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Sent: Tuesday, July 17, 2007 4:53 PM
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Subject: Electronic Filing: Florida Power & Light Company's Petition for Authority to Use Deferral Accounting and for the creation of a Regulatory Asset.
Attachments: Petition for Regulatory Asset.doc; Appendix A-Cost Summary Table.xls; Appendix B-Affidavit of K. Michale Davis.pdf

070432-EI

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No.: _____

c. Document being filed on behalf of Florida Power & Light Company

d. There are twelve pages.

e. The document attached for electronic filing is Florida Power & Light Company's Petition for Authority to Use Deferral Accounting and for the creation of a Regulatory Asset.

(See attached file: Petition for Regulatory Asset.doc)(See attached file: Appendix A-Cost Summary Table.xls)(See attached file: Appendix B-Affidavit of K. Michale Davis.pdf)

Thank you for your assistance.

Nanci NeSmith
 Florida Power & Light Company

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's)
petition for authority to use deferral)
accounting and for the creation of a)
regulatory asset)

Docket No: _____

Filed: July 17, 2007

**PETITION OF FLORIDA POWER & LIGHT COMPANY
FOR AUTHORITY TO USE DEFERRAL ACCOUNTING
AND FOR THE CREATION OF A REGULATORY ASSET**

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company") and files this petition for entry of an order, on an expeditious basis, granting FPL authority to use deferral accounting and for the creation of a regulatory asset for its prudently incurred preconstruction costs associated with development of its clean coal project, and in support states:

1. FPL is a public utility subject to the jurisdiction of the Florida Public Service Commission ("Commission") under Chapter 366, Florida Statutes (2006). FPL's General Offices are located at 9250 West Flagler Street, Miami, FL 33174.

2. Any pleading, motion, notice, order or other document required to be served upon the petitioner or filed by any party to this proceeding should be served upon the following individuals:

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3. The Florida Legislature and this Commission have instructed utilities in Florida, and FPL specifically, to take steps to maintain fuel diversity in meeting customers' energy needs. See, e.g., Section 403.519, Florida Statutes (amended in 2006 by SB 888 requiring the Commission to explicitly take fuel diversity into consideration as a criterion of approval in need determination cases); Order No. PSC-06-0555-FOF-EI, Docket No. 060225-EI (issued June 28, 2006) (granting FPL's petition for determination of need for two natural gas-fired, combined cycle generating units (West County Units 1 and 2) on the condition that FPL file a petition with the Commission for an exemption from Rule 25-22.082, Florida Administrative Code (the "Bid Rule"), with respect to its proposed advanced technology coal plant, "thereby helping to expedite the benefits of fuel diversity to FPL's customers, including projected reductions in the level and volatility of fuel costs"); Order No. PSC-05-0084-FOF-EI, Docket No. 050001-EI (issued Jan. 24, 2005) (approving new unit power sales ("UPS") agreements between FPL and Southern Company for cost recovery purposes despite concerns about cost-effectiveness relative to a self-build option, in part, because the fuel diversity benefits of the contracts outweighed such concerns and a "premium" should be paid for the types of benefits provided by the new UPS agreements).¹ Indeed, in Order No. PSC-06-0779-PAA-EI, issued September 19, 2006 in Docket No. 060426-EI, the Commission granted FPL an exemption from the Bid Rule with respect to FPL's proposal to construct an ultra-supercritical pulverized coal generating plant and stated as follows:

¹ See also Order No. PSC-06-0674-FOF-EC, Docket No. 060220-EC (issued Aug. 6, 2006) (granting Seminole Electric Cooperative's petition for determination of need for a 750 megawatt supercritical pulverized coal electrical power plant in Putnam County); Order No. PSC-05-0699-FOF-EI, Docket No. 041393-EI (issued June 28, 2005) (approving UPS agreements between Progress Energy Florida and Southern Company and finding that potential long-term costs are alleviated by important non-price benefits of the contracts including fuel diversity due to the 74 megawatts of coal capacity under the agreements).

the exemption will serve the public welfare and will likely result in reliability and cost benefits to the utility's general body of ratepayers. FPL should move forward with the construction of the generating units as expeditiously as possible and has stated that a need determination filing could be made, for both units, no later than May 1, 2007.

See Order No. PSC-06-0779-PAA-EI, pp. 5-6.

4. Further, recent Commission reviews of ten-year site plans filed by Florida's electric utilities over the past several years have directed utilities to move forward with plans to construct solid fuel generation, such as clean coal plants, in an effort to plan for a balanced fuel supply. For example, in the December 2006 *Review of 2006 Ten-Year Site Plans*, the Commission devoted a chapter to fuel diversity and stated, in part, as follows:

Utilities should continue to increase the supply of solid fuel generation, including clean coal technologies and nuclear, in Florida. Planned coal-fired generating units in 2012 and 2013 are a reasonable step toward fuel diversity. ...

See *Review of 2006 Ten-Year Site Plans*, p. 2, Florida Public Service Commission (December 2006). The 2006 report went on to state:

Following the Commission's direction, Florida's utilities have taken actions to move towards greater fuel diversity in the state's generation mix. The Ten-Year Site Plans contain ten proposed solid fuel units scheduled to enter service in 2010 and beyond. Two of these units were approved by the Commission during 2006. The Commission granted FPL a waiver of the RFP requirement for its coal units proposed for 2012 and 2013.

See id. pp. 14.² Similarly, in the Commission's *Review of 2005 Ten-Year Site Plans*, utilities were instructed as follows:

Florida's utilities should explore ways to accelerate the certification and construction of solid fuel plants and continue their education efforts with regard to the benefits of a [balanced fuel supply] approach to utility planning.

² See also Florida Public Service Commission News Release dated December 19, 2006 stating that "[t]he Review of 2006 Ten-Year Site Plans for Florida's Electric Utilities approved by the Florida Public Service Commission identifies the need for greater fuel diversity ... [and] [c]onstruction of additional solid fuel plants like clean coal and nuclear are also encouraged to achieve a more balanced fuel supply.")

See *A Review of Florida Electric Utility 2005 Ten-Year Site Plans*, p. 17, Florida Public Service Commission (December 2005); see also *Review of 2004 Ten-Year Site Plans*, p. 6 (“Areas of Concern”) (“[b]ased on current fuel mix and fuel price projections, Florida’s utilities should explore the feasibility of adding solid fuel generation as part of future capacity additions.”)

5. Consistent with the policy and directions expressed by the Florida Legislature and this Commission and in order to keep pace with the substantial infrastructural and energy demands of Florida’s rapidly growing population and economy, FPL undertook the necessary steps that would enable it to construct two coal-fired generation units, FPL Glades Power Park Units 1 and 2 electrical power plants (“FGPP”) in Glades County, in order to supply its customers’ needs beginning in about 2013. Such steps included receiving an exemption from the Bid Rule, filing a need determination petition and supporting testimony of 14 witnesses with this Commission on February 1, 2007, initiating the site certification process under the Florida Electrical Power Plant Siting Act (“PPSA”), and undertaking preconstruction activities including designing the plant and negotiating and entering into contractual agreements necessary to secure land, rights of way, and major equipment, as well as other design, development and engineering needs for the project. A number of parties intervened in the Commission need determination proceeding. FPL responded to discovery, filed rebuttal testimony and participated in a 5-day hearing before the Commission. After the conclusion of the hearing, the Commission Staff’s primary recommendation to the Commission was that FPL’s petition for determination of need should be granted in order to maintain fuel diversity on FPL’s system. On June 5, 2007, the Commission voted to deny FPL’s petition on grounds it was not the most cost-effective alternative “given the uncertainty of present fuel prices, capital costs, and current market and

regulatory factors.” See Order No. PSC-07-0557-FOF-EI, p. 4, Docket No. 070098-EI (issued July 2, 2007).

6. Consistent with prior Commission orders and directives, in order to develop a significant fuel diverse resource option to present to the Commission for its review and to ensure that such a resource option could be placed in service on a timely basis, FPL incurred costs totaling approximately \$34.5 million (which is less than 1 percent of the total project cost) as reflected on the schedule attached to this Petition as Appendix A. These costs include option payments associated with securing land totaling approximately \$1.7 million, costs associated with obtaining necessary permits and site certification totaling \$7.6 million, progress payments and cancellation costs associated with procuring major equipment that is in high demand for coal projects throughout the world with costs totaling approximately \$17.5 million, preliminary engineering and project management costs associated with designing the unit totaling approximately \$5.3 million and \$2.4 million associated with its engineering, procurement and construction (“EPC”) contract. Appendix B contains the affidavit of FPL’s Vice President, Controller and Chief Accounting Officer, Mr. K. Michael Davis, supporting the amount of costs incurred to date including adjustments.

7. As described in the testimony of Mr. William L. Yeager, FPL’s Vice President of Engineering and Construction, filed in Docket No. 070098-EI, FPL followed a reasonable approach to contracting for power plant equipment and design and site development costs. In order to ensure the reasonableness of its FGPP costs, FPL secured firm pricing for three major pieces of equipment and the EPC, including soliciting and negotiating market-competitive agreements. Indeed, an independent consultant, Cummins & Barnard, performed an independent detailed review of FPL’s installed cost estimate for FGPP and concluded that the estimated

installed cost for FGPP was reasonable and competitive. This independent assessment was addressed in the testimony of Mr. William Damon of Cummins & Barnard in Docket No. 070098-EI. Further, as described in the testimony of Mr. David Hicks, FPL's Senior Director of Project Development, FPL's site development and permitting activities were reasonable and appropriate and FPL took the necessary steps to ensure that FGPP could be placed in service in the 2013 time frame.

8. FPL is continuing to seek ways to reduce the amount of costs that have been stranded as a result of the Commission's decision denying FPL's petition for determination of need for FGPP. Specifically, FPL is continuing to negotiate with various vendors seeking additional reductions in the termination payments associated with major equipment contracts. FPL will complete these efforts by August 31, 2007, at which time it will make a final adjustment to reduce the accrued amount by any further savings as a result of these negotiations. FPL is seeking recovery of the amount of actual costs incurred. Such amount will not exceed the \$34.5 million amount shown on Appendix A.

9. FPL took appropriate steps to mitigate costs incurred prior to receiving PPSA approval. For example, FPL secured land pursuant to option contracts rather than purchasing the needed real estate outright. Also, FPL negotiated with its boiler supplier to make an upfront cash payment for a boiler designed to meet FPL's specifications in exchange for a full rebate in the event FPL did not receive PPSA approval. FPL received this rebate in the amount of \$6.4 million. Further, FPL structured its contracts with the various equipment vendors and other suppliers in a way that minimized upfront costs, and was able to negotiate lower cancellation payments for pieces of major equipment. However, a project of this scope and scale – to date the largest power plant construction project ever to be proposed under the Florida PPSA –

necessarily entailed substantial expenditures and contract commitments in order to ensure that the project actually could be constructed on the required schedule and at the projected cost.

10. It was essential that FPL incur these preconstruction costs and enter into these contracts prior to receiving an affirmative determination of need in order to ensure that land and equipment was available at a reasonable price and to ensure that the units would be placed in service in order to meet customers' needs beginning in about 2013. Had FPL not entered into these agreements and incurred these costs prior to receiving a need determination from the Commission, the cost to FPL and customers would have dramatically increased and FPL would not have been able to ensure the units would be placed in service on a timely basis.

11. FPL is requesting that the Commission enter an order, on an expeditious basis, granting FPL deferred accounting treatment and authorizing the recovery of these previously incurred costs. FPL requests that it be authorized to defer its prudently incurred preconstruction costs as a regulatory asset in account number 182.3, Other Regulatory Assets, until the next rate proceeding with amortization over a five-year period beginning when new rates are implemented.³ Such an order will allow FPL to record these costs as a regulatory asset in conformance with Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation.

12. It is appropriate and consistent with Commission precedent for the Commission to authorize deferred accounting treatment for FPL's prudently incurred preconstruction costs with amortization of these amounts over a five-year period when base rates are re-set. For example,

³ FPL's present electric base rates have been in effect since January 1, 2006 pursuant to Commission Order No. PSC-05-0902-S-EI, issued September 14, 2005 in Docket No. 050045-EI and 050188-EI, in which the Commission approved the stipulation and settlement agreement that governs FPL's base rates until December 31, 2009 or until new base rates and charges become effective by order of the Commission.

in 2004, the Commission authorized deferred accounting treatment and amortization over a five-year period beginning January 1, 2006 (when new base rates were set) for \$38.3 million in incremental nuclear security costs required by the Nuclear Regulatory Commission Design Basis Threat Order. See Order No. PSC-04-1276-FOF-EI, Docket No. 040001-EI (issued Dec. 23, 2004). Also, the Commission authorized deferred accounting treatment for \$19.3 million (plus \$2.7 million deferred depreciation and \$9.9 million AFUDC) associated with repairs and enhancements to a reservoir built to provide cooling water for FPL's Martin Units 1 and 2, as well as \$52.7 million related to steam generator repairs to Turkey Point Units 3 and 4, with recovery of such costs commencing with the effective date of new base rates in a general rate proceeding for FPL and amortized over a five-year period. See Order No. 16907, Docket Nos. 850782-EI and 850783-EI (issued Dec. 2, 1986). Similarly, here, the Commission should authorize deferred accounting treatment with amortization over a five-year period beginning when base rates are re-set for FPL's prudently incurred preconstruction costs. Such treatment will continue to provide appropriate signals to utilities that the pursuit of new resource options, particularly those that promote fuel diversity, is encouraged by this Commission and that the recovery of costs incurred in the course of such efforts will not hinge on whether a resource decision is ultimately adopted by the Commission.

13. FPL is not aware of any disputed issue of material fact. This Petition is not filed in response to any agency decision.

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission expeditiously enter an order granting this petition for authority to use deferral accounting and for the creation of a regulatory asset for FPL's prudently

incurred preconstruction costs, with approval to amortize such costs over a five-year period beginning when base rates are re-set.

Respectfully submitted,

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