

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Glades Power Park Units 1 and 2 electrical
power plants in Glades County, by Florida
Power & Light Company.

DOCKET NO. 070098-EI
ORDER NO. PSC-07-0232-PCO-EI
ISSUED: March 14, 2007

ORDER BIFURCATING THE PROCEEDING

On February 1, 2007, Florida Power & Light Company (FPL) filed a petition for determination of need for Glades Power Park Units 1 and 2 electrical coal-fired power plants in Glades County, pursuant to Section 403.519, Florida Statutes. Consistent with the time frames established in Rule 25-22.0080, Florida Administrative Code,¹ Order No. PSC-07-0120-PCO-EI was issued in the instant docket on February 9, 2007, establishing the controlling dates for this docket, including an administrative hearing on April 16-17, 2007.

Also included in FPL's Petition was a request that the Commission, in its final order granting a determination of need for the Project: (1) find that FPL's decision to construct the proposed project is prudent based on the estimated installed costs and the associated facilities as well as the other relevant assumptions; (2) affirm that costs that are imposed pursuant to current or future environmental legislation or regulatory requirements will be deemed prudent and will be recovered on an incremental basis through the Environmental Cost Recovery Clause ("ECRC"), or similar means; and (3) establish an annual review process, pursuant to which the costs and projections for the project would be reviewed on an annual basis until the project is completed.

FPL's petition invokes Commission jurisdiction under Section 403.519, Florida Statutes, to determine the need for the proposed electrical power plants in Glades County. The need determination is required by the Florida Electrical Power Plant Siting Act, and as such, serves as the Commission's report to the Department of Environmental Protection as required by Section 403.507(4), Florida Statutes. Need determinations filed under Section 403.519, Florida Statutes, are limited in scope by the statute and are expedited proceedings.

Need proceedings are, by their nature, designed to make a snap-shot determination of whether the proposed plant is the most cost-effective alternative available to the applicant, consistent with the criteria set forth in Section 403.519, Florida Statutes. However, FPL's petition proposes to considerably expand the scope of review normally taken in need proceedings.

¹ Rule 25-22.080(2), Florida Administrative Code, provides that the Commission shall set a date for hearing, which shall be within 90 days of receipt of the petition to determine the need for a proposed electrical power plant, and that the matter will be placed before the Commission on an agenda which will permit a decision no later than 135 days from the date of receiving the petition.

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FPSC-COMMISSION CLERK

FPL specifically seeks the following additional relief:

FPL requests that the Commission determine that FPL's decision to undertake the proposed Project is reasonable and prudent, and that the Commission establish an annual review process by which the prudence of actual costs incurred and the continued feasibility of the plant would be determined. Consistent with basic principles of utility regulation under which utilities are permitted recovery of prudently incurred costs, FPL also requests that the Commission in its order affirm that prudently incurred costs of the Project will be recovered whether or not the Project is completed in order to help maintain a more favorable credit risk profile for the Company and, all other things equal, help offset some of the negative impact that such a large, complex and uncertain project would otherwise have.

By requesting cost recovery through the ECRC, FPL also invokes the Commission's ratemaking jurisdiction under Chapter 366, Florida Statutes. However, the kind of prudence review FPL requests above is that which is generally undertaken in base rate proceedings under Section 366.06, not Section 403.519, Florida Statutes. The ECRC, which is governed by Section 366.8255, Florida Statutes, is an ongoing proceeding with an annual hearing held every November. Each investor-owned electric utility presents its historical, actual, and projected environmental recovery costs for the Commission to establish an annual cost recovery factor to be charged to ratepayers. The ECRC is not an expedited proceeding, but rather one of continuing and long-term duration. FPL does not ask that its proposed cost recovery for its project be heard in the normal course of the ECRC proceeding, but rather in the expedited proceeding for the need determination. Similarly, determinations of whether a utility's costs have been prudently incurred are normally considered in base rate proceedings, which are subject to a different set of statutory time frames and considerations. Finally, I note that FPL's request that the Commission establish an annual review process by which the prudence of actual costs incurred and the continued feasibility of the plant would be determined appears to be a matter of first impression before the Commission for coal plants.

Rate and cost recovery proceedings are intensive and potentially long-term processes, involving audits, review of costs, and extensive discovery, all of which may delay the determination of need. There have been no prior instances in which the Commission has established an annual review process to determine the prudence of actual costs and the continued feasibility of a proposed electric plant, such as FPL is requesting in this proceeding. The need determination is an expedited proceeding in which the Commission must make specific, statutorily-specific findings in a timely manner. The additional requests for relief made by FPL considerably expand the scope of the need proceeding. Furthermore, the time frames established by Rule 25-22.0080, Florida Administrative Code, do not afford the parties or this Commission sufficient time to give these additional cost recovery matters the due weight and consideration they merit, without also causing an unnecessary delay of the need proceeding.

The Prehearing Officer has authority pursuant to Rule 28-106.211, Florida Administrative Code, to issue orders necessary, among other things, to prevent delay and

promote the just, speedy and inexpensive determination of all aspects of the case, including bifurcating this proceeding. Upon consideration, I find that bifurcating the proceeding will prevent delay of the need determination portion of FPL's request, and promote the just, speedy and inexpensive determination of all aspects of the case. The issue of the need for the construction of Glades Power Park Units 1 and 2 electrical power plants will be heard at the April 16-17, 2007, evidentiary proceeding. The issues of prudence of construction, recovery of environmental costs through the ECRC, and establishment of an annual review process will be heard by the Commission at a later date in a separate docket.

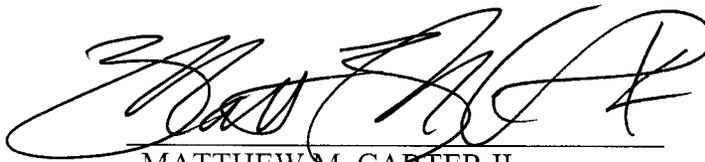
Based on the foregoing, it is

ORDERED by Matthew M. Carter II, as Prehearing Officer, that the issues of prudence of construction, recovery of environmental costs through the ECRC, and establishment of an annual review process will not be reviewed in the instant docket. It is further

ORDERED that Florida Power & Light Company's petition for determination of need for Glades Power Park Units 1 and 2 electrical power plants in Glades County will be heard, as scheduled on April 16-17, 2007. It is further

ORDERED that the issues of prudence of construction, recovery of environmental costs through the ECRC, and establishment of an annual review process will be set for a later date.

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 14th day of March, 2007.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(SEAL)

JSB

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.