

Dorothy Menasco

From: LOWE, AMY [Amy.Lowe@fpl.com]
Sent: Monday, August 16, 2010 4:53 PM
To: Filings@psc.state.fl.us
Cc: Lisa Bennett; Keino Young; Anna Williams; mcglathlin.joseph@leg.state.fl.us; Kelly.jr@leg.state.fl.us; Charles Rehwinkel; mwalls@carltonfields.com; bhuhta@carltonfields.com; dianne.triplett@pgnmail.com; vkaufman@kagmlaw.com; jmoyle@kagmlaw.com; jmcwhirter@mac-law.com; john.burnett@pgnmail.com; alex.glenn@pgnmail.com; jbrew@bbrslaw.com; ataylor@bbrslaw.com; RMiller@pcsphosphate.com; paul.lewisjr@pgnmail.com; shayla.mcneill@tyndall.af.mil; Gadavis@enviroattorney.com; jwhitlock@enviroattorney.com; Cano, Jessica; Anderson, Bryan
Subject: Electronic Filing - Docket # 100009-EI
Attachments: FPL's Motion for Continuance or Deferral of Confidentiality Evidentiary Hearing.pdf; Attachment - Proposed Stipulations.pdf; FPL's Motion for Continuance or Deferral of Confidentiality Evidentiary Hearing.doc; Attachment - Proposed Stipulations.doc

Electronic Filing

a. Person responsible for this electronic filing:

Jessica A. Cano, Esq.
 Florida Power & Light Company
 700 Universe Boulevard
 Juno Beach, FL 33408
 (561) 304-5226
Jessica.Cano@fpl.com

b. Docket No. 100009-EI

IN RE: Nuclear Power Plant Cost Recovery Clause

c. The documents are being filed on behalf of Florida Power & Light Company.

d. There are a total of eleven (11) pages.

e. The documents attached for electronic filing is:

Florida Power & Light Company's Motion for Continuance or Deferral of Confidentiality Evidentiary Hearing and Request for Expedited Ruling

Attachment - Proposed Stipulations of Issues

*(See attached file(s): FPL's Motion for Continuance or Deferral of Confidentiality Evidentiary Hearing.doc; Attachment - Proposed Stipulations.doc
 FPL's Motion for Continuance or Deferral of Confidentiality Evidentiary Hearing.pdf; Attachment - Proposed Stipulations.pdf)*

Regards,
 Amy Lowe, CLA
 Certified Legal Assistant
 Senior Legal Assistant to
 Bryan Anderson, Managing Attorney
 Florida Power & Light Company
 Office: (561) 304-5608 Fax: (561) 691-7135
 Email: amy.lowe@fpl.com

8/17/2010

FILED
 6750 AUG 16 2010
 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant)
Cost Recovery Clause)

Docket No. 100009-EI
Filed: August 16, 2010

**MOTION FOR CONTINUANCE OR DEFERRAL OF
CONFIDENTIALITY EVIDENTIARY HEARING
AND REQUEST FOR EXPEDITED RULING**

Pursuant to 28-106.204, Florida Administrative Code, Florida Power & Light Company (“FPL”) respectfully moves the Prehearing Officer for a continuance or deferral of the Confidentiality Evidentiary Hearing scheduled for August 20, 2010, and in support thereof states:

1. FPL and the Office of Public Counsel (“OPC”) have reached a stipulation supporting deferral of all of the Nuclear Cost Recovery Clause (“NCRC”) issues dealing solely with FPL in Docket No. 100009-EI, which are set for hearing on August 24, 2010 through August 27, 2010. If approved, the stipulation would defer determination of the FPL-only issues set forth in the stipulation to the 2011 NCRC cycle, with the exception of Issue 3B as to which FPL will request deferral and OPC does not object to deferral. A copy of the stipulation with OPC is attached. FPL is currently working with the Southern Alliance for Clean Energy (“SACE”) and the Florida Industrial Power Users Group (“FIPUG”), which are the only other entities that have taken adverse positions to FPL on FPL’s issues, with respect to possible stipulation as well.

2. Order No. PSC-10-0482-PCO-EI sets a Confidentiality Evidentiary Hearing for August 20, 2010, and was issued because some of the requests for confidential classification filed in this docket “involve pre-filed testimony or hearing exhibits, which may be discussed during the Nuclear Cost Recovery Clause Hearing...” In the event the stipulation between FPL,

DOCUMENT NUMBER DATE
6750 AUG 16 2010
FPCO-COMMISSION CLERK

OPC and perhaps others is approved by the Florida Public Service Commission (“Commission”), there would be no use of confidential FPL documents at the hearing. Accordingly, a Confidentiality Evidentiary Hearing prior to the NCRC hearing would be unnecessary, and could be delayed until after all parties have finished their work on the NCRC hearings.

3. Alternatively, if the stipulation is not approved, the Confidentiality Evidentiary Hearing could occur at the beginning of the presentation of FPL’s NCRC case as a preliminary matter, when all of FPL’s NCRC witnesses and resources will already be in Tallahassee. By conducting the Confidentiality Evidentiary Hearing, if necessary, at the start of FPL’s case, the purpose and intent of Order No. 10-0482-PCO-EI would still be achieved. Additionally, FPL believes that this would be more administratively efficient than proceeding with the August 20 hearing when one considers that in addition to eliminating the need for an additional evidentiary hearing on the eve of the NCRC hearings, any motion for reconsideration by a party with respect to a ruling at the August 20 hearing would be addressed to the full Commission on August 24. This further supports handling any contested confidentiality issues, if necessary, at the August 24 hearing if the stipulation is not approved.

4. In accordance with Rule 28-106.204(3), Florida Administrative Code, FPL contacted counsel for each party in this docket to determine whether they object to this Motion. FPL is authorized to represent that OPC’s position is that, if the Commission approves the NCRC stipulation, “OPC agrees to a reasonable deferral or continuance of the hearing on FPL’s requests for confidential classification now scheduled for August 20, and believes that deferring the hearing on confidentiality claims from August 20 to the next practicable hearing date would provide parties a more adequate ability to prepare.” PCS Phosphate and SACE take the same

position as OPC. FIPUG and Progress Energy Florida take no position on this motion. FPL was unable to contact the Federal Executive Agencies for its position on this motion.

WHEREFORE, FPL respectfully moves the Prehearing Officer for a continuance or deferral of the Confidentiality Evidentiary Hearing to a hearing date following the NCRC hearings in the event the proposed NCRC stipulations are approved, and alternatively, to the beginning of the presentation of FPL's NCRC case during the August 24th – August 27th timeframe in the event the proposed NCRC stipulations are not approved. FPL further requests that the ruling on this motion be issued on an expedited basis, and requests that the Prehearing Officer issue his ruling by close of business on Wednesday, August 18, 2010, so that Staff and other participants to the August 20, 2010 Confidentiality Evidentiary Hearing have adequate notice. No party will be disadvantaged by the granting of this motion. Indeed, all parties will be afforded the opportunity to more adequately prepare for both the Confidentiality Evidentiary Hearing and the NCRC hearing, and perhaps resolve many of the outstanding confidentiality issues.

Respectfully submitted this 16th day of August, 2010.

Bryan S. Anderson
Fla. Auth. House Counsel No. 219511
Mitchell S. Ross
Fla. Bar No. 108146
Jessica A. Cano
Fla. Bar No. 0037372
Attorneys for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
(561) 304-5226
(561) 691-7135 (fax)

By: s/ Jessica A. Cano
Jessica A. Cano
Fla. Bar No. 0037372

**CERTIFICATE OF SERVICE
DOCKET NO. 100009-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's Motion for Continuance or Deferral of Confidentiality Evidentiary Hearing and Request for Expedited Treatment was served electronically this 16th day of August, 2010 to the following:

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

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

J. Michael Walls, Esq.
Blaise Huhta, Esq.
Carlton Fields Law Firm
P.O. Box 3239
Tampa, Florida 33601-3239
mwalls@carltonfields.com
bhuhta@carltonfields.com
Attorneys for Progress

Dianne M. Triplett, Esq.
Progress Energy Florida
229 1st Avenue N PEF-152
St. Petersburg, Florida 33701
dianne.triplett@pgnmail.com
Attorney for Progress

Jon C. Moyle, Jr., Esq.
Vicki Gordon Kaufman, Esq.
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, Florida 32301
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com
Attorneys for FIPUG

John W. McWhirter, Jr., Esq.
Davidson McWhirter, P.A.
PO Box 3350
Tampa, Florida 33601
jmcwhirter@mac-law.com
Attorney for FIPUG

R. Alexander Glenn, Esq.
John T. Burnett, Esq.
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, Florida 33733-4042
john.burnett@pgnmail.com
alex.glenn@pgnmail.com
Attorneys for Progress

James W. Brew, Esq.
F. Alvin Taylor, Esq.
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201
jbrew@bbrslaw.com
ataylor@bbrslaw.com
Attorneys for PCS Phosphate

Randy B. Miller
White Springs Agricultural Chemicals, Inc.
Post Office Box 300
15843 Southeast 78th Street
White Springs, Florida 32096
RMiller@pcsphosphate.com

Captain Shayla L. McNeill
Air Force Legal Operations Agency (AFLOA)
Utility Litigation Field Support Center (ULFSC)
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319
shayla.mcneill@tyndall.af.mil

Mr. Paul Lewis, Jr.
106 East College Ave., Suite 800
Tallahassee, Florida 32301-7740
paul.lewisjr@pgnmail.com

Gary A. Davis, Esq.
James S. Whitlock, Esq.
Gary A. Davis & Associates
P.O. Box 649
Hot Springs, NC 28743
Gadavis@enviroattorney.com
jwhitlock@enviroattorney.com
Attorneys for SACE

By: s/ Jessica A. Cano
Jessica A. Cano
Florida Bar No. 0037372

Docket No. 100009-EI
Proposed Stipulations of Issues

In order to facilitate efficient resolution of issues, and to enhance administrative convenience, Florida Power & Light Company (“FPL”) offers the following proposed stipulations. Issue number references are made with respect those set forth in Staff’s final issues list and pre-hearing statement, as amended at the August 11 prehearing conference. The proposed stipulations pertain only to FPL issues.

Confidentiality hearing continuance/deferral stipulation:

Proposed

Stipulation: FPL intends to file a motion not later than August 16, 2010 to defer or for continuance of the August 20 confidentiality hearing. OPC agrees that FPL can state in its motion that it is authorized to represent that these parties’ position on the motion is that if the Commission defers the issues to which FPL and OPC have stipulated to the 2011 hearing cycle, then OPC agrees to a reasonable deferral or continuance of the hearing on FPL’s requests for confidential classification now scheduled for August 20, and believes that deferring the hearing on confidentiality claims from August 20 to the next practicable hearing date would provide parties a more adequate ability to prepare.

PROPOSED STIPULATIONS BY ISSUE

ISSUE 1: Do FPL’s activities related to Turkey Point Units 6 & 7 qualify as “siting, design, licensing, and construction” of a nuclear power plant as contemplated by Section 366.93, F.S.?

Proposed

Stipulation: FPL and OPC stipulate to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 3B: Should any FPL rate case type expense associated with the 2010 NCRC hearing for FPL be removed?

Proposed

Stipulation: FPL will request deferral of this issue until the 2011 nuclear cost recovery cycle, and OPC does not object to deferral of this issue.

ISSUE 16: Should the Commission find that for the year 2009, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

Proposed

Stipulation: FPL and OPC stipulate to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 17: Should the Commission find that for the year 2009, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

Proposed

Stipulation: FPL and OPC stipulate to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 18: Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

Proposed

Stipulation: FPL and OPC stipulate to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 19: Is FPL's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?

Proposed

Stipulation: FPL and OPC stipulate to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 20: Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

Proposed

Stipulation: FPL and OPC stipulate to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 21: What system and jurisdictional amounts should the Commission approve as FPL’s final 2009 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?

Proposed

Stipulation: Subject to the stipulation set forth below, the Commission should approve \$237,677,629 (system) in EPU expenditures and \$498,077 (system) in O&M expenses as FPL’s 2009 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$227,680,201 for EPU expenditures, \$16,459,883 in carrying charges, and \$480,934 in O&M expenses. In addition, 2009 jurisdictional base rate revenue requirements are \$12,802.

For purposes of the Capacity Cost Recovery Clause (“CCRC”), the final 2009 true up amount is an over recovery of \$3,837,507 in carrying costs, an over recovery of \$63,533 in O&M expenses and an over recovery of \$70,658 in base rate revenue requirements. The net amount of (\$3,971,698) should be included in setting FPL’s 2011 NCRC recovery factor.

FPL and OPC stipulate that the determination of FPL’s final 2009 prudently incurred costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to have been imprudently incurred such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 22: What system and jurisdictional amounts should the Commission approve as FPL’s reasonable actual/estimated 2010 costs and estimated true-up amounts for the Extended Power Uprate project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve \$318,166,769 (system) in EPU expenditures and \$3,210,753 (system) in O&M expenses as FPL’s actual/estimated 2010 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$302,009,710 for EPU expenditures, \$42,352,323 in carrying charges, and \$3,140,969 in O&M expenses. In addition, jurisdictional base rate revenue requirements are \$2,018,321, with carrying charges of (\$457,762).

The 2010 true up amount is an under recovery of \$757,736 in carrying costs, under recovery of \$992,986 in O&M expenses, and over recovery of \$14,317,118 in base rate revenue requirements. The net amount of (\$12,566,397) should be included in setting FPL’s 2011 NCRC recovery factor.

FPL and OPC stipulate that the determination of FPL's reasonable actual/estimated 2010 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable that such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 23: What system and jurisdictional amounts should the Commission approve as FPL's reasonably projected 2011 costs for the Extended Power Uprate project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve the amount of \$547,756,895 (system) in EPU expenditures and \$4,161,728 (system) in O&M expenses as FPL's projected 2011 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$521,701,593 in EPU expenditures, \$49,129,740 in carrying charges, and \$3,917,202 in O&M expenses. In addition, jurisdictional base rate revenue requirements are \$28,270,391.

FPL and OPC stipulate that the determination of FPL's reasonably projected 2011 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 24: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve \$37,731,525 (system) and \$37,599,045 (jurisdictional) as FPL's final 2009 preconstruction costs, as well as \$857,693 in preconstruction carrying charges and \$373,162 in jurisdictional carrying charges on prior years' unrecovered site selection costs.

The final 2009 true up amount is an over recovery of \$7,845,423 in preconstruction expenditures and an over recovery of \$2,802,854 in preconstruction carrying charges on site selection unrecovered costs. The net amount of (\$10,648,277) should be included in FPL's 2011 NCRC recovery amount.

FPL and OPC stipulate that the determination of FPL's final 2009 prudently incurred preconstruction costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 25: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2010 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve \$42,629,655 (system) and \$42,125,853 (jurisdictional) as FPL's 2010 actual/estimated preconstruction costs, as well as (\$4,734,785) in preconstruction carrying charges and \$145,965 in jurisdictional carrying charges on prior years' unrecovered site selection costs. FPL's 2010 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.

The 2010 true up amount is an over recovery of \$48,528,272 in pre-construction expenditures and an over recovery of \$5,795,691 in preconstruction carrying charges on site selection unrecovered costs. The net amount of (\$54,323,963) should be included in FPL's 2011 NCRC recovery amount.

FPL and OPC stipulate that the determination of FPL's 2010 actual/estimated preconstruction costs and estimated true-up amounts should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 26: What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for FPL’s Turkey Point Units 6 & 7 project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve \$29,469,475 (system) and \$29,121,201 (jurisdictional) as FPL’s 2011 projected preconstruction costs, as well as \$2,189,194 in preconstruction carrying charges and \$171,052 in carrying charges on prior years’ unrecovered site selection costs. The total amount of \$31,481,447 should be included in setting FPL’s 2011 NCRC recovery amount.

FPL and OPC stipulate that the determination of FPL’s 2011 projected preconstruction costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 27: What is the total jurisdictional amount to be included in establishing FPL’s 2011 Capacity Cost Recovery Clause factor?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the total jurisdictional amount of \$31,288,445 should be included in establishing FPL’s 2011 Capacity Cost Recovery Clause factor. This amount consists of carrying charges on site selection costs, pre-construction costs and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, O&M costs and base rate revenue requirements, all as provided for in Section 366.93, Florida Statutes and Rule 25-6.0423, F.A.C.

FPL and OPC stipulate with respect to the Turkey Point 6 & 7 and Extended Power Uprate projects that the determination of FPL’s final 2009 prudently incurred costs, reasonable actual/estimated 2010 costs and reasonably projected 2011 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to have been imprudently incurred or unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.