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April 13, 2009

-VIA HAND DELIVERY -

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 090007-EI

Dear Ms. Cole:

I am enclosing for filing in the above docket the original and seven (7) copies of Florida Power & Light Company's ("FPL's") Petition for Approval of the Manatee Temporary Heating System Project for Environmental Cost Recovery, together with a CD containing the electronic version of same.

Also enclosed for filing are the original and fifteen (15) copies of the prefiled testimony and exhibits of FPL witness Randall LaBauve in support of FPL's Petition.

If there are any questions regarding this transmittal, please contact me at 561-304-5639.

Sincerely,

Damaris Rodriguez for

John T. Butler

COM	_____
ECR	<u> 2 </u> + CD
GCL	<u> 2 </u>
OPC	_____
RCP	<u> 2 </u> Enclosures
SSC	_____
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ADM	_____
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cc: Counsel for Parties of Record (w/encl.)

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental Cost)
Recovery Clause. _____)

Docket No. 090007-EI
Filed: April 13, 2009

**PETITION OF FLORIDA POWER & LIGHT COMPANY FOR APPROVAL OF
MANATEE TEMPORARY HEATING SYSTEM PROJECT FOR ENVIRONMENTAL
COST RECOVERY**

Florida Power & Light Company ("FPL"), pursuant to Section 366.8255, Florida Statutes and prior orders of the Commission, hereby petitions this Commission for approval of the FPL Manatee Temporary Heating System Project (the "MTHS Project") at FPL's Riviera Plant ("PRV") as an "environmental compliance activity," such that prudent MTHS Project costs incurred after the date of this Petition may be recovered as "environmental compliance costs" through the Environmental Cost Recovery Clause ("ECRC"). In support of this Petition, FPL states as follows:

1. FPL is a public utility subject to the regulatory jurisdiction of the Commission under Chapter 366, Florida Statutes. The Company's principal offices are located at 700 Universe Boulevard, Juno Beach, Florida.

2. All notices, pleadings and other communications required to be served on the petitioner should be directed to:

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3. Section 366.8255 authorizes the Commission to review and approve recovery through the ECRC of prudently incurred "environmental compliance costs," which are defined as "costs or expenses incurred by an electric utility in complying with environmental laws or regulations." In turn, section 366.8255 defines "environmental laws or regulations" broadly to

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include “all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment.” The Commission has adopted the following test for determining whether costs qualify for ECRC recovery:

We find that the following policy is the most appropriate way to implement the intent of the environmental cost recovery statute:

Upon petition, we shall allow the recovery of costs associated with an environmental compliance activity through the environmental cost recovery factor if:

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.

Order No. PSC-94-0044-FOF-EI, Docket No. 930613-EI, dated January 12, 1994, at 6-7.

4. As explained below and in the testimony FPL witness LaBauve, which is incorporated by reference herein, the MTHS Project is being undertaken in order to comply with “environmental laws or regulations” and meets the Commission’s three-part test for ECRC cost recovery.

5. The purpose of the MTHS Project is to provide a warm water habitat for endangered manatees at PRV and thus help FPL remain in compliance with FPL’s PRV Manatee Protection Plan (MPP), which is Specific Condition 13 to the Industrial Wastewater Facility (IWWF) Permit Number FL00001546 issued by the Florida Department of Environmental Protection (FDEP) for the Riviera Plant on February 10, 2004. As explained below, the effect of the MPP will be triggered by the removal of the existing conventional steam units at PRV from active service, which requires

active measures to comply with the MPP that have never previously been required or even contemplated.

6. PRV is an electric generating station in Riviera Beach, Palm Beach County, Florida, consisting of two oil and/or natural gas fired nominal 300MW units. PRV presently has a once-through cooling water system that uses water to condense steam that is generated in the production of energy. A portion of the once-through cooling water discharge provides warm water to the manatee embayment area. The remainder of the once-through cooling water is discharged approximately 1900 feet from the plant into the Lake Worth Lagoon.

7. PRV's warm water discharge provides a safe refuge for endangered manatees. Manatees are known to inhabit the Lake Worth Lagoon year-round and congregate at the PRV embayment area during colder temperatures because of the warm water discharge described previously. During aerial surveys conducted by both FPL and the United States Fish and Wildlife Service ("FWS"), as many as 454 manatees have been observed near PRV. The MPP requires the maintenance of a minimum water temperature in the area of the once-through cooling water discharge in order to provide a *continual safe refuge for manatees*. Compliance with the IWWF and MPP is a condition to the operation of PRV.

8. On September 12, 2008, FPL received a determination of need from this Commission to undertake a major Modernization Project at PRV (the "Modernization Project"), which will convert the existing conventional steam units into a highly efficient, clean-burning, gas-fired combined cycle unit, to be named the Riviera Beach Next Generation Clean Energy Center (RBEC). Implementing the Modernization Project will require that the existing units be dismantled and substantially rebuilt. During this construction period, the units will not be available to provide warm water for compliance with the MPP.

9. The initial projected activity under the MTHS Project implements the requirements of the MPP to maintain a minimum water temperature in the embayment area to provide a safe habitat for manatees during the construction period for the Modernization Project. The proposed activity under the MTHS Project is to install an electric heating system in order to provide a temporary “manatee refuge” by discharging warm water into the manatee embayment area when necessary, until PRV is converted to the RBEC. Primary activities integral to this MTHS Project include installing the pipes, pumps, and heater, interconnection to the FPL power system, and testing and operating the system.

10. The current schedule for the Modernization Project requires that the existing conventional steam units be taken out of service no later than 2011 to begin the conversion. However, FPL has projected that it can save approximately \$10 million in O&M costs for PRV during 2009 and 2010 by keeping the existing units in inactive reserve status until they are dismantled for the Modernization Project, and accelerating the installation of the manatee heating system. Projected savings for FPL and its customers by keeping the existing units in inactive reserve is more than double the entire cost of the MTHS Project. Additionally, the temporary heating system is less costly to operate in comparison to operating PRV out of economic dispatch just for water heating, allows FPL to respond quicker to weather threats to manatees, and requires less fuel and lower O&M costs to accomplish the same objective as operating PRV for purposes of warming the water. It can thus be reasonably concluded that the temporary heating system is the better alternative for FPL to pursue, resulting in the most cost effective means to produce warm water for the manatees and the least burdensome to FPL’s customers.

11. There are specific “environmental laws or regulations” requiring the MTHS Projected activities at PRV:

a. IWWP Specific Condition 13 states the following:

13. The permittee shall continue compliance with the facility's Manatee Protection Plan approved by the Department on December 21, 2000.

A copy of the IWWF for PRV is attached as Exhibit RRL-2 to the testimony of FPL witness LaBauve.

b. The MPP states, in pertinent part:

1. This Manatee Protection Plan will be in effect during the term of the permit. In order for the plant's warm water discharge to provide a safe, warm water refuge for the manatees and to comply with Specific Condition 12, FPL will take the following actions:

...

b) From November 15 through March 31 each year, to coincide with the time of greatest manatee abundance, if the ambient water temperature falls below 61°F., the FPL Riviera power plant shall endeavor to operate in a manner that maintains the water temperature in an adequate portion of the Unit 1 and 2 "discharge area" at or above 68°F., until such time as the ambient water temperature reaches 61°F., unless otherwise authorized by BPSM and the USFWS, or unless safety or reliability of the plant would be compromised. The main method for heating this area will be the "manatee siphons" that discharge heated effluent from the Unit 3 and 4 seal wells to the abandoned Unit 1 and 2 discharge area.

A copy of the MPP for PRV is attached as Exhibit RRL-3 to the testimony of FPL witness LaBauve. Note that the MPP refers to "Specific Condition 12," which has been renumbered as Specific Condition 13 in the current IWWF permit.

c. The Lake Worth Lagoon is considered by the FWS as Critical Habitat for the manatee (42 FR 47840). The manatee is also protected by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361, et. seq.), and the Endangered Species Act of 1973 (16 U.S.C. 1531, et.seq.). On June 24, 2008, the FWS provided comments in a letter to FPL regarding the Modernization Project. In those comments, the FWS noted that the Marine Mammal Protection Act and the Endangered Species Act do not permit incidental takes. The FWS indicated that measures would be necessary to protect the manatees from cold water impacts during the transition period of the

Modernization Project. A copy of the FWS letter to FPL is attached as Exhibit RRL-4 to the testimony of FPL witness LaBauve.

12. FPL plans to place the temporary heating system into service by early November 2009. Due to the prescribed annual period for providing warm water and the time required to design, purchase, and install the heating system and perform integral activities such as making the interconnection to the FPL power system, the MTHS Project will begin immediately. Upon the commercial operation of the RBEC (scheduled for 2014), FPL expects to dismantle and remove the heating system because it will no longer be needed. The modernized combined cycle unit will provide a regular source of warm water to comply with the MPP.

13. Estimated capital costs for purchasing the temporary heating system in 2009 are \$4.7 million. These estimates include expenditures for the equipment, design and engineering of the system, labor for installation, and interconnection to the FPL power system. FPL has projected approximately \$234,000 in amortization expense and return on investment associated with the MTHS Project during the remainder of 2009. FPL does not project that it will incur O&M costs for the MTHS Project in 2009. After installation and commissioning is complete, FPL expects to incur O&M costs associated with materials and supplies necessary to maintain the heating system. FPL's annual O&M estimates for 2010 – 2014 are \$50,000. These projected O&M costs do not include the energy costs to operate the temporary heating system. FPL cannot predict how often the system will operate, but does not expect the energy costs for operating the system to be significant. Whatever energy costs are incurred will not be recovered through the ECRC.

14. Additional activities may be required for compliance with the IWWF and MPP in the future, but FPL is not aware of any such requirements at this time.

15. The MTHS Project satisfies the three-part test for ECRC eligibility set forth in Order No. PSC-94-0044-FOF-EI. All MTHS Project costs will be incurred after April 13, 1993. The

conditions triggering the activities required by the IWWF and MPP did not occur at the time of the last test year upon which FPL's rates are based. There are no costs for the activities required by the MTHS Project included in FPL's 2010 test year Minimum Filing Requirements (MFRs). FPL is not presently recovering MTHS Project costs through base rates or any other recovery mechanism.

16. On September 12, 2008, the Commission also granted need for the modernization of FPL's Cape Canaveral Plant. The permits for the Cape Canaveral Plant have similar requirements for maintaining water temperatures to protect manatees. FPL expects to make a decision on how to provide temporary water heating at the Cape Canaveral Plant this Fall. FPL may petition to amend the MTHS Project to include a manatee water heating system at the Cape Canaveral Plant at the appropriate time.

WHEREFORE, Florida Power & Light Company respectfully requests the Commission to approve the MTHS Project as an "environmental compliance activity," such that prudent MTHS Project costs incurred after the date of this Petition may be recovered through the ECRC.

Respectfully submitted,

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By: Jamarcis Rodriguez for
John T. Butler
Florida Bar No. 283479

CERTIFICATE OF SERVICE

Docket No. 090007-EI

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Petition for Approval of the Manatee Temporary Heating System Project for Environmental Cost Recovery has been furnished by hand delivery (*) or U.S. Mail on April 13, 2009, to the following:

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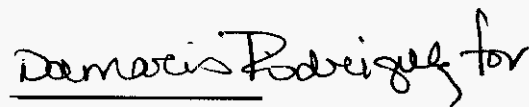
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