition, the company requested that it be authorized to defer \$34.5 million of preconstruction costs as a regulatory asset. FPL did not request any revision of its existing base rates. Instead, FPL requested that the regulatory asset be deferred and amortized over a five-year period beginning when new rates are implemented. Based on the test year notification letter that FPL filed November 17, 2008, it is anticipated that new rates would become effective on January 1, 2010.³

Our staff conducted an audit of the cost components included in the \$34.5 million of preconstruction costs for the GPP project. The audit report was filed January 22, 2008.

We have jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F. S. Our decision to grant FPL's Petition is set out in detail below.

DISCUSSION AND DECISION

FPL has requested that it be allowed to defer \$34.5 million of GPP preconstruction costs as a regulatory asset. The regulatory asset would be amortized over a five-year period beginning when base rates are re-set. Without such an approval, FPL would be required to record the entire \$34.5 million as a current expense.

A regulatory asset involves a cost incurred by a regulated utility that would normally be expensed currently but for an action by the regulator or legislature to defer the cost as an asset to the balance sheet. This allows the utility to amortize the regulatory asset over a period greater than one year instead of treating it as an expense in a single year.⁴ For example, unamortized rate case expense in the water and wastewater industry is a regulatory asset. Normally, the costs of a rate case would be expensed when they are incurred. However, Section 367.0816, F.S., requires that water and wastewater utilities amortize rate case expense over a four year period, thus creating a regulatory asset.

² Order No. PSC-07-0557-FOF-EI, issued July 2, 2007, in Docket No. 070098-EI, In re: Petition for determination of need for Glades Power Park Units 1 and 2 electrical power plants in Glades County, by Florida Power & Light Company.

³ Docket No. 080677-EI, In re: Application for increase in rates by Florida Power & Light Company.

⁴ Order No. PSC-95-1230-FOF-EI, issued October 3, 1995, in Docket No. 950270-EI, In re: Petition for approval of accounting treatment for funds expended on Lake Tarpon-Kathleen transmission line by Florida Power Corporation.

Statement of Financial Accounting Standards 71 (SFAS 71) allows regulated companies to defer costs and create regulatory assets if it is likely that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. To create a regulatory asset or liability, a regulated company must have the approval of its regulator. Additional qualification requirements are stated in Section 9 of SFAS 71:

9. Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An enterprise shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
 - a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
 - b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred costs rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred costs.

In the Uniform System of Accounts, Account 183, Preliminary Survey and Investigation Charges, has been established to record certain costs incurred for the purposes of determining the feasibility of contemplated projects. If construction does not result, the charges can be made to the appropriate operating expense accounts or to Account 426.5, Other Deductions. We may also direct that the costs be recorded in Account 182.2, Unrecovered Plant and Regulatory Costs, and amortized over a specific period.

GPP PRECONSTRUCTION COSTS

FPL seeks to recover \$34.5 million⁵ in costs related to activities associated with the Company's integrated resource planning for additions to generation and the analysis of possibilities involved with the decision to construct a plant at the GPP site. The requested recovery includes the following categories of costs:

⁵ \$34,287,476 actual as of August 22, 2007, per FPL's response to discovery.

	<u>Requested</u>	<u>Actual</u> ⁵
Major Equipment Contract Termination Costs	\$17,500,000	\$17,236,800
Land and Right of Way Options Payments	1,700,000	1,684,275
Site Certification and Permitting Costs	7,600,000	7,646,308
Preliminary Engineering and Project Management Costs	5,300,000	5,289.159
Engineering, Procurement, and Construction Contract Termination Costs	<u>2,400,000</u>	<u>2,430,934</u>
Total	<u>\$34,500,000</u>	<u>\$34,287,476</u>

Work done by FPL in 2005 indicated that the earliest possible time for including solid fuel in the generation fleet was 2012. That possibility required an uninterrupted workflow from early planning through material specification to equipment procurement and installation. When the GPP site appeared to be a possibility, work proceeded in order to meet the 2012 in-service date, and a need determination was filed on February 1, 2007. In its request for a determination of need, FPL had estimated costs of approximately \$3.5 billion (2013) and \$2.244 billion (2014) for the GPP Units 1 and 2 in successive years.⁶ The process of estimation was complex. It necessarily included fuel specifics regarding chemistry and transport, as well as construction of a plant that would be much larger and more technologically complex than the combined cycle plants of recent vintage.

The staff audit was the first step to review whether FPL's \$34.5 million deferral request was strictly associated with the costs for the GPP. In the review and analysis of the audit findings, we considered the underlying requirements for estimating costs that would be associated with a plant such as the GPP project. The following analysis will provide a general description of the activities associated with each of the major categories of the amount requested for recovery, and the reasons for any adjustments.

Major Equipment Contract Termination Costs

When a utility files a request for determination of need for a power plant, the utility typically includes information obtained from vendors relating to costs and timing for delivery and installation of major plant components. Vendors informed FPL of the unprecedented limitations on the supply of large forgings and other major components. The world-wide supply capability is so limited that already established queues will determine what orders will be filled for years to come. The vendors of the boiler, the turbine generator, and the feed water and material handling systems indicated to FPL that they would not have equipment available by the

⁶ Docket No. 070098-EI, In re: Petition for determination of need for Glades Power Park Units 1 and 2 electrical power plants in Glades County, by Florida Power & Light Company.

time the need determination was granted or denied, and the magnitude of delay would be multiple years rather than a few months.

In an effort to meet the in-service date, FPL proceeded to negotiate primary supplier contracts for major equipment items. Approximately \$17.5 million of its requested deferral is associated with the supplier contracts. By the nature of the installation, intensive design work must be done before material can be ordered for fabrication. For example, we reviewed confidential documents including the heat balance for the reheat turbine. These confidential documents are summary sheets which show the results of many intricate calculations, and, in turn, the summary information must be completed before calculations can be made to specify piping, valves, and multiple elements that are critical to the machine that is planned. The compensation for such "preliminary" work is always included in contract arrangements, as it was in this case. We believe the utility made a strong effort to control the equipment costs, and we have not identified any missed opportunities in that regard.

Land and Right of Way Options Payments

The \$1.7 million for the purchase of land rights options included a committed price for land parcels to be purchased, if FPL exercised a purchase option. The options provided FPL with a known cost for the needed parcels, but at a cost lower than the cost for an outright purchase. It would not have been prudent to plan for a generation site and file a need determination without having determined the availability and cost of land. The purchase of options was prudent, as compared to outright ownership of land that would be unusable by FPL for the foreseeable future.

Site Certification and Permitting Costs

This category includes costs of \$7,646,308 associated with preliminary assessments of fuel chemistry needed to develop the environmental compliance plan for proposed plants to utilize solid fuel at the GPP site. Evaluation of various possibilities and contingencies involved with permitting and transportation, with the associated projections of impact on costs, would be included in this work. Both fuels and waste materials could require permits. The work product included development and provision of the information necessary for environmental permits to be filed if the determination of need were granted.

Preliminary Engineering and Project Management Costs

This category includes the costs for the professional design and management functions to successfully manage the contractors that would provide equipment, construction, or technical services for the GPP project. Preliminary evaluation and estimated costs for transmission additions are also included. The work done by the preliminary engineering and project

management functions provided the cost estimates amounting to \$5.744 billion that appeared in the FPL request for need determination for the GPP.⁷

Engineering, Procurement, and Construction Contract Termination Costs

This category includes some preliminary work at the specific site, such as the geological evaluation of the site designated for construction. It also includes the evaluation of construction requirements including necessary methods, time, and materials.

In summary, we find that the land and right of way option payments (\$1.7 million), site certification and permitting costs (\$7.6 million), major equipment contract termination costs (\$17.5 million), preliminary engineering and project management costs (\$5.3 million), and engineering, procurement and construction contract termination costs (\$2.4 million) are reasonable and prudent except for the following adjustments for employee relocation costs and lobbying costs.

Employee Relocation Costs

Our staff's Audit Finding No. 2 indicates that relocation costs of \$126,315 were incurred for the recruiting and hiring of two technical employees to provide oversight of the construction of the GPP. The employees' positions were "Director - Construction" and "Manager - Construction." The employees would be expected to provide expertise during the planning and construction associated with the GPP project. The relocation expenses paid by FPL for those individuals go back as far as December 2005, and apparently both of them were working for FPL by April 2006. The audit work papers include GPP contract documents signed in early 2007 by one of those individuals. Also, the company has advised that one individual was allocated 80 percent to the GPP project. Both continue to be employed by FPL as the company plans to meet capacity needs in the next decade.

Beyond the information recounted above, FPL did not provide any details regarding the assignments or work performed by these employees. The requested recovery of the moving costs and payroll costs is based on FPL's plan to utilize these employees in critical job assignments that would have developed during the construction of the GPP, but the utilization of these employees has changed. Since FPL is necessarily engaged in development of a new plan for meeting the demand for generation, the moving and payroll costs are not uniquely associated with the historic efforts to build the GPP. Even prior to the vote denying the need for the GPP on June 5, 2007, these individuals would likely have been responsible for management of a variety of technical issues requiring expertise, but not directly associated with the GPP project. The information provided is not sufficient to quantify what fraction of the moving costs and payroll to date might credibly be associated with the GPP project. Therefore, we find that the requested regulatory asset shall be reduced by \$126,315 in employee relocation costs.

⁷ Docket No. 070098-EI, In re: Petition for determination of need for Glades Power Park Units 1 and 2 electrical power plants in Glades County, by Florida Power & Light Company.

Lobbying Costs

Our staff's Audit Finding No. 3 indicates that FPL spent \$1,552,270 for lobbying, community outreach and public relation costs for the GPP project. Included in this amount is \$71,016 that has been specifically identified as lobbying. Account 426.4, Expenditures for Certain Civic, Political and Related Activities, is defined as follows in the Uniform System of Accounts:

This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.

Account 426.4 is not an operating expense account. It is classified as a "below-the-line" expense account and is not included in the determination of net operating income for ratemaking purposes. In other words, these types of expenditures (lobbying) are not recoverable from the ratepayers and are, therefore, paid for by the shareholders. Although FPL has every right to lobby on its own behalf, it is our opinion that lobbying costs should not be considered as recoverable from the ratepayers and should be recorded "below-the-line." Therefore, we find that the requested regulatory asset shall be reduced by \$71,016.

Based on the two adjustments previously discussed, we find that the appropriate amount of the regulatory asset shall be \$34,090,145, calculated as follows:

Total Regulatory Asset ⁸	<u>\$34,287,476</u>
Lobbying Costs	(71,016)
Employee Relocation Costs	<u>(126,315)</u>
Total Adjustments	<u>(197,331)</u>
Adjusted Regulatory Asset	<u>\$34,090,145</u>

AMORTIZATION PERIOD

In its petition, FPL requested a five-year amortization period beginning the next time that base rates are re-set. FPL's present base rates have been in effect since January 1, 2006,

⁸ \$34,287,476 actual as of August 22, 2007, per FPL response to Staff Interrogatory No. 1.

pursuant to Order No. PSC-05-0902-S-EI.⁹ In that order, we approved the stipulation and settlement agreement that governs FPL's base rates until December 31, 2009, or until new base rates and charges become effective. On November 17, 2008, FPL filed a test year notification letter stating that it intends to file for a base rate increase in March 2009.¹⁰ Any base rate increase approved in that proceeding could not become effective before January 1, 2010.

Based on FPL's requested accounting treatment, the amortization of the regulatory asset would not begin until new base rates become effective. Until that time, the entire regulatory asset would earn a return by virtue of including the asset in rate base for earnings surveillance purposes. As previously discussed, the event giving rise to FPL's request occurred on June 5, 2007, the date when the determination of need was denied.

In light of the circumstances surrounding this case and the present uncertain state of the financial markets, we find that the amortization of the regulatory asset we have approved shall begin on January 1, 2010. We also find that five years is a reasonable amortization period for the regulatory asset. We note that customer rates are not affected at this time.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition for authority to use deferral accounting and for creation of a regulatory asset for prudently incurred preconstruction costs associated with development of clean coal project, by Florida Power & Light Company is approved, with the adjustments set forth in the body of this Order. It is further

ORDERED that the amortization of the regulatory asset we have approved shall begin on January 1, 2010. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

⁹ Order No. PSC-05-0902-S-EI, issued September 14, 2005, in Docket No. 050045-EI, In re: Petition for rate increase by Florida Power & Light Company.

¹⁰ Docket No. 080677-EI, In re: Application for increase in rates by Florida Power & Light Company.

By ORDER of the Florida Public Service Commission this 5th day of January, 2009.



ANN COLE
Commission Clerk

(S E A L)

MCB

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 26, 2009.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.