

State of Florida



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

RECEIVED-FPS
10 JAN 13 AM 11:56
COMMISSION
CLERK

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

DATE: January 13, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Graves, Matthews) *REG*
Division of Economic Regulation (Lee, Roberts) *ar*
Office of the General Counsel (Bennett) *SB* *JCB* *RLT*

Handwritten initials

RE: Docket No. 090505-EI – Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system.

AGENDA: 01/26/10 – Regular Agenda – Decision on Stipulation Prior to Hearing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RAD\WP\090505.RCM.DOC

Case Background

On February 26, 2008, a fault occurred at Florida Power & Light's (FPL) Flagami substation. The fault created conditions on the transmission grid that caused three of FPL's fossil-fueled generating units and FPL's Turkey Point Nuclear Units 3 and 4 to trip offline. The fault and tripping of generators is referred to herein as the "February 26, 2008 outage."

As a result of the February 26, 2008 outage, FPL was required to: 1) operate several less efficient and costlier peaking units, 2) replace nuclear-fueled generation with more costly gas-fired generation, and 3) purchase power at a cost greater than the Company's marginal cost of power production.

In the 2008 fuel and purchased power cost recovery proceeding (Docket No. 080001-EI) the replacement power costs attributable to the February 26, 2008 outage, were included as part of FPL's approved fuel cost recovery factor. The following issue, identified as Issue 2C in the 2009 fuel and purchased power cost recovery proceeding (Docket No. 090001-EI) was raised to address the potential refund of replacement power costs associated with the February 26, 2008 outage:

With respect to the February 26, 2008 outages, should FPL or its customers be responsible for replacement power costs associated with the outages?

By agreement of FPL and the Office of Public Counsel (OPC), consideration of this issue was deferred to the 2010 fuel and purchased power cost recovery proceeding (Docket No. 100001-EI) to allow completion of a Federal Energy Regulatory Commission (FERC) investigation into the causes of the February 26, 2008 outage. FPL and FERC reached an agreement closing the investigation on October 8, 2009.

On October 30, 2009, the Prehearing Officer in Docket No. 090001-EI issued Order No. PSC-09-0723-PHO-EI, which directed the following:

Issue 2C shall be spun-out and addressed in a separate proceeding as early as practicable in [the] 2010 calendar year. In addition, FPL shall comply with all outstanding discovery requests served by OPC and Staff related to this issue within 30-days of October 20, 2009.

Docket No. 090505-EI was established to satisfy the requirements of Order No. PSC-09-0723-PHO-EI. The OPC and the Attorney General (AG) have intervened in Docket No. 090505-EI.

On December 16, 2009, FPL filed a Proposed Resolution of Issues (Attachment 1). The Proposed Resolution of Issues also signed by the OPC and the AG, seeks Commission approval of a resolution agreeing that FPL should bear the cost of replacement power attributable to the February 26, 2008 outage.¹

On December 17, 2009, an informal preliminary issue identification meeting involving Commission staff, FPL, OPC, and the AG was held. All parties involved verbally identified the following issues for deliberation in this docket:

1. Should FPL credit to customers the replacement power costs attributable to the February 26, 2008 outage?
2. How should the replacement power costs attributable to the February 26, 2008 outage be measured, and what is the amount of such costs?
3. What is the appropriate method to credit customers for the replacement power costs determined pursuant to Issue 2?

¹ The February 26, 2008 outage is referred to as the Flagami Transmission Event in Attachment 1.

Docket No. 090505-EI
Date: January 13, 2010

In past proceedings the Commission has determined the refunding or crediting responsibilities, such as those discussed in the first issue listed above, based upon a prudence review. If the Commission approves the parties' Proposed Resolution of Issues, the first issue listed above would be moot.

This recommendation is meant to address the Proposed Resolution of Issues. This recommendation is not meant to recommend a determination regarding prudence with respect to FPL's actions relative to the February 26, 2008 outage.

Discussion of Issues

Issue 1: Should the Commission approve the Proposed Resolution of Issues found in Attachment 1?

Recommendation: Yes. The Commission should approve the Proposed Resolution of Issues. Pursuant to the Proposed Resolution of Issues, FPL will be responsible for the cost of replacement power attributable to the February 26, 2008 outage. The issues remaining for this docket should be limited to the appropriate measure of replacement power costs and the appropriate method of refunding customers. (Bennett, Graves, Matthews)

Staff Analysis: By the Proposed Resolution of Issues, FPL and the intervening parties agree that FPL will be responsible for the cost of the replacement power attributable to the February 26, 2008 outage. While the Proposed Resolution of Issues acknowledges that FPL will pay for replacement power costs, it does not admit imprudence or improper actions on FPL's part. The language found in paragraph 1.a. of the Proposed Resolution of Issues would not preclude further actions against FPL arising from the February 26, 2008 outage in another administrative or judicial forum.

FPL and the parties agree that, if the Commission approves this resolution, then the remaining issues for decision are how much FPL must repay and how that repayment will be refunded to customers. At the December 17, 2009, informal meeting, all parties agreed to proceed assuming approval of the Proposed Resolution of Issues. Therefore, testimony filed on the January 13, 2010, filing date will deal with how much FPL must repay and how that repayment will be refunded to customers. If the Commission does not accept the parties' Proposed Resolution of Issues, the parties agree that the current hearing date of March 17, 2010, will need to be moved to a later date to allow for the filing and review of supplemental testimony dealing with the issue of whether FPL or its customers should bear the replacement power costs attributable to the February 26, 2008 outage.

Staff believes that approving the attached Proposed Resolution of Issues is appropriate as it promotes administrative efficiency. Therefore, staff recommends that the Commission approve the Proposed Resolution of Issues. As discussed in the Case Background, approval of the Proposed Resolution of Issues will resolve the matter of the first issue listed in the Case Background and will obviate the need for the Commission to make a prudence determination. In the event the Commission does not agree with staff's recommendation, staff recommends that the Commission establish new hearing dates and filing deadlines.

Issue 2: Should this docket be closed?

Recommendation: No. This recommendation is only meant to address FPL's Proposed Resolution of Issues which reconciles one issue in this docket. (Bennett)

Staff Analysis: FPL's Proposed Resolution of Issues only addresses one issue in this docket. Other issues in this docket should be resolved in accordance with the procedures and schedule presented in Order No. PSC-09-0854-PCO-EI.² As such, these issues will be presented to the Commission in a hearing scheduled for March 17-18, 2010.

² Issued December 30, 2009, in Docket No. 090505-EI, In re: Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system.

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: Review of replacement fuel costs,)
associated with the February 26, 2008 outage))
on Florida Power & Light Company's)
electrical system,)

Docket No: 090505-EI

Filed: December 16, 2009

**FLORIDA POWER & LIGHT COMPANY'S
NOTICE OF FILING PROPOSED RESOLUTION OF ISSUES**

Florida Power & Light Company ("FPL") hereby gives notice of filing on December 16, 2009 of the attached Proposed Resolution of Issues ("PRI") that has been executed on behalf of the Office of Public Counsel, the Office of the Attorney General, and FPL.

R. Wade Litchfield, Esq.
Vice President and Chief Regulatory Counsel
John T. Butler, Esq.
Managing Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
Telephone: (561) 304-5639
Facsimile: (561) 691-7135

By: s/ John T. Butler
John T. Butler
Fla. Bar No. 283479

CERTIFICATE OF SERVICE
Docket No. 090505-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 16th day of December, 2009, to the following:

Lisa Bennett, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
LBENNETT@PSC.STATE.FL.US

J. R. Kelly, Esq.
Charles J. Rehwinkel, Esq.
Charles Beck, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399
Kelly.jr@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us
beck.charles@leg.state.fl.us

Cecilia Bradley
Senior Assistant Attorney General
Office of the Attorney General
The Capitol - PL01
Tallahassee, FL 32399-1050
cecilia.bradley@myfloridalegal.com

By: s/ John T. Butler
John T. Butler
Fla. Bar No. 283479

**PROPOSED RESOLUTION OF ISSUES ("PRI")
DOCKET NO. 090505-EI
DECEMBER 4, 2009**

Background

On February 26, 2008, a fault occurred at FPL's Flagami substation in connection with troubleshooting a switch used to connect a shunt inductor to FPL's transmission system. The fault created conditions that, among other things, caused three fossil-fueled generating units and Turkey Point Nuclear Units 3 and 4 to trip offline, which is how they are designed to operate in such a situation. This event is referred to herein as the "Flagami Transmission Event."

The Federal Energy Regulatory Commission ("FERC") and the North American Electric Reliability Council ("NERC") conducted investigations of the Flagami Transmission Event. On October 8, 2009, FPL agreed with FERC and NERC to settle claims that FPL allegedly violated certain FERC and NERC transmission-reliability standards. As part of the settlement agreement, FERC does not conclude that FPL violated any reliability standards or laws, and FPL does not admit any violations or liability in connection with the outage.

Docket 090001-EI contained the following issue: "With respect to the February 26, 2008 outages, should EPL or its customers be responsible for replacement power costs associated with the outages?" This docket was opened in November 2009 to address that issue by itself. In light of FPL's agreement herein to bear the cost of replacement power attributable to the Flagami Transmission Event, FPL proposes and the other parties to this PRI agree that the scope of this docket should now be limited to determining the appropriate measure of replacement power costs.

Components of the PRI

FPL will ask the Commission to approve the following, and the other parties to this PRI agree to support FPL's request:

1. FPL agrees to bear the cost of replacement power attributable to the Flagami Transmission Event; provided, however, that:
 - a. FPL does not admit imprudence or any other improper action or failure with regard to the Flagami Transmission Event and reserves all of its rights and defenses with respect to the propriety of its actions in connection with the Flagami Transmission Event; and
 - b. the appropriate measure of replacement power costs that are attributable to the Flagami Transmission Event remains an issue to be determined by the Commission in this docket.

2. All parties to this PRI and Staff may each take any position that it wishes concerning the proper measure of replacement power costs, if any, that FPL should refund to customers as a result of the Flagami Transmission Event. Testimony and discovery will be limited to the issue of the appropriate measure of replacement power costs.
3. This PRI is a one-time response to an extraordinary situation. All of the parties to this PRI acknowledge, and the Commission finds, that approval of this PRI will establish no precedent with respect to any matter resolved herein.
4. This PRI may be executed in counterparts, and all such counterparts will constitute one instrument binding on the signatories, notwithstanding that all parties may not be signatories to the original of the same counterpart. Facsimile transmission of an executed copy of this PRI will be accepted as evidence of a party's execution of the PRI.

Agreed and accepted on behalf of:

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408

By: Charlie Beck
Charlie Beck, Esq.

By: John T. Butler
John T. Butler, Esq.

Office of the Attorney General
The Capitol - PL01
Tallahassee, FL 32399-1050

By: Cecilia Bradley
Cecilia Bradley, Esq.