

In re: Petition for approval of environmental cost recovery of St. Lucie Turtle Net Project for period of 4/15/02 through 12/31/02 by Florida Power & Light Company.

DOCKET NO. 020648-EI
ORDER NO. PSC-02-1421-PAA-EI
ISSUED: October 17, 2002

The following Commissioners participated in the disposition of this matter:

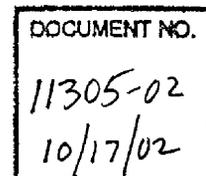
LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR COST RECOVERY THROUGH THE ENVIRONMENTAL COST RECOVERY CLAUSE

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On June 19, 2002, Florida Power & Light Company ("FPL" or "Company") petitioned for approval of the Company's St. Lucie Turtle Net Project as a new activity for cost recovery through the Environmental Cost Recovery Clause ("ECRC"). The project is intended to protect sea turtles from entering the cooling water intake wells of the St. Lucie facility. Five species of sea turtles are present in the area and all are listed as either endangered or threatened under the Endangered Species Act ("ESA").

The Turtle Net Project consists of: 1) installing a new net and support structures across the cooling water intake canal for the St. Lucie facility; 2) conducting a bottom survey of the intake canal; 3) maintenance dredging the canal in the vicinity of the net; and, 4) installing a sand pump in the vicinity of the net.



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FPL has been subject to a stipulation that prohibited cost recovery through the ECRC for the past three years. The stipulation reads:

For 2002, FPL will not be allowed to recover any costs through the environmental cost recovery docket. FPL may, however, petition to recover in 2003 prudent environmental compliance costs incurred after the expiration of the three-year term of this Stipulation and Settlement in 2002. FPL is authorized to recover these prudently incurred environmental costs in 2003. Interest, however, will not accrue on these expenses.

Order No. PSC-01-2463-FOF-EI issued in Docket No. 010007-EI (addressing the interpretation of a stipulation attached to Order No. PSC-99-0519-AS-EI in Docket Number 990067-EI). The stipulation expired on April 15, 2002. Order No. PSC-99-0519-AS-EI issued in Docket No. 990067-EI. FPL is not seeking to recover any costs incurred prior to April 15, 2002.

Section 366.8255, Florida Statutes, the ECRC, gives us authority to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. Electric utilities may petition the Commission to recover projected environmental compliance costs required by environmental laws or regulations. Section 366.8255(2), Florida Statutes. Environmental laws or regulations 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." Section 366.8255(1)(c), Florida Statutes. If the utility's petition for cost recovery through this clause is approved, only prudently incurred costs can be recovered. Section 366.8255(2), Florida Statutes.

The Nuclear Regulatory Commission ("NRC") issued a license to FPL to operate the St. Lucie Unit 2, a nuclear power plant. Environmental requirements associated with non-radiological activities are contained in Appendix B to the license. Appendix B requires the following activities relevant to FPL's Petition:

4.2.2.2 Terms and Conditions of the Incidental Take Statement

The following terms and conditions are established to monitor the level of take and to minimize the adverse impacts of entrapment and the possibility of lethal takes:

1) FPL shall install and maintain a five inch (12.7 cm) mesh barrier net across the intake canal, east of the previously existing eight inch mesh barrier net. The new net shall receive regular inspection, maintenance, and repair on at least a quarterly basis. The regular maintenance schedule notwithstanding, any holes or damage to the net that are discovered shall be promptly repaired to prevent the passage of turtles through the barrier net.

2) The existing eight inch mesh barrier net shall be retained to serve as a backup to the new five inch mesh barrier net, which may be lowered occasionally because of fouling and water flow problems. The eight (8) inch mesh net shall receive regular inspection, maintenance, and repair on at least a quarterly basis. The regular maintenance schedule notwithstanding, any holes or damage to the net that are discovered shall be promptly repaired to prevent the passage of turtles through the barrier net.

The license does not require FPL to conduct a bottom survey, maintenance dredge the canal, or install a sand pump in the vicinity of the net. FPL contends that the maintenance dredging and the sand pump are needed to make the 5 inch mesh net operate more effectively.

It should be noted that on August 28, 2002, the NRC license was modified, in part due to sea turtle considerations. The above stated requirements were not changed; however, the Appendix B attached to the Petition and the Appendix B currently attached to the license are now different documents. All references to Appendix B in this recommendation refer to the modified document.

The capital cost of the work proposed by FPL is estimated at \$694,142 (system). All of the capitalized activities were competitively bid except for the canal bottom survey which is estimated to be \$9,000 (system). The majority of the capital costs, \$400,000 (system), would be incurred for maintenance dredging.

There are projected annual O&M costs of \$24,000 (system) for divers to conduct maintenance work and quarterly inspections of the nets. Costs incurred for diving are typical ongoing O&M costs being recovered by FPL's current base rates and therefore are not appropriate for recovery through the ECRC. FPL began installation of the net in June 2002. The estimated Turtle Net Project in-service date is September 2002.

Appendix B qualifies as an environmental law or regulation, pursuant to Section 366.8255(1)(c), Florida Statutes, because it is part of a federal license.

FPL's Petition explains that the five inch mesh net currently in place stretches and bows when influxes of seaweed and jellyfish are large. When the net becomes deformed, it traps turtles and can kill them if they aren't found in time. In its Petition, FPL proposes to install a new net, made of a different material that is intended to correct the problem of stretching and bowing. FPL wants to maintenance dredge to increase the cross-sectional area of the canal, which will slow water velocity. FPL believes that slower water velocity will further reduce the likelihood of the net becoming deformed. The sand pump will help to maintain the dimensions achieved from maintenance dredging.

FPL has exceeded the maximum mortality limit for sea turtles in the NRC license at least twice since 1995. Although dredging is not expressly required by the license, FPL is doing the dredging to reduce water velocity through the net so that turtle mortality is reduced.

FPL asserts that installing the new five inch mesh net alone does not enable them to meet the turtle mortality limit. FPL contracted with a consulting firm to determine the best way to reduce velocities at the site and the firm determined that maintenance dredging and the sand pump were needed. In addition,

FPL explains that it could not properly install the net unless it dredged. Installation of the sand pump is expected to reduce the need for maintenance dredging. FPL's proposed remedial activities are intended to avoid failures similar to those that occurred in the past.

The NRC license leaves almost all of the details of net design and installation up to FPL. For example, the license does not require FPL to install a new net made out of new material, but FPL is doing so. The license does not require tensioning towers to support the net such that it can drop to the bottom of the canal quickly when it becomes fouled with jellyfish and seaweed. FPL is doing this as well. These actions were undertaken to enhance the functioning of the net. These costs are recoverable through the ECRC even though they are not expressly required by the license. By requiring the net, and no other engineering details, the license impliedly requires that FPL take whatever measures are necessary to make the net work properly.

We find that, conducting a bottom survey, maintenance dredging, and installing a sand pump is, in this particular case, within the scope of work authorized by the license because it is needed to ensure that the net functions properly. For this reason, FPL's proposed activities, excluding diving, are reasonable and necessary to achieve compliance and to maintain compliance with a new environmental requirement as defined by Section 366.8255, Florida Statutes. Therefore, we find that costs prudently incurred to implement FPL's proposed Turtle Net Project which are incremental to FPL's base rates qualify for recovery through the ECRC.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power and Light's Petition for Approval of Environmental Cost Recovery of St. Lucie Turtle Net Project for the Period April 15, 2002, Through December 31, 2002, is granted in part and denied in part. It is further

ORDERED that the O&M costs for divers to maintain the nets and conduct quarterly inspections of the nets shall not be recovered through the Environmental Cost Recovery Clause. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th Day of October, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 7, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.