

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED 12/21/2017
DOCUMENT NO. 10794-2017
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20170007-EI

ENVIRONMENTAL COST
RECOVERY CLAUSE.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 8

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK

DATE: Tuesday, December 12, 2017

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS
Court Reporter and
Notary Public in and for
the State of Florida at Large

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1 P R O C E E D I N G S

2 CHAIRMAN BROWN: Moving on to Item 8.

3 (Discussion off the record.)

4 MS. MTENGA: Good morning again,
5 Commissioners.

6 CHAIRMAN BROWN: Good morning.

7 MS. MTENGA: Moniaishi Mtenga with Commission
8 staff.

9 Item No. 8 is staff's recommendation for
10 post-hearing decision for the recovery of costs for
11 FPL's Turkey Point cooling canal monitoring plan
12 for cost recovery through the Environmental Cost
13 Recovery Clause.

14 The parties argued two main points in this
15 docket. Issues 10A through 10C are arguing
16 prudence and reasonableness of disputed costs, and
17 10D is arguing how should the costs be allocated.

18 The intervenors argue that FPL was imprudent
19 in its decision-making regarding the Turkey Point
20 cooling canal, regardless of prompting from its
21 environmental regulators and, therefore, should not
22 be allowed to recover the disputed costs.

23 Staff recommends that the costs were prudent
24 because the evidence in the record demonstrates
25 that FPL adhered to its monitoring requirements

1 while under the continuous over- -- oversight of
2 local and state environmental regulators.

3 No party provided evidence that FPL
4 intentionally withheld or submitted false data to
5 environmental regulators or the Commission.
6 Therefore, staff recommends that the consent order
7 and the consent agreements should be categorized as
8 required environmental regulation and the disputed
9 costs should be recovered.

10 For the allocation issue, both FPL and OPC's
11 witnesses relied upon models from Tetra Tech to
12 determine allocation. OPC's witness truncated the
13 analysis to arrive at a different allocation
14 percentage.

15 Staff recommends that OPC's proposal is
16 against generally-accepted accounting principles
17 and that the allocation method proposed by FPL is
18 appropriate.

19 We received approximately 800 customer
20 comments in this docket. And staff is available
21 for any questions.

22 CHAIRMAN BROWN: Thank you. And thank you for
23 your work on this. I know this has been a long
24 time coming and it's a very difficult issue. So,
25 thank you for your work on this.

1 MS. MTENGA: You're welcome.

2 CHAIRMAN BROWN: And it's a difficult decision
3 for us as well.

4 Commissioners, I'm going to open up the floor
5 on all issues.

6 Commissioner Clark.

7 COMMISSIONER CLARK: I'll take the first stab
8 with just a couple of general comments.

9 First of all, I want to echo your sentiments
10 towards staff. They have answered a lot of our
11 questions over the last several weeks regarding the
12 situation. I think they've done an outstanding
13 job. I want to thank you for your dedication and
14 continued efforts here.

15 This is a -- a tough one and I -- it's kind of
16 getting in very early on this. I see three real
17 key things: Prudence, legal requirements, and the
18 fact that it's not eligible for recovery through
19 any other mechanism.

20 I listened to the testimony and -- and reread
21 the testimony over the last week. And it's really
22 hard for me to say that anyone could have actually
23 seen this coming.

24 Based on that, I just want to reiterate that I
25 think that there were a lot of things that went on

1 in the very beginning with the different agencies
2 that were involved that made this an even more-
3 complex issue.

4 When you bring in the water management, EPA,
5 DEP, and -- and I don't think anybody really saw
6 what was going to happen, what the possible
7 outcomes of this were going to be.

8 So, with that, Madam Chairman, I am -- I'm
9 supportive of staff recommendation.

10 CHAIRMAN BROWN: Thank you, Commissioner
11 Clark.

12 Commissioner Polmann.

13 COMMISSIONER POLMANN: Thank you, Madam
14 Chairman.

15 In essence, I would support or agree with
16 Commissioner Clark's comments. It's apparent to
17 everyone who's paid any attention to this that a
18 tremendous amount of work has -- has been done
19 here. We had an enormous volume of technical
20 material, direct testimony, pre-hearing testimony,
21 and rebuttal testimony.

22 We held the technical hearing; spent two days,
23 over 15 hours, on the record here in this room;
24 most of that dissecting the material that was
25 prepared ahead of time. Personally, I spent over

1 three hours in this chair questioning the
2 witnesses, make sure that --

3 CHAIRMAN BROWN: It was only three hours?

4 COMMISSIONER POLMANN: Over three. I'm sure
5 it was four, five, six. It seemed like --

6 CHAIRMAN BROWN: I think it was more than
7 that.

8 COMMISSIONER POLMANN: I was being kind to
9 myself --

10 CHAIRMAN BROWN: Yes.

11 (Laughter.)

12 COMMISSIONER POLMANN: -- here, today. I was
13 not necessarily kind to y'all. I'm grateful for
14 your indulgence.

15 But my intention there was to -- was to make
16 sure that we had the information necessary to come
17 to a decision to fulfill our job, which was in
18 pursuit of the full set of knowledge so that we
19 could meet our obligation to act in the public
20 interest. And those questions were not just for
21 me. I mean, it was for the staff. It was -- it
22 was for -- for the record so that we had that.

23 And in addition, I had numerous meetings with
24 my staff, pouring over the material; and with
25 technical staff, understanding what was in the

1 record.

2 With the amount of time that I've invested in
3 this particular docket and after reviewing the
4 records, we could sit here all day and -- and talk
5 about it again, but we've all looked at it, as --
6 as Commissioner Clark just said.

7 And I'm satisfied that staff has done their
8 job. And there's a lot of controversy over this
9 and -- and many people out -- outside, and the
10 intervenors -- they have their opinions, but I
11 think we've done our work. I know we've done our
12 work. And I'm satisfied that the staff has put
13 forth the effort that's appropriate, and I can
14 support it.

15 Now, we could sit here and ask each other
16 questions --

17 CHAIRMAN BROWN: And that's all we're limited
18 to.

19 COMMISSIONER POLMANN: And that's what --
20 that's what I'm saying. We could ask each other
21 questions and make sure that -- that each of us has
22 done our work, but I know we have.

23 And I have experience in -- in work elsewhere,
24 and I know what it means to deal with regulatory
25 agencies, and I understand what it means to comply

1 with the regulatory requirements. So, I know what
2 the utility was up against.

3 And it's regrettable that some people do not
4 understand that. They don't have that experience,
5 but I do. And I know what I've looked at. And I'm
6 prepared to act on that.

7 Thank you, Madam Chairman.

8 CHAIRMAN BROWN: Thank you, Commissioner
9 Polmann.

10 Commissioner Brisé.

11 COMMISSIONER BRISÉ: Thank you, Madam Chair.

12 And I think I join my colleagues in
13 recognizing the complexity of this issue and the
14 fact that these issues have a long history, and
15 there's a lot of things that have changed in terms
16 of how the state interacts with these issues. And
17 I -- I appreciate the work the staff has done in --
18 in preparation and through that whole process.

19 So, I have a -- a question regarding that
20 outstanding \$1.5 million in 10A. And it is my
21 understanding that the utilities' witness didn't
22 characterize the 1.5 million as a penalty; isn't
23 that correct?

24 MS. MTENGA: Yeah, that's correct. They
25 didn't characterize it.

1 COMMISSIONER BRISÉ: And I don't think any one
2 of the intervenors asserted that it was anything
3 different than that, right?

4 MS. MTENGA: No, I don't recall. No.

5 COMMISSIONER BRISÉ: Right. Okay. I did
6 recall hearing something similar to a donation --
7 Mr. Moyle addressing it as a -- a donation.

8 And we recognize, per the -- per the
9 recommendation, that it is not recoverable to --
10 through the ECRC, right?

11 MS. MTENGA: Correct.

12 COMMISSIONER BRISÉ: Okay. Now, does that
13 preclude the company for seeking recovery for the
14 1.5 million through another proceeding such as a --
15 a base-rate case or anything like that?

16 MR. MURPHY: We would have to see how it was
17 brought before us, but I -- theoretically, they
18 could try to recover it in a base rate, but it's --
19 it's done for the ECRC.

20 COMMISSIONER BRISÉ: Okay. I just wanted to
21 make sure that, you know, if -- if -- if they felt
22 that, you know, they needed another way to attempt
23 to recover this, that they could do that. I'm not
24 saying that this Commission would agree, but that
25 there would be an option available to them.

1 MR. MURPHY: Yes, sir.

2 COMMISSIONER BRISÉ: Okay.

3 CHAIRMAN BROWN: Thank you.

4 Any other questions or comments? All right.

5 COMMISSIONER GRAHAM: Move staff.

6 CHAIRMAN BROWN: Is there a second?

7 COMMISSIONER BRISÉ: Second.

8 CHAIRMAN BROWN: Any further discussion?

9 All those in favor, signify by saying aye.

10 (Chorus of ayes.)

11 CHAIRMAN BROWN: Motion passes unanimously.

12 Thank you.

13 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
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same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED THIS 21st day of December, 2017.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021