

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** November 29, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Ellis) ✓ TB  
Office of the General Counsel (Murphy, Weisenfeld) CM CM for TLT ayw

**RE:** Docket No. 20180007-EI – Environmental cost recovery clause.

**AGENDA:** 12/11/18 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** Decision must be rendered by 12/11/18 in order to implement new environmental factors with the first billing cycle in 2019.

**SPECIAL INSTRUCTIONS:** None

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### Case Background

As part of the Florida Public Service Commission's (Commission) continuing environmental cost recovery clause (ECRC) proceedings, the Commission conducted a hearing in this docket on November 5, 2018. The parties resolved all issues by stipulation, except for the Commission's review of Florida Power & Light Company's (FPL or Company) Issues 1 through 4, 7, 10A, and 10B detailed within this recommendation. Issues 1 through 4 and 7 relate to the Turkey Point Cooling Canal Monitoring Plan project (TPCCMP Project), Issue 10A to proposed modifications to the Manatee Temporary Heating System project (MTHS Project), and 10B to proposed modifications to the National Pollutant Discharge Elimination System Permit Renewal Requirements project (NPDES Project).

Docket No. 20180007-EI  
Date: November 29, 2018

Testimony on these issues was heard at the November 5, 2018, hearing. On November 16, 2018, FPL, the Office of Public Counsel (OPC), and Southern Alliance for Clean Energy (SACE) filed post-hearing briefs.

The Commission has jurisdiction in this matter pursuant to Section 366.8255, Florida Statutes (F.S.).

## Discussion of Issues

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

**Recommendation:** The final true-up amount for the period January 2017 through December 2017 for FPL is an over recovery of \$31,560,081. There should be no adjustment to this amount associated with the TPCCMP Project. (Ellis)

### Position of the Parties

**FPL:** \$31,560,081 over-recovery.

**OPC:** No position.

**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.

### Staff Analysis:

## Parties' Arguments

### FPL

FPL contends that the Company is eligible for cost recovery for the TPCCMP Project expenditures associated compliance activities for the 2015 Consent Agreement (CA) and 2016 Consent Agreement Addendum (CAA) with the Miami-Dade Department of Environmental Resource Management (DERM) and for the 2016 Consent Order (CO) with the Florida Department of Environmental Protection (FDEP), as they were approved in the Commission's Order No. PSC-2018-0014-FOF-EI during the 2017 ECRC proceeding.<sup>1</sup> (FPL BR 1-2, 5-6) FPL argues that the Commission is not the appropriate regulator to determine if remediation objectives are being met in a timely manner, but rather FDEP and DERM are. (FPL BR 6) FPL asserts that the activities for which it seeks recovery are pursuant to the requirements of the CA, CAA, and/or CO and are therefore prudent and reasonable. (FPL BR 7-9) FPL states it is in compliance with the DERM CAA. (FPL BR 9-10)

### SACE

SACE contests FPL's recovery of TPCCMP Project expenditures as SACE claims that the Company knew or should have known prior to 1993 that its Turkey Point Plant was causing an underground hypersaline plume. (SACE BR 1, 3) SACE argues that FPL ratepayers should not be responsible for FPL's remediation costs due to the Company's imprudent operation of the Turkey Point Plant. (SACE BR 1, 3-4) SACE contends that FPL has not met its burden of proof

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<sup>1</sup>Order No. PSC-2018-0014-FOF-EI, issued January 5, 2018, in Docket No. 20180007-EI, *In re: Environmental cost recovery clause*.

to demonstrate projected costs are reasonable. (SACE BR 2, 4) Specifically, SACE argues that FPL is not timely complying with its requirements under the CAA and therefore these costs are not reasonable. (SACE BR 5-7)

## **Analysis**

### ***Final ECRC True-Up Amount***

Based on the testimony and exhibits of FPL witness Deaton, FPL's environmental cost recovery true-up amount for 2017 for all programs is \$31,560,081. (TR 22; EXH 13, p. 1) FPL's final total for 2017 expenditures for the TPCCMP Project is approximately \$14.2 million.<sup>2</sup> (EXH 13, p. 4, 9)

### ***TPCCMP Project Eligibility***

The Commission initially approved recovery through the ECRC of FPL's TPCCMP Project in the 2009 ECRC Proceeding.<sup>3</sup> Subsequently, the Commission approved recovery of additional costs associated with remediation and mitigation activities as required by various environmental regulators.<sup>4</sup> As a result, SACE's argument that FPL's ratepayers should not be responsible for any past or projected expenses associated with these activities ignores the Commission's prior decision allowing recovery of reasonable costs for the TPCCMP Project. FPL's actual, estimated, and projected expenditures for the TPCCMP project are tied to remediation and mitigation activities required by its environmental regulators. (TR 285; EXH 14, p. 112; EXH 38, p. 37; EXH 52) While SACE also argues that TPCCMP Project costs are unreasonable based upon the allegation that FPL is not timely complying with its environmental requirements, staff observes that it is not within the Commission's jurisdiction to determine whether or not FPL is in compliance meeting its environmental requirements, but rather that is the role of the environmental regulators. Moreover, staff notes that FPL witness Sole testified that FPL is currently in compliance with the CA, CAA, and CO. (TR 366) Therefore, staff recommends that FPL has demonstrated its actual, estimated, and projected costs, including TPCCMP Project costs, are reasonable and should be allowed for cost recovery.

## **Conclusion**

The final true-up amount for the period January 2017 through December 2017 for FPL is an over-recovery of \$31,560,081. There should be no adjustment to this amount associated with the TPCCMP Project.

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<sup>2</sup>TPCCMP Project costs include \$11,150,044 for operations and maintenance (O&M) and \$3,042,331 in recoverable costs for capital investment, for a total of \$14,192,375.

<sup>3</sup>Order No. PSC-09-0759-FOF-EI, issued November 18, 2009, in Docket No. 20090007-EI, *In re: Environmental cost recovery clause*.

<sup>4</sup>Order No. PSC-2018-0014-FOF-EI, issued January 5, 2018, in Docket No. 20180007-EI, *In re: Environmental cost recovery clause*.

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

**Recommendation:** The actual/estimated true-up amount for the period January 2018 through December 2018 for FPL is an under-recovery of \$5,614,420. There should be no adjustment to this amount associated with the TPCCMP Project. (Ellis)

**Position of the Parties**

**FPL:** \$5,614,420 under-recovery.

**OPC:** No position.

**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.

**Staff Analysis:**

**Parties' Arguments**

**FPL**

As discussed in Issue 1, FPL argues it is eligible for cost recovery for costs associated with the TPCCMP Project.

**SACE**

As discussed in Issue 1, SACE argues that FPL should not be allowed to recover costs for the TPCCMP Project as it engaged in imprudent activity and its projected costs are unreasonable due to the Company being out of compliance with the CAA.

**Analysis**

**Estimated/Actual ECRC True-Up Amount**

Based on the testimony and exhibits of FPL witness Deaton, FPL's environmental cost recovery true-up amount for 2018 for all programs is \$5,614,420. (TR 23; EXH 12, p. 1) FPL's actual/estimated total for 2018 expenditures for the TPCCMP Project is approximately \$32.8 million.<sup>5</sup> (EXH 12, p. 4, 9)

**TPCCMP Project Eligibility**

As discussed in Issue 1, the Commission has previously approved the inclusion of costs for the TPCCMP Project. Staff recommends that FPL has reasonably demonstrated its activities are associated with the TPCCMP Project and should be allowed for cost recovery.

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<sup>5</sup>TPCCMP Project costs include \$28,268,375 for O&M and \$4,504,185 in recoverable costs for capital investment, for a total of \$32,772,560.

**Conclusion**

The actual/estimated true-up amount for the period January 2018 through December 2018 for FPL is an under-recovery of \$5,614,420. There should be no adjustment to this amount associated with the TPCCMP Project.

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

**Recommendation:** The projected amount for the period January 2019 through December 2019 for FPL is a total of \$187,365,910, which includes projected expenditures associated with the TPCCMP Project. (Ellis)

**Position of the Parties**

**FPL:** \$187,365,910.

**OPC:** No position.

**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.

**Staff Analysis:**

**Parties' Arguments**

**FPL**

As discussed in Issue 1, FPL argues it is eligible for cost recovery for costs associated with the TPCCMP Project.

**SACE**

As discussed in Issue 1, SACE argues that FPL should not be allowed to recover costs for the TPCCMP Project as it engaged in imprudent activity and its projected costs are unreasonable due to the Company being out of compliance with the CAA.

**Analysis**

**Projected ECRC Amount**

Based on the testimony and exhibits of FPL witness Deaton, FPL's environmental cost recovery projected amount for 2019 for all programs is \$187,365,910. (TR 31; EXH 14, p. 1) FPL's projected total includes expenditures for the TPCCMP Project of approximately \$24.3 million.<sup>6</sup> (EXH 14, p. 2, 52)

**TPCCMP Project Eligibility**

As discussed in Issue 1, the Commission has previously approved the inclusion of costs for the TPCCMP Project. Staff recommends that FPL has reasonably demonstrated its activities are associated with the TPCCMP Project and should be allowed for cost recovery.

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<sup>6</sup>TPCCMP Project costs include \$17,735,378 for O&M and \$6,534,008 in recoverable costs for capital investment, for a total of \$24,269,386.

**Conclusion**

The projected amount for the period January 2019 through December 2019 for FPL is a total of \$187,365,910, which includes projected expenditures associated with the TPCCMP Project.

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

**Recommendation:** The projected amount, including true-ups, for the period January 2019 through December 2019 for FPL is a total of \$161,536,472 to be recovered from ratepayers, which includes projected expenditures associated with the TPCCMP Project. (Ellis)

**Position of the Parties**

**FPL:** \$161,536,472, including prior period true-up amounts and revenue taxes.

**OPC:** No position.

**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.

**Staff Analysis:**

**Parties' Arguments**

**FPL**

As discussed in Issue 1, FPL argues it is eligible for cost recovery for costs associated with the TPCCMP Project.

**SACE**

As discussed in Issue 1, SACE argues that FPL should not be allowed to recover costs for the TPCCMP Project as it engaged in imprudent activity and its projected costs are unreasonable due to the Company being out of compliance with the CAA.

**Analysis**

**Projected ECRC Amount**

Based on the testimony and exhibits of FPL witness Deaton, FPL's environmental cost recovery amount, including true-up amounts, is \$161,536,472. (TR 31; EXH 14, p. 1) FPL's expenditures for the period 2017 through 2019 for the TPCCMP Project are approximately \$71.2 million.<sup>7</sup> (EXH 12, p. 4, 9; EXH 13, p. 4, 9; EXH 14, p. 2, 52)

**TPCCMP Project Eligibility**

As discussed in Issue 1, the Commission has previously approved the inclusion of costs for the TPCCMP Project. Staff recommends that FPL has reasonably demonstrated its activities are associated with the TPCCMP Project and should be allowed for cost recovery.

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<sup>7</sup>TPCCMP Project costs include \$57,153,797 for O&M and \$14,080,524 in recoverable costs for capital investment, for a total of \$71,234,321.

**Conclusion**

The projected amount, including true-ups, for the period January 2019 through December 2019 for FPL is a total of \$161,536,472 to be recovered from ratepayers, which includes projected expenditures associated with the TPCCMP Project.

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

**Recommendation:** If the Commission approves staff's recommendation in Issue 4, staff recommends approval of FPL's factors as shown in FPL witness Deaton's Exhibit RBD-4. If the Commission denies staff's recommendation in Issue 4, FPL should file revised factors and associated tariffs implementing the Commission vote for administrative approval by staff. (Ellis)

**Position of the Parties**

**FPL:**

RATE CLASS	Environmental Cost Recovery Factor (cents/kWh)
RS1/RTR1	0.159
GS1/GST1	0.157
GSD1/GSDT1/HLFT1	0.142
OS2	0.086
GSLD1/GSLDT1/CS1/CST1/HLFT2	0.139
GSLD2/GSLDT2/CS2/CST2/HLFT3	0.121
GSLD3/GSLDT3/CS3/CST3	0.121
SST1T	0.108
SST1D1/SST1D2/SST1D3	0.138
CILC D/CILC G	0.121
CILC T	0.112
MET	0.130
OL1/SL1/SL1M/PL1	0.035
SL2/SL2M/GSCU1	0.113
Total	0.149

**OPC:** No position.

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

**Staff Analysis:**

**Parties' Arguments**

**FPL**

As discussed in Issue 1, FPL argues it is eligible for cost recovery for costs associated with the TPCCMP Project.

**SACE**

As discussed in Issue 1, SACE argues that FPL should not be allowed to recover costs for the TPCCMP Project as it engaged in imprudent activity and its projected costs are unreasonable due to the Company being out of compliance with the CAA.

**Analysis**

If the Commission approves staff's recommendation in Issue 4, staff recommends approval of FPL's factors as shown in FPL witness Deaton's Exhibit RBD-4 (EXH 14, p. 131). If the Commission denies staff recommendation in Issue 4, FPL should file revised factors and associated tariffs implementing the Commission vote for administrative approval by staff.

**Issue 10A:** Should the Commission approve FPL's Petition for Approval of Modification to Manatee Temporary Heating System Project and the recovery of the associated costs through the ECRC pursuant to Section 366.8255, F.S.?

**Recommendation:** Yes. The Commission should approve FPL's petition and be allowed to recover costs associated with its proposed modification to the MTHS Project as it addresses an environmental requirement triggered after the Company's last rate case. Reasonable costs associated with the project should be allowed to be recovered through the ECRC. (Ellis)

**Position of the Parties**

**FPL:** Yes. The PFM MTHS Project is being undertaken in order to comply with PFM's Manatee Protection Plan during periods when PFM is shut down for extended outages or because it is not being economically dispatched. Installation of the proposed MTHS is a cost-effective way to meet PFM's compliance requirement.

**OPC:** Maybe. The Commission must, nevertheless independently determine that each cost submitted for recovery meets each element of the statutory requirements for recovery through this clause as set out in Section 366.8255, Florida Statutes. FPL has not proven that these costs fully meet the statutory test to the extent it relies on prior approvals of similar types of projects for meeting the Company's burden of proof.

**SACE:** No position.

**Staff Analysis:**

**Parties' Arguments**

**FPL**

FPL argues that the proposed modifications to the MTHS Project to include an additional heating system at the Plant Fort Myers (Fort Myers). (FPL BR 2, 11-13) FPL asserts that it is required to install a new system as Fort Myers is no longer adequately dispatched during manatee season, risking putting it out of compliance with its environmental requirements. (FPL BR 12-14) FPL argues that the proposed Fort Myers system is eligible for recovery under the ECRC and represents the most cost-effective solution. (FPL BR 14-16)

**OPC**

OPC agrees that FPL has submitted adequate evidence to meet all the criteria necessary to qualify for recovery through the ECRC on a stand-alone basis. (OPC BR 2, 4) OPC expresses concerns that the Company's filing appears to rely upon the Commission's prior approval of similar projects, instead of independent approval, by including an additional project under the MTHS Project. (OPC BR 1-4)

## Analysis

### ***MTHS Project and Proposed Modifications***

The Commission initially approved recovery through the ECRC of FPL's MTHS Project in the 2009 ECRC proceeding, addressing the Company's Riviera Beach and Cape Canaveral facilities.<sup>8</sup> Subsequently, the Commission approved recovery of costs associated with the Port Everglades and Dania Beach facilities in the 2012 and 2017 ECRC proceedings, respectively.<sup>9</sup>

As described by FPL witness Sole, FPL is seeking to recover costs associated with a heating system for Fort Myers to keep water temperatures high enough to maintain a manatee refuge (TR 268-269). The proposed addition includes electric heating equipment and associated intake and pumping systems. (TR 274)

### ***Eligibility Criteria***

The ECRC, enacted into law in 1993, provides an investor-owned utility the opportunity to recover the costs associated with changes in environmental regulations between rate cases. The statute authorizes the Commission to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. When the Commission first implemented the provisions of Section 366.8255, F.S., it identified the criteria required to demonstrate eligibility for cost recovery under the ECRC clause:

1. Such costs were prudently incurred after April 13, 1993;
2. The activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year upon which rates are based; and,
3. Such costs are not recovered through some other cost recovery mechanism or through base rates.<sup>10</sup>

Pursuant to Section 366.8255, F.S., only the utility's prudently incurred environmental compliance costs are allowed to be recovered through the ECRC.<sup>11</sup> Staff notes that its review of the proposed modification to the MTHS Project is based upon the information in the hearing record regarding these specific modifications and whether these modifications independently meet the ECRC criteria and reasonableness tests.

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<sup>8</sup>Order No. PSC-09-0759-FOF-EI, issued November 18, 2009, in Docket No. 20090007-EI, *In re: Environmental cost recovery clause*.

<sup>9</sup>Order No. PSC-12-0613-FOF-EI, issued November 16, 2012, in Docket No. 20120007-EI, *In re: Environmental cost recovery clause*. and Order No. PSC-2018-0014-FOF-EI, issued January 5, 2018, in Docket No. 20180007, *In re: Environmental cost recovery clause*.

<sup>10</sup>Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 19930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes, by Gulf Power Company*.

<sup>11</sup>Order No. PSC-05-0164-PAA-EI, issued on February 10, 2005, in Docket No. 20041300-EI, *In re: Petition for Approval of New Environmental Program for Cost Recovery Through Environmental Cost Recovery Clause, by Tampa Electric Company*.

### ***Eligibility Criteria Review***

As the proposed modification to the MTHS Project was implemented beginning in 2018, it meets the first criterion. FPL witness Sole states that FPL is not recovering any MTHS Project costs through an alternate mechanism, which addresses the third criterion. (TR 278)

The second criterion is dependent upon timing of the Utility's last rate case and the environmental regulation. FPL's most recent rate case was resolved by a settlement between many parties, including FPL and OPC, and approved by the Commission in Order No. PSC-16-0560-AS-EI.<sup>12</sup> FPL witness Sole identifies the environmental regulation requiring the proposed modification of the MTHS Project as FDEP's Industrial Wastewater Facility Permit (Permit) for Fort Myers, issued January 20, 2016. (EXH 4) The Permit states, in relevant part, "The permittee shall continue compliance with the facility's Manatee Protection Plan approved by [FDEP] on August 18, 1999." (TR 269; EXH 4). This requires FPL to maintain a warm water manatee refuge during mid-November through the end of March annually, unless it endangers the safety or reliability of Fort Myers. (EXH 5) FPL witness Sole argues that operating circumstances have changed since FPL's most recent rate case, effectively triggering the effects of the Permit, due to a combination of scheduled maintenance outages and reductions in the projected economic dispatch of Fort Myers. (TR 270-273) The proposed MTHS Project therefore meets the second criterion.

Regarding the reasonableness of expenditures for the modification to the MTHS Project, FPL evaluated alternatives including operating Fort Myers out of economic dispatch or using a temporary diesel system. (TR 272-273; EXH 36, p. 6) No other available alternative was as cost-effective at meeting the environmental requirement as the proposed system at Fort Myers. Therefore, the costs associated with the modification of the MTHS Project appear reasonable at this time.

### **Conclusion**

The Commission should approve FPL's petition and be allowed to recover costs associated with its proposed modification to the MTHS Project as it addresses an environmental requirement triggered after the Company's last rate case. Reasonable costs associated with the project should be allowed to be recovered through the ECRC.

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<sup>12</sup>Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.

**Issue 10B:** Should the Commission approve FPL's Petition for Approval of Modification to National Pollution Discharge Elimination System Permit Renewal Requirement Project and the recovery of the associated costs through the ECRC pursuant to Section 366.8255, F.S.?

**Recommendation:** No. The proposed modification to the NPDES Project does not meet the threshold requirement of being necessary to comply with environmental regulations as required by Section 366.8255, F.S. Therefore, the Commission should deny recovery of costs through the ECRC at this time. (Ellis)

**Position of the Parties**

**FPL:** Yes. It is anticipated that Plant Scherer's renewed NPDES permit will include a limit on copper discharges. Repacking Scherer Unit 4's cooling tower fill medium is a cost-effective way to reduce copper levels.

**OPC:** No. The Commission must, nevertheless independently determine that each cost submitted for recovery meets each element of the statutory requirements for recovery through this clause as set out in Section 366.8255, Florida Statutes. FPL has not proven that these costs fully meet the statutory test to the extent it relies on prior approvals of similar types of projects for meeting the Company's burden of proof. This project may not be ripe for approval.

**SACE:** No position.

**Staff Analysis:**

**Parties' Arguments**

**FPL**

FPL states that its proposed modification to the NPDES Project includes the replacement of cooling tower packing material at Plant Scherer Unit 4 (Scherer). (FPL BR 2, 16) FPL asserts that Scherer is likely to be required to limit copper discharge in future environmental permits, and the replacement addressed this concern. (FPL BR 17-19) FPL seeks ECRC recovery of the modifications to the NPDES Project contingent upon the issuance of a future environmental permit including the copper limitation requirement. (FPL BR 20) FPL argues that the modification to the NPDES Project satisfies the requirements of recovery for the ECRC as it is based on an anticipated environmental regulation. (FPL BR 20-21)

**OPC**

OPC expresses concern that the contingent nature of FPL's request for a modification to the NPDES Project is outside of the scope of Section 366.8255, F.S. (OPC BR 1, 5) OPC objects that the Company's filing appears to rely upon the Commission's prior approval of similarly named projects, instead of independent approval. (OPC BR 5-6, 7-8) OPC argues that the proposed project is significantly different from the prior projects approved under the NPDES Project. (OPC BR 6) OPC also asserts that as the project has already been completed, there is no urgency requiring a contingent approval. (OPC BR 7)

## Analysis

### **NPDES Project and Proposed Modifications**

The Commission initially approved recovery through the ECRC of FPL's NPDES Project in the 2011 ECRC proceeding.<sup>13</sup> The project was focused on complying with then-new FDEP requirements to establish whole effluent toxicity limits and prepare storm water pollution prevention plans. Subsequently, the Commission approved recovery of costs associated with the St. Lucie facility's renewed permit, specifically a requirement to conduct a total residual oxidants plan of study, in the 2012 ECRC proceeding.<sup>14</sup>

As described by FPL witness Sole, FPL is seeking to recover costs associated with the replacement of cooling tower packing material at Scherer due to meet anticipated permit conditions. (TR 279) The replacement of cooling tower packing material began in March 2018 and was completed in May 2018. (EXH 14, p. 118) FPL is a joint owner of Scherer and its requested recovery is proportional to its ownership interest in Scherer. (EXH 36, p. 13) FPL initially estimated its portion of costs was \$9 million, but the actual cost was \$7.9 million. (EXH 14, p. 118) FPL witness Deaton notes FPL is not seeking recovery through the ECRC at this time, therefore the cost of the project does not affect FPL's proposed ECRC expenditures discussed above in Issues 3 and 4. (TR 18)

### **Eligibility Criteria**

As discussed in Issue 10A, the criteria required to demonstrate eligibility for cost recovery under the ECRC include whether: (1) costs were prudently incurred after April 13, 1993; (2) the activity is legally required to comply with a governmentally imposed environmental regulation after the Company's last rate case test year; and (3) costs are not recovered through another mechanism or through base rates.<sup>15</sup> Pursuant to Section 366.8255, F.S., only the utility's prudently incurred environmental compliance costs are allowed to be recovered through the ECRC.<sup>16</sup> Staff notes that its review of the proposed modification to the NPDES Project is based upon the information in the hearing record regarding these specific modifications and whether these modifications independently meet the ECRC criteria and reasonableness tests.

### **Eligibility Criteria Review**

As the proposed modification to the NPDES Project was implemented in 2018, it therefore meets the first criterion. FPL witness Deaton states that FPL is not currently seeking recovery of costs associated with the proposed modification to the NPDES Project, and that the Company plans to recover costs in base capital accounts prior to issuance of the revised permit. (TR 18) The

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<sup>13</sup>Order No. PSC-11-0553-FOF-EI, issued December 7, 2011, in Docket No. 20110007-EI, *In re: Environmental cost recovery clause.*

<sup>14</sup>Order No. PSC-12-0613-FOF-EI, issued November 16, 2012, in Docket No. 20120007-EI, *In re: Environmental cost recovery clause.*

<sup>15</sup>Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 19930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes, by Gulf Power Company.*

<sup>16</sup>Order No. PSC-05-0164-PAA-EI, issued on February 10, 2005, in Docket No. 20041300-EI, *In re: Petition for Approval of New Environmental Program for Cost Recovery Through Environmental Cost Recovery Clause, by Tampa Electric Company.*

Company requests approval to transfer recovery to the ECRC if the anticipated environmental requirement occurs. (TR 18-19) As such, current base rates are supporting the expenditures associated with the proposed modification to the NPDES Project.

The second criterion is dependent upon timing of the Utility's last rate case and the environmental regulation. As discussed in Issue 10A, FPL's base rates were last established by a settlement by Order No. PSC-16-0560-AS-EI, issued December 15, 2016.<sup>17</sup> The Company describes repacking activities in 2018 as the modification to the NPDES Project to address anticipated permit conditions. (TR 326; EXH 50, NPDES Project petition) FPL witness Deaton specifies that the Company's request is contingent upon a possible outcome of a future permit for Scherer. (TR 18) FPL witness Sole states that there are "indications that there is a probability that there is a concern" regarding copper at Scherer. (TR 338)

Based on the record in this docket, staff recommends that it is premature to approve recovery of the proposed modification to the NPDES Project, as the environmental regulation has not yet been enacted, become effective, or had its effects triggered. Therefore, the proposed modification to the NPDES Project fails the second criterion at this time.

### **Conclusion**

The proposed modification to the NPDES Project does not meet the threshold requirement of being incurred to comply with environmental regulations as required by Section 366.8255, F.S. Therefore, the Commission should deny recovery of costs through the ECRC at this time.

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<sup>17</sup>Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company*.