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Subject: Docket No. 080009-EI; Florida Power & Light Company's Post-Hearing Brief
Attachments: FPL's Post-Hearing Brief.doc

a. Person responsible for this electronic filing:

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b. Docket No. 080009-EI; In re: Nuclear Cost Recovery Clause

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

d. There are a total of 36 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Post-Hearing Brief.

Sincerely,

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Attorney

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9/19/2008

DOCUMENT NUMBER-DATE

08869 SEP 19 08

FPSC-COMMISSION CLERK.

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Power Plant)
Cost Recovery Clause)

Docket No. 080009-EI
Filed: September 19, 2008

FLORIDA POWER & LIGHT COMPANY'S POST-HEARING BRIEF

Florida Power & Light Company ("FPL" or the "Company") hereby files with the Florida Public Service Commission (the "PSC" or the "Commission") its Post-Hearing Brief in the above-referenced docket, and states as follows¹:

INTRODUCTION AND OVERVIEW

During 2006, the Florida Legislature enacted Section 366.93, Florida Statutes, which directed the Commission to "establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing and construction of a nuclear power plant." Section 366.93(2), Fla. Stat. The Legislature stated that the purpose of such mechanisms is to "promote utility investment in nuclear ... power plants and allow for the recovery in rates of all prudently incurred costs..." *Id.* During April, 2007, as directed by the Legislature, the Commission enacted rules establishing "alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of nuclear ... plants in order to promote electric utility investment in nuclear ... plants and allow for the recovery in rates of all such prudently incurred costs." Rule 25-6.0423(1), Fla. Admin. Code.

As authorized by Section 366.93 and Rule 25-6.0423(1), FPL is requesting cost recovery via the Nuclear Power Plant Cost Recovery ("NPPCR") process for specific costs provided for in

¹ FPL takes no position on the issues identified for Progress Energy Florida in this docket. The Progress issues are numbered 3A, 3B, 5A-5C, 7A-7H, 9A-9G, 11A-11G, and 13.

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the Commission's rules with respect to eligible nuclear power plant projects for which need determinations have been granted. These projects are the Extended Power Uprate Projects at the St. Lucie and Turkey Point nuclear generating stations ("EPU Project" or "Uprate Projects") and the Turkey Point 6 & 7 new nuclear project. Each of these projects is expected to provide large amounts of base load capacity and energy on existing Company property, without using fossil fuel, and with zero greenhouse gas emissions. *See In re: Petition for determination of need for expansion of Turkey Point and St. Lucie nuclear power plants*, Docket No. 070602-EI, Order No. PSC-08-0021-FOF-EI (Fla. P.S.C. 2008); *In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant*, Docket No. 070650-EI, Order No. PSC-08-0237-FOF-EI (Fla. P.S.C. 2008).

The Turkey Point 6 & 7 project and the Uprate Projects continue to be projected to be cost-effective and in the best interests of FPL's customers. In this proceeding, FPL provided updated long-term economic analyses of these projects in satisfaction of the requirement stated in Rule 25-6.0423(5)(c)5, Florida Administrative Code, that a utility analyze and report on the continued long-term feasibility of each project. Tr. 496 (Sim). FPL's analyses utilized updated capital cost expenditure schedules and updated inputs related to load, fossil fuel costs, environmental costs, capital costs of competing combined cycle units, discount rates, and the cost of debt, to reflect the most current information available at the time of the analysis. Tr. 501-02 (Sim).

FPL's resource plan that includes the Uprate Projects continues to be projected as more cost-effective in eight of nine economic scenarios, and the economic advantage in seven of those scenarios has grown. Tr. 502-03, 508 (Sim). The Turkey Point 6 & 7 project also continues to be projected as the cost-effective choice. The projected "breakeven" costs for new nuclear – the

amount FPL could spend on new nuclear and breakeven with what it would spend for a combined cycle resource addition – continues to be higher than the non-binding cost estimate for Turkey Point 6 & 7 in eight of nine scenarios. Tr. 504-05, 508-09 (Sim). Additionally, the economic advantage of Turkey Point 6 & 7 in each of those nine scenarios has grown. *Id.* All in all, the projected economic advantages of each of these projects are now even more promising based on the updated analyses, fully supporting the continued feasibility of the projects.

The NPPCR amount for which FPL seeks approval is comprised of 2006-2007 actual costs, 2008 actual/estimated costs, and 2009 projected costs. Rule 25-6.0423(5)(c)2, Florida Administrative Code, sets forth the process by which the Commission is to review the prudence of past expenditures and the reasonableness of estimated or projected expenditures. In making its determinations of prudence and reasonableness, the Commission is required to apply the standard provided in Section 403.519(4)(e), Florida Statutes, which reads in pertinent part as follows:

...the right of a utility to recover any costs incurred prior to commercial operation... shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred.

FPL has clearly demonstrated that the costs it seeks to recover are prudent and reasonable, as applicable, through the testimony, exhibits, and other evidence presented in this proceeding.² No party has produced evidence “that certain costs were imprudently incurred,” let alone shown by a preponderance of the evidence that any costs were imprudent, as required by Section 403.519(4)(e), Florida Statutes.

² A utility decision is “prudent” if it is consistent with what a reasonable utility manager would have done in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made. *See Re Progress Energy Florida, Inc.*, 260 P.U.R. 4th 306, Order No. PSC-07-0816-FOF-EI (Fla. P.S.C. 2007) citing *City of Cincinnati v. Public Utilities Commission*, 620 N.E. 2d 826 (Ohio 1993).

FPL prudently incurred reasonable construction costs for the Uprate Projects in 2007. Tr. 425 (Labbe). Those 2007 costs were for activities that are necessary to the Uprate Projects, and were undertaken to help maintain the schedule for delivering the projects' benefits to customers. Tr. 425, 531 (Labbe). FPL did not begin recording carrying charges on those expenditures until 2008, so there are no costs for FPL to recover through the NPPCR with respect to the Uprate Projects in 2007. Tr. 426 (Labbe). FPL's 2008 actual/estimated and 2009 projected construction costs and carrying charges, as described further below, are also necessary to the uprates and are reasonable. Tr. 438 (Labbe). FPL has identified with a high degree of certainty each component that needs to be procured and installed, and each process that needs to be followed, in order to successfully complete each uprate. Tr. 443-44 (Labbe). All of FPL's uprate costs are incurred, and budgets and plans prepared, using its highly effective project management system. *Id.*

FPL incurred site selection and preconstruction costs for Turkey Point 6 & 7 in 2006-2007. The site selection costs were necessarily and reasonably incurred in order to determine the most appropriate and cost-effective site, conduct preliminary engineering reviews, establish the project plan and obtain local zoning approvals. Tr. 466-67, 477-78 (Scroggs). Pre-construction costs were related to the licensing and permitting of the project and were necessarily and reasonably incurred for that purpose. Tr. 477-78 (Scroggs). Pursuant to the partial stipulations approved by the Commission, FPL's reasonable site selection and 2007 preconstruction costs are to be included for cost recovery during 2009, with a final prudence determination on those site selection and 2007 preconstruction costs being deferred until the 2009 NPPCR cycle. FPL's 2008 actual/estimated and 2009 projected pre-construction costs for Turkey Point 6 & 7 relate to licensing and permitting activities, engineering and design work, and long lead procurement, and its 2009 projected costs also relate to scheduled payments associated with the anticipated

Engineering and Procurement contract with Westinghouse/Shaw, the vendor of the preferred AP 1000 design. Tr. 468-77 (Scroggs). FPL utilizes its project management tools to verify that Turkey Point 6 & 7 project costs are reasonable, as discussed in more detail below. Tr. 478 (Scroggs).

The evidence shows that FPL fully complied with its applicable policies and procedures to hire qualified vendors to perform necessary services at a reasonable price. FPL maintains a preference for competitively bidding contracted work and does so when feasible. Tr. 559 (Reed); *See also* Tr. 721-22 (Scroggs). When single or sole source contracting is necessary, FPL justifies, documents, and approves those contracts as required by the applicable procurement policy. *See* Tr. 661-62 (Labbe); Tr. 719-20 (Scroggs).

As explained by Mr. Reed, the number of potential vendors in the nuclear power industry has decreased substantially, to one-fifth the number that was available by the end of the last nuclear development cycle. Tr. 748, 755. Moreover, as explained by witnesses Labbe and Scroggs and discussed in more detail below, FPL has retained several particular vendors on a single or sole source basis that are uniquely qualified for the services they are retained to provide. These vendors offer clear and certain advantages in cost-effectiveness, experience, efficiencies, and a likelihood of success, in addition to the avoidance of unnecessary delays and the adverse impacts to customers associated therewith. Dr. Jacobs, retained by OPC with a single source contract, affirmed that cost-effectiveness, experience, efficiencies, and past successes are reasonable factors to consider in assessing whether to hire a vendor using a single or sole source contract. Tr. 572-73 (Jacobs). Such considerations, conveniently ignored by Dr. Jacobs relative to FPL's single and sole source contracting, demonstrably supported FPL's selection of single or sole source contractors, as properly documented in FPL's memoranda

required by its procurement policies, and as discussed further below.

In conclusion, FPL's costs are prudent and reasonable, as supported by the record in this case and detailed in FPL's positions below. Neither OPC, nor any other party, has claimed that any of FPL's costs are unreasonable or that FPL has chosen the wrong contractors. Tr. 754-55 (Reed). Therefore, FPL requests that the total amount of \$220,529,243 be approved for recovery through the Capacity Cost Recovery Clause as provided for pursuant to Rule 25-6.0423, Florida Administrative Code.

ISSUES AND POSITIONS

ISSUE 1A: Should Progress Energy Florida, Inc. and Florida Power & Light Company be allowed to recover through the Nuclear Cost Recovery Clause revenue requirements for a phase or portion of a system associated with a power plant, after such phases or portion of the project has been placed into commercial service, or should such phases or portion of the project be recovered through base rates?

FPL: *Yes. Rule 25-6.0423(7) specifically provides for the appropriate method to recover revenue requirements "as operating units or systems associated with the nuclear power plant and the nuclear power plant itself are placed in commercial service," allowing for clause recovery until the time that a unit or system enters commercial service.*

Rule 25-6.0423(7) specifically provides for the appropriate method to recover revenue requirements "as operating units or systems associated with the nuclear power plant and the nuclear power plant itself are placed in commercial service." The Rule provides for clause recovery until the time the unit or system enters commercial service, at which point it shall be included in base rates. Rule 25-6.0423(7)(c), Fla. Admin. Code.

ISSUE 1B: If recovery of costs for a phase or portion of a system associated with a power plant that is in commercial service continues through the Nuclear Cost Recovery Clause, how should the revenue requirements for that phase or portion be determined?

FPL: *Rule 25-6.0423(7) specifically provides for the appropriate method to recover revenue requirements "as operating units or systems associated with the nuclear power plant and the nuclear power plant itself are placed in commercial service," allowing for clause recovery until the time that a unit or system enters commercial service. Revenue requirements should be

determined consistent with Rule 25-6.0423.*

Rule 25-6.0423(7) specifically provides for the appropriate method to recover revenue requirements “as operating units or systems associated with the nuclear power plant and the nuclear power plant itself are placed in commercial service.” The Rule provides for clause recovery until the time the unit or system enters commercial service, at which point it shall be included in base rates. Rule 2506.0423(7)(c), Fla. Admin. Code. Revenue requirements should be determined consistent with Rule 25-6.0423, Florida Administrative Code.

ISSUE 1C: How should the completion of site clearing work be determined for purposes of distinguishing between pre-construction and construction costs for recovery under the clause?

FPL: *Site clearing work is complete when the property has been prepared to a condition that can allow the initiation of the first construction activity. Generally, this means the removal of existing vegetation and soils to allow for the initiation of engineered civil work activities such as foundations and buried infrastructure. Ultimately, this is a factually specific determination that should be made individually for each site.*

Site clearing work is complete when the property has been prepared to a condition that can allow the initiation of the first construction activity. Generally, this means the removal of existing vegetation and soils to allow for the initiation of engineered civil work activities such as foundations and buried infrastructure. Ultimately, this is a factually specific determination that should be made individually for each site.

ISSUE 1D: Should a utility be required to inform the Commission of any change in ownership or control of any asset which was afforded cost recovery under the Nuclear Cost Recovery Clause?

FULL STIPULATION (approved September 11, 2008):

Yes, timely notification to the Commission and parties to the NCRC docket at the time of filing the notice will allow the Commission to make any required adjustments within or outside of the Nuclear Cost Recovery Clause. Staff will conduct workshops on the administrative procedures to be used by the Commission to make such adjustments.

Project Management and Controls

ISSUE 2A: Should the Commission find that for the year 2007, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point 6 & 7 project and for the Extended Power Uprate (EPU) project?

FPL: *Yes. The Commission should find that FPL's project management, contracting, and oversight controls for the EPU project were reasonable and prudent. Subject to the approved partial stipulation below, the Commission should find that FPL's project management, contracting, and oversight controls for the Turkey Point 6 & 7 project were reasonable. The controls employed by FPL are proven and have resulted in the successful completion of major nuclear projects in the past that were completed on schedule, and under budget. Additionally, these controls have been reviewed and deemed appropriate by Concentric Energy Advisors and the Commission's Audit Staff.*

(1) EPU Project

The record shows that for the year 2007, FPL's project management, contracting and oversight controls for the EPU project were reasonable and prudent. FPL's nuclear project management system is implemented through a series of Nuclear Policies and Procedures. Tr. 424 (Hale/Labbe). The reasonableness, prudence and effectiveness of this system has been demonstrated through the successful completion of several major nuclear projects, including reactor vessel head replacements at Turkey Point, and reactor vessel head, pressurizer, and steam generator replacements at St. Lucie. Tr. 425 (Hale/Labbe). Additionally, Uprate Projects key personnel have proven track records of success managing large projects which include license renewal for Turkey Point and St. Lucie, and an uprate project at FPL Energy's Seabrook plant. *Id.* These projects were completed on schedule and under budget. *Id.*; Tr. 444 (Labbe).

Included in this project management system is a budget development process. The budget development process collects input from internal and external subject matter experts, and benchmarks those costs to FPL's experience in other capital intensive power generation projects. Tr. 438 (Hale/Labbe). FPL's proposed budget was then independently reviewed by a senior

management team from Shaw Stone and Webster, before submittal to FPL's senior executive management for critical review and approval. Tr. 438-39 (Hale/Labbe). The budget is continually managed to maintain overall project objectives and milestones. Periodic meetings are held with contributing business units and principal contractors. Monthly reports are prepared, reviewed and approved, and variances are noted and explained. *Id.*

Also included in this project management system are policies and procedures related to procurement in general, and single or sole source contracting in particular. The Nuclear Division's Nuclear Policy 1100 ("NP-1100") states that competitive bidding is the standard approach for procurement and requires, among other things, an explanation as to why a single or sole source contractor has a unique capacity to meet the procurement requirements or why it is not in the best business interests of FPL to obtain multiple bids. Ex. 2 (Staff composite exhibit, No. 11). Consistent with this policy, FPL maintains a preference for competitive bidding. Tr. 559 (Reed); Tr. 721-22 (Scroggs). In fact, a large majority of the costs for the Uprates Projects – over a billion dollars – is expected to be competitively bid. Tr. 667 (Labbe); *see also*, Tr. 685 (Labbe). Nonetheless, single and sole source contracting is and will continue to be a necessary procurement method for the successful completion of the Uprates Projects. Single and sole source contracts for the Uprate Projects are justified and approved in compliance with NP-1100. Tr. 669, 671 (Labbe). The justification for single and sole source contracts associated with the Uprate Projects is discussed in greater detail in Issue 6C.

Concentric Energy Advisors ("Concentric") has performed an independent review and analysis of FPL's project management and budgeting processes for the Uprates Project. As a result of that review, it was determined that the project management, cost estimation and risk management attributes of FPL are "highly developed, well documented, and conscientiously

adhered to, and are well positioned to meet FPL's needs" as the projects continue to develop. Tr. 522 (Reed). The Commission Staff's audit also determined that FPL's controls appear adequate, specifically concluding that FPL followed its contractor selection procedures and that FPL's use of sole source contractors was in keeping with reasonable business practices. Tr. 645-46 (Vinson); Ex. 40 (Vinson, Fisher).

OPC does not dispute that FPL's controls are sufficient. Instead, as discussed in more detail in Issue 6C, Dr. Jacobs has only offered his opinion that FPL did not comply with its own internal controls – an opinion with which neither Concentric nor the Commission's Audit Staff agrees. Accordingly, the record clearly shows that for the year 2007, FPL's project management, contracting, and oversight controls were reasonable and prudent for the EPU Project.

(2) Turkey Point 6 & 7 Project

FPL has demonstrated that its project management contracting and oversight controls for the Turkey Point 6 & 7 project are reasonable. FPL uses industry accepted project controls, systems and practices to ensure the reasonableness of the expenditures incurred and projected for all its projects. Tr. 462 (Scroggs). The primary means of control include the project budgeting and reporting process, project schedule and activity reporting processes, contract management process for external service providers, and internal and external oversight processes. Tr. 462-65 (Scroggs).

FPL's budget development process uses input from internal and external subject matter experts and benchmarks costs to FPL's experience in other capital intensive power generation projects. Tr. 462 (Scroggs). The budget is continually managed to maintain overall project objectives and milestones. Periodic meetings are held with contributing business units and principal contractors. Monthly reports are prepared, reviewed and approved, and variances are

noted and explained. *Id.*

FPL utilizes proven processes to solicit, qualify, negotiate, select and manage service providers, and approaches this process with an understanding of the key players in each specialty field. Tr. 461 (Scroggs). The specific policy for procurement and contracting applicable to the Turkey Point 6 & 7 project is General Operating Procedure 705.3, entitled “Purchasing Goods and Services – Using Purchase Orders and Contracts.” Tr. 715 (Scroggs). That procedure establishes a process for the consideration and approval of single or sole source justifications, while recognizing that an overly prescriptive procedure would not be applicable in all cases. Consistent with this policy, FPL maintains a preference for competitive bidding. Tr. 559 (Reed); Tr. 721-22 (Scroggs). Nonetheless, single and sole source contracting is and will continue to be a necessary procurement method for the successful completion of the Turkey Point 6 & 7. Tr. 722 (Scroggs). Single and sole source contracts for the Turkey Point 6 & 7 project are justified and approved in compliance with General Operating Procedure 705.3 *Id.* This is discussed in greater detail in Issue 8A.

Concentric Energy Advisors performed an independent review and analysis of FPL’s project management and budgeting processes for the Turkey Point 6 & 7 project. As a result of that review, it was determined that the project management, cost estimation and risk management attributes of FPL are “highly developed, well documented, and conscientiously adhered to, and are well positioned to meet FPL’s needs” as the projects continue to develop. Tr. 522 (Reed). The Commission Staff’s audit also determined that FPL’s controls appear adequate, specifically concluding that FPL followed its contractor selection procedures and that FPL’s use of sole source contractors was in keeping with reasonable business practices. Tr. 645-46 (Vinson); Ex. 40 (Vinson, Fisher).

Again, OPC has not disputed the reasonableness of these internal management controls, but instead only offered its opinion that FPL did not comply with them – an opinion with which neither Concentric nor the Commission’s Audit Staff agrees. FPL’s compliance with its procurement procedure for Turkey Point 6 & 7 is discussed in detail in Issue 8A. Accordingly, the record clearly shows that for the year 2007, FPL’s project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point 6 & 7 project.

PARTIAL STIPULATION (approved September 11, 2008):

The timing of the Turkey Point 6 & 7 need determination order prevented FPL from filing for recovery of site selection costs and preconstruction costs for that project by March 1, as contemplated for previous year true-ups under Rule 25-6.0423, F.A.C. To refuse to allow FPL to begin collecting these costs in 2009 could result in even higher charges to customers in 2010; however, the post March 1 filing date shortens the time available for OPC and other parties to review and analyze the site selection and preconstruction costs in this proceeding that is envisioned by the rule, and shortens the time available to the Commission to conduct the prudence review set forth in subsections 25-6.0423(b)(c)(2) and (3) of the above rule. To resolve the issues created by the timing of FPL’s request, OPC and FPL agree that FPL may include those site selection and preconstruction costs in the calculation of the nuclear cost recovery amount that is to be recovered through the 2009 capacity cost recovery factor, and further agree that any finding as to the prudence of the costs and/or determination that certain costs should be disallowed will be deferred until the 2009 nuclear cost recovery cycle.

ISSUE 2B: Should the Commission find that for the year 2007, FPL’s accounting and costs oversight controls were reasonable and prudent for the Turkey Point 6 & 7 project and for the EPU project?

FPL: *Yes. The Commission should find that FPL’s accounting and cost oversight controls were reasonable and prudent for the EPU project. Subject to the approved partial stipulation below, the Commission should find that FPL’s accounting and cost oversight controls for the Turkey Point 6 & 7 project were reasonable. The Company utilizes comprehensive and overlapping controls for incurring costs and recording transactions.*

(1) EPU Project

The record shows that with respect to 2007 the EPU project costs, FPL’s accounting and cost oversight controls were reasonable and prudent. The Company has utilized its comprehensive and overlapping accounting and business unit controls for incurring costs and

recording transactions. Tr. 404-05, 417 (Ousdahl). Those controls include FPL's Accounting Policies and Procedures, financial systems and related controls including its general ledger and construction asset tracking system, Sarbanes-Oxley processes and testing, and annual budgeting, planning, reporting, and monitoring of plan costs to actual costs incurred. Tr. 404 (Ousdahl). These controls are documented, assessed, audited, and tested on an ongoing basis by both FPL's internal and external auditors. Tr. 404-05, 417 (Ousdahl). No party has disputed the reasonableness and prudence of FPL's accounting and cost oversight controls.

(2) Turkey Point 6 & 7 Project

With respect to the 2007 Turkey Point 6 & 7 costs, FPL has demonstrated that its accounting and cost oversight controls were reasonable. The Company has utilized its comprehensive and overlapping accounting and business unit controls for incurring costs and recording transactions. Tr. 404-05, 417 (Ousdahl). Those controls include FPL's Accounting Policies and Procedures, financial systems and related controls including its general ledger and construction asset tracking system, Sarbanes-Oxley processes and testing, and annual budgeting, planning, reporting, and monitoring of plan costs to actual costs incurred. Tr. 404 (Ousdahl). These controls are documented, assessed, audited, and tested on an ongoing basis by both FPL's internal and external auditors. Tr. 404-05, 417 (Ousdahl). No party has disputed the reasonableness of FPL's accounting and cost oversight controls.

PARTIAL STIPULATION (approved September 11, 2008):

The timing of the Turkey Point 6 & 7 need determination order prevented FPL from filing for recovery of site selection costs and preconstruction costs for that project by March 1, as contemplated for previous year true-ups under Rule 25-6.0423, F.A.C. To refuse to allow FPL to begin collecting these costs in 2009 could result in even higher charges to customers in 2010; however, the post March 1 filing date shortens the time available for OPC and other parties to review and analyze the site selection and preconstruction costs in this proceeding that is envisioned by the rule, and shortens the time available to the Commission to conduct the prudence review set forth in subsections 25-6.0423(b)(c)(2) and (3) of the above rule. To resolve

the issues created by the timing of FPL's request, OPC and FPL agree that FPL may include those site selection and preconstruction costs in the calculation of the nuclear cost recovery amount that is to be recovered through the 2009 capacity cost recovery factor, and further agree that any finding as to the prudence of the costs and/or determination that certain costs should be disallowed will be deferred until the 2009 nuclear cost recovery cycle.

Turkey Point 6 & 7 Site Selection Costs

ISSUE 4A: Should the Commission grant FPL's request to include the review and approval for recovery through the Nuclear Cost Recovery Clause of prudently incurred site selection costs for the Turkey Point Unit 6 & 7 project?

FULL STIPULATION (approved September 11, 2008):

Yes. The timing of the Turkey Point 6 & 7 need determination order prevented FPL from filing for recovery of site selection costs and preconstruction costs for that project by March 1, as contemplated for previous year true-ups under Rule 25-6.0423, F.A.C. To refuse to allow FPL to begin collecting these costs in 2009 could result in even higher charges to customers in 2010; however, the post March 1 filing date shortens the time available for OPC and other parties to review and analyze the site selection and preconstruction costs in this proceeding that is envisioned by the rule, and shortens the time available to the Commission to conduct the prudence review set forth in subsections 25-6.0423(b)(c)(2) and (3) of the above rule. To resolve the issues created by the timing of FPL's request, OPC and FPL agree that FPL may include those site selection and preconstruction costs in the calculation of the nuclear cost recovery amount that is to be recovered through the 2009 capacity cost recovery factor, and further agree that any finding as to the prudence of the costs and/or determination that certain costs should be disallowed will be deferred until the 2009 nuclear cost recovery cycle.

ISSUE 4B: What amount should the Commission approve as FPL's final 2007 true-up of prudently incurred site selection costs for the Turkey Point Units 6 & 7 project?

FPL: *Subject to the approved stipulation on Issue 4A, that prudence of these costs will be deferred, the Commission should approve \$6,397,310 and related carrying charges of \$141,857 (total \$6,539,167) as FPL's reasonable site selection costs for the Turkey Point 6 & 7 project. These site selection costs were incurred in full compliance with FPL's management, procurement, and cost controls and are reasonable.*

FPL incurred certain necessary and reasonable site selection costs during the period of April 2006 to October 16, 2007. Tr. 466 (Scroggs). In 2006, these costs covered a Site Analysis Study and the engineering review of candidate technologies. Additionally, project planning activities occurred to address major issues such as transmission integration, project organization,

project schedule and budget. *Id.* In 2007 costs were incurred for the development and defense of the Public Hearing Application in Miami-Dade County, as well as continued investigations of design alternatives and project issues, and preparation of the filing for a need determination with the Commission. Tr. 466-67 (Scroggs); Ex. 23 (Scroggs, Ousdahl). The major cost categories of Site Selection costs include project staffing, engineering, environmental licensing, and legal expenditures. Tr. 467 (Scroggs).

These site selection expenditures were necessary to the project, and the costs were incurred under a full range of project controls and procedures to verify they were appropriate, reasonable, and priced consistent with FPL's extensive experience in power generation development activities in Florida. Tr. 477 (Scroggs). All procurement decisions were documented through approved procedures and authorized after appropriate management review to determine (1) that the activities were necessary to maintaining the project schedule, and (2) that the costs were consistent with applicable contract terms and were reasonable. Tr. 478 (Scroggs). No party has disputed the reasonableness of these site selection costs. Accordingly, FPL has demonstrated that its site selection costs totaling \$6,539,167 are reasonable.

2007 True-Up Costs

ISSUE 6A: What amount should the Commission approve as FPL's final 2007 true-up of prudently incurred preconstruction costs for the Turkey Point Units 6 & 7 project?

FPL: *Subject to the approved partial stipulation below deferring a Commission determination on prudence, the Commission should approve preconstruction costs for the Turkey Point 6 & 7 project of \$2,522,692 and related carrying charges of \$20,547 as FPL's reasonable 2007 preconstruction costs for the Turkey Point 6 & 7 project. These costs were incurred in full compliance with FPL's management, procurement, and cost controls and are reasonable.*

FPL has demonstrated that the reasonable amount of 2007 preconstruction costs for the Turkey Point Units 6 & 7 project is \$2,522,692, with related carrying charges of \$20,547, subject

to the stipulation for later prudence review as approved and stated below. Ex. 22 (Scroggs, Ousdahl). The preconstruction activities that occurred in 2007 were necessary, and their costs were incurred under a full range of project controls and procedures to verify they were appropriate and priced consistent with FPL's extensive experience in power generation development activities in Florida. Tr. 477 (Scroggs).

All procurement decisions were documented through approved procedures and authorized after appropriate management review to determine (1) that the activities were necessary to maintaining the project schedule, and (2) that the costs were consistent with applicable contract terms and were reasonable. Tr. 478 (Scroggs). No party has disputed the reasonableness of these 2007 preconstruction costs. Accordingly, FPL has demonstrated that its preconstruction costs totaling \$2,543,239 are reasonable.

PARTIAL STIPULATION (approved September 11, 2008):

The timing of the Turkey Point 6 & 7 need determination order prevented FPL from filing for recovery of site selection costs and preconstruction costs for that project by March 1, as contemplated for previous year true-ups under Rule 25-6.0423, F.A.C. To refuse to allow FPL to begin collecting these costs in 2009 could result in even higher charges to customers in 2010; however, the post March 1 filing date shortens the time available for OPC and other parties to review and analyze the site selection and preconstruction costs in this proceeding that is envisioned by the rule, and shortens the time available to the Commission to conduct the prudence review set forth in subsections 25-6.0423(b)(c)(2) and (3) of the above rule. To resolve the issues created by the timing of FPL's request, OPC and FPL agree that FPL may include those site selection and preconstruction costs in the calculation of the nuclear cost recovery amount that is to be recovered through the 2009 capacity cost recovery factor, and further agree that any finding as to the prudence of the costs and/or determination that certain costs should be disallowed will be deferred until the 2009 nuclear cost recovery cycle.

ISSUE 6B: What total amount should the Commission approve as FPL's final 2007 true-up to be recovered for the Turkey Point Units 6 & 7 project?

FPL: *Subject to the approved partial stipulation below deferring a Commission determination of prudence, the Commission should approve site selection costs of \$6,397,310, site selection related carrying charges of \$141,857, pre-construction costs of \$2,522,692 and pre-construction related carrying charges of \$20,547 (total \$9,082,406) as FPL's reasonable 2007 costs for Turkey

Point 6 & 7. These costs have been demonstrated by FPL to be reasonable.*

As described above in issues 4B and 6A, FPL's Turkey Point 6 & 7 site selection and 2007 preconstruction costs, and the related carrying charges for each, have been demonstrated to be reasonable. Accordingly, the amount that should be approved for recovery as FPL's reasonable 2007 costs for Turkey Point 6 & 7 includes site selection costs of \$6,397,310, site selection related carrying charges of \$141,857, pre-construction costs of \$2,522,692, and pre-construction related carrying charges of \$20,547, for a total of \$9,082,406, subject to the provisions for prudence review stipulated to below.

PARTIAL STIPULATION (approved September 11, 2008):

The timing of the Turkey Point 6 & 7 need determination order prevented FPL from filing for recovery of site selection costs and preconstruction costs for that project by March 1, as contemplated for previous year true-ups under Rule 25-6.0423, F.A.C. To refuse to allow FPL to begin collecting these costs in 2009 could result in even higher charges to customers in 2010; however, the post March 1 filing date shortens the time available for OPC and other parties to review and analyze the site selection and preconstruction costs in this proceeding that is envisioned by the rule, and shortens the time available to the Commission to conduct the prudence review set forth in subsections 25-6.0423(b)(c)(2) and (3) of the above rule. To resolve the issues created by the timing of FPL's request, OPC and FPL agree that FPL may include those site selection and preconstruction costs in the calculation of the nuclear cost recovery amount that is to be recovered through the 2009 capacity cost recovery factor, and further agree that any finding as to the prudence of the costs and/or determination that certain costs should be disallowed will be deferred until the 2009 nuclear cost recovery cycle.

ISSUE 6C: What amount should the Commission approve as FPL's final 2007 true-up of prudently incurred construction costs for the EPU project?

FPL: *The Commission should approve the amount of \$8,236,653 as FPL's final 2007 true-up of prudently incurred construction costs for the EPU project. These construction costs, including those associated with single or sole source contracts, were incurred in full compliance with FPL's management, procurement, and cost controls and are reasonable.*

FPL prudently incurred \$8,236,653 in construction costs for the Uprate Projects in 2007.

The 2007 construction costs fall into the following categories: License Application; Engineering and Design; Permitting; Project Management; and Power Block Engineering. Tr. 425

(Hale/Labbe); Ex. 20 (Hale/Labbe, Ousdahl). All of these costs were for activities that are necessary to the project and were appropriately undertaken in 2007 in order to maintain the Uprate Projects schedule. Tr. 425 (Hale/Labbe).

As described above in Issue 2A, FPL has a preference for competitively bidding out contracted work, and expects to competitively bid the large majority of Uprate Projects costs. Tr. 667 (Labbe); *see also*, Tr. 685 (Labbe). Nonetheless, single and sole source contracting is a necessary and important part of these nuclear projects. Costs associated with three significant sole source contracts are included in the Engineering and Design category. Those contracts are with Westinghouse, Shaw Stone & Webster, and Areva. In each instance FPL had valid and compelling business reasons for selecting the vendor, documented and justified its selection of the vendor in accordance with its nuclear procurement policies, and determined that the cost of the contracted work was reasonable. FPL's substantial experience in and knowledge of the nuclear industry permits a detailed, line-by-line examination of these contract costs. *See* Tr. 687 (Labbe).

Westinghouse

Westinghouse was retained to perform engineering and safety analyses in support of the NRC uprate license amendments and preparation of long lead equipment specification and procurements activities. Tr. 427 (Hale/Labbe). The duration of license amendment preparation activities and the NRC review period could exceed three years, so it is important that this work be completed now, to ensure that the license amendments are issued before the final uprate implementation refueling outages. *Id.* The costs associated with the Westinghouse contract were benchmarked with costs for similar uprate work at Turkey Point, Seabrook and other nuclear plants, and determined to be reasonable. Tr. 428 (Hale/Labbe); 669-70 (Labbe).

Westinghouse was selected as the sole source for this work because they are the original equipment manufacturer of the Nuclear Steam Supply System and because they have a proven track record with FPL Group. *Id.* Because Westinghouse was the original equipment manufacturer, it has access to its own unique, proprietary, safety related information. Tr. 443 (Labbe). The safety analysis required is completely dependent on the vendor's unique fuel design, and while it may not be impossible theoretically to negotiate a contract with the existing fuel vendor to provide support for another vendor to perform the analysis, the second contract necessary to enable the sharing of that information would be prohibitively expensive. Tr. 664-65 (Labbe). Additionally, it is unlikely that any of these vendors would ever be willing to share this type of intellectual property with a competitor. Tr. 665 (Labbe). Moreover, in order to change vendors for the Engineering & Design work, FPL would have to change the fuels that are inside the station, which would require three fuel cycles – or four and half years – to elapse. Tr. 676, 679 (Labbe). FPL's justifications are properly documented in its sole source justification memorandum for this contract. *See* Ex. 29 (Jacobs); Ex. 44 (Labbe).

Shaw Stone and Webster

Shaw Stone and Webster ("SSW") has been engaged to perform initial plant engineering support including preparation of long lead equipment specifications, hydraulic analyses, and heat balance calculations for the four units. Tr. 428 (Hale/Labbe). This work must be completed now because it is necessary to support the NRC licensing and overall uprate implementation schedule. *Id.*

SSW was selected because it is the leading engineering firm in performing power uprate work in the industry, and because it has a proven track record with FPL Group, having completed successful uprates at the Turkey Point and Seabrook plants on schedule and within

budget. *Id.* There is a very real benefit to having access to an experienced, capable vendor with a proven track record at the very project one is asking them to perform. Tr. 666 (Labbe). These justifications are properly documented in FPL's sole source justification memorandum for this contract. *See* Ex. 30 (Jacobs); Ex. 44 (Labbe).

The costs related to the SSW contract were reviewed in detail by FPL and determined to be reasonable, based on FPL's experience with other uprates, its understanding of the scope of work needed, and its understanding of the appropriate billing rates that the work requires. Tr. 446 (Labbe). A recent bidding process for a similar scope of work at FPL Energy's Seabrook Station also informed the decision. There, the license amendment scope of work was competitively bid. The two vendors other than SSW who submitted proposals, however, were not able to meet the deliverables or their prices were significantly higher than SSW's. Tr. 690, 704 (Labbe). That recent market test further supports the reasonableness of the SSW contract costs.

Areva

A third vendor, Areva, is performing fuel design and licensing work to provide the initial engineering support for the nuclear fuel parameters, fuel burn-up rates, and fuel design for the St. Lucie plant. Tr. 428 (Hale/Labbe). This work needs to be completed now because it is required to support the NRC licensing and overall uprate implementation schedule.

Areva was selected as the sole source contractor for this work because it is the original equipment manufacturer for St. Lucie Unit 1 fuel. The reasons for choosing Areva for this work are similar to the reasons for choosing Westinghouse for similar work at Turkey Point, as described above. Tr. 665, 670 (Labbe). The St. Lucie plant uses fuel designed by Areva. *Id.* As a result, even if Areva was willing to provide its proprietary information to a competitor, the

arrangement would be prohibitively expensive. Moreover, three fuel cycles, or approximately four and a half years, would have to elapse in order to change the fuel used at the plant to permit another vendor to perform the work. Tr. 678 (Labbe). These justifications are properly documented in FPL's sole source justification memorandum for this contract. See Ex. 31 (Jacobs); Ex. 44 (Labbe). Given the above considerations, Areva can provide the most cost-effective analysis and evaluation of the fuel. Tr. 428-29 (Hale/Labbe). Also, as with each of its single or sole source contracts, FPL utilizes its experience with similar work and its knowledge of the nuclear industry to review costs in detail and determined their reasonableness. Tr. 446 (Labbe).

Siemens

During 2007 FPL also entered into a contract with Siemens to reserve equipment manufacturing space at Siemens' facilities for the low pressure turbine rotors for St. Lucie 1 and 2. Tr. 430 (Hale/Labbe). This cost is reflected in the Power Block Engineering category. FPL needed to make this reservation now in order to ensure that Siemens can deliver the rotors in time to support the St. Lucie uprate implementation schedule. Tr. 431 (Hale/Labbe). Siemens was selected because it is the original turbine generator equipment supplier, and the only vendor that could manufacture the equipment needed. *Id.* The costs for this equipment were benchmarked with costs of similar equipment at FPL and other plants, and determined to be reasonable. *Id.*; Ex. 45 (Labbe). While Dr. Jacobs criticized FPL's detailed analysis of the costs and alternatives for this procurement as "back of the envelope," upon cross-examination, he admitted that the exhibit attached to his testimony – upon which he based his claim – omitted the detailed, multi-page engineering and economic analysis prepared by FPL. Tr. 577-79 (Jacobs).

Compliance with Procurement Policy

Dr. Jacobs, testifying on behalf of OPC, attempted to demonstrate that FPL had not complied with its single and sole source controls because FPL pointed to schedule constraints as one justification. Tr. 321 (Jacobs). The record refutes that contention. NP-1100 does not prohibit the consideration of schedule constraints as one basis for entering into a single or sole source contract. In fact, in the case of these nuclear projects, it is critically important that the contracted for services be performed in a manner that meets the schedule for implementation. FPL has appropriately recognized a contractor's ability to meet the project schedule as one of the justifications for utilizing single or sole source contractors. Tr. 663 (Labbe).

In the case of the Westinghouse and Areva contracts, as described above, hiring a different vendor would require FPL to change the nuclear fuel used at its plants, causing at least a four and a half year delay. Choosing to issue a request for proposals, and causing such a delay, would have been an imprudent choice for FPL and its customers. Tr. 707-08. Despite Dr. Jacobs' contention that the need to switch fuel vendors was not included in the justification memo, this significant disruption was inherent in the statement that it would not be "cost-effective or prudent from a schedule perspective" to hire another contractor. Tr. 676-78 (Labbe). The vice president responsible for reviewing the justifications and approving the contract is very familiar with the nuclear fuel cycle procurement considerations unique to the nuclear industry and the purpose of the justifications provided. Tr. 677 (Labbe).

Moreover, it is clear from the evidence presented in this case that a number of other reasonable considerations, as documented in FPL's sole source justifications, also informed the selection of these single and sole source contractors. Tr. 670 (Labbe). As discussed above more specifically for each contractor, those considerations included (i) unique experience, (ii) proven

past success with a similar scope of work, (iii) efficiencies resulting from or attributable to other similar projects, and (iv) cost-effectiveness, often resulting from free access to their own proprietary information. *See* Ex. 29-31 (Jacobs); Ex. 44 (Labbe). Conspicuous in its absence is any reference to these documented justifications in Dr. Jacobs testimony. *See* Tr. 576-77 (Jacobs). FPL has clearly demonstrated that its retention of these vendors and the associated costs were prudent and reasonable, and that Dr. Jacobs' criticisms are without merit and should be rejected.

Both Concentric Energy Advisors and the Commission Audit Staff disagreed with Dr. Jacobs' assessment, and determined that FPL had followed its project management controls with respect to single and sole source contracting. Tr. 743, 754 (Reed); Tr. 645-46 (Vinson); Ex. 40 (Vinson, Fisher). Specifically, as reflected in the audit report, Staff determined that FPL followed its contractor selection procedures and that FPL's use of sole source contractors was in keeping with reasonable business practices. Tr. 645-46 (Vinson); Ex. 40 (Vinson, Fisher).

FPL has demonstrated that its 2007 construction costs were based on prudent decisions and are reasonable. As explained by Mr. Reed, reasonable costs flow from prudent decisions, and FPL's decisions clearly reflect what a reasonable person in the nuclear power industry would do. Tr. 756 (Reed). Although Dr. Jacobs attempted to show that FPL did not follow its single and sole source contracting controls, the overwhelming evidence presented in this case demonstrates that those controls were in fact followed, that the numerous business reasons for entering into sole or single source contracts were appropriately documented and approved, and that the costs were reasonable. Moreover, no party has attempted to demonstrate that FPL selected the wrong vendor for these activities or that the specific costs incurred were unreasonable. Accordingly, the evidence supports a reasonable final true-up amount of

\$8,236,653 for 2007 uprates construction costs and a determination of their prudence.

ISSUE 6D: What amount should the Commission approve as carrying charges on FPL's prudently incurred 2007 construction costs for the EPU project?

FPL: *FPL did not accrue carrying charges on its prudently incurred construction costs for the EPU project during fiscal year 2007 due to its pending need determination from the Commission. Accordingly, this amount should be zero.*

FPL did not accrue carrying charges on its construction costs in 2007. On January 7, 2008, the Commission issued Order No. PSC-08-0021-FOF-EI approving FPL's need determination for the Uprate Projects. In that Order the Commission determined that Rule No. 25-6.0423, F.A.C. is applicable to the costs of the Uprate Projects. As a result of the issuance of this Order, in January 2008, these costs were transferred to Construction Work in Progress Account 107, and carrying charges began accruing. Tr. 425-26 (Hale/Labbe). Prior to this transfer, no carrying costs were accrued. Accordingly, the amount of 2007 carrying charges on construction costs for the Uprate Projects is zero. Tr. 413-14 (Ousdahl).

ISSUE 6E: What total amount should the Commission approve as FPL's final 2007 true-up to be recovered for the EPU project?

FULL STIPULATION (approved September 11, 2008):

As stated in its position on Issue 6D, FPL did not accrue carrying charges on construction costs during 2007. Therefore, there are no costs to be recovered.

ISSUE 6F: Has FPL demonstrated that the uprate costs it seeks to recover in this docket are separate and apart from those it would incur in conjunction with providing safe and reliable service, had there been no uprate project?

FULL STIPULATION (approved September 11, 2008):

OPC and FPL stipulate that as it applies to nuclear uprate projects, the NCRC should be limited to those costs that are separate and apart from nuclear costs that would have been necessary to provide safe and reliable service had there been no uprate project. OPC and FPL will work with PSC Staff to develop an NFR form for use in the 2009 hearing cycle that specifies

the information that a utility will provide in support of its request, that the uprate costs in its NCRC filing are separate and apart from costs that would have been necessary to provide safe and reliable service without the uprate. For the purposes of the 2008 NCRC hearings, OPC will not challenge the prudence of FPL's 2007 uprate costs on the "separate and apart" issue. OPC's position for the 2007 uprate costs, however, does not prevent OPC from raising the "separate and apart" issue for any FPL uprate costs incurred subsequent to 2007.

2008 Actual/Estimated Costs

ISSUE 8A: What amount should the Commission approve as FPL's 2008 actual and estimated preconstruction costs for the Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve \$69,707,855 as FPL's reasonable 2008 actual and estimated pre-construction costs for the Turkey Point Units 6 & 7 project. These costs, including those associated with single or sole source contracts, were incurred or developed in full compliance with FPL's management, procurement, and cost controls and are reasonable.*

FPL has incurred or has estimated it will incur \$69,707,855 in reasonable preconstruction costs in 2008 for the Turkey Point 6 & 7 project. Ex. 23 (Scroggs, Ousdahl). Those costs are included in the categories of Licensing, Permitting, Engineering & Design, Long Lead Procurement, and Power Block Engineering. See Tr. 468-77 (Scroggs). FPL's 2008 actual/estimated costs are necessary and were incurred under a full range of project controls and procedures to verify that they were appropriate and priced consistent with FPL's extensive experience in power generation development activities in Florida. Tr. 477 (Scroggs). FPL's industry experience and knowledge permits a critical review of all costs to ensure their reasonableness. See Tr. 461-62, 470, 721-22 (Scroggs).

Certain of these preconstruction costs relate to contracts developed through a Request for Proposals process. See Tr. 470, 472 (Scroggs). As described above in Issue 2A, FPL has a preference for competitively bidding out contracted work. Nonetheless, single and sole source contracting is a necessary and important tool in the business of new nuclear deployment. Tr. 722 (Scroggs). As a result, certain 2008 preconstruction costs relate to payments to single or sole

source contractors, such as McNabb Hydrogeologic Consulting (“McNabb”) and Black & Veatch.

McNabb

McNabb was retained for permitting activities related to the Underground Injection Controls (“UIC”) System at Turkey Point. McNabb was chosen primarily because of its expertise in the UIC permitting process; specifically, it has provided similar support on the UIC permitting and construction at the West County Energy Center, and has demonstrated that it can complete the required tasks for a cost that is below market price. Ex. 32 (Jacobs). These and other justifications were documented, and the contract was approved, in accordance with GO Procedure 705.3. *See* Ex. 32 (Jacobs). The costs for the McNabb contract were compared to other quotes for similar activity on other projects, and found to be below market value. Tr. 719 (Scroggs).

Black & Veatch

Black & Veatch was retained to conduct a feasibility study to develop a desalination plant at Turkey Point. Black & Veatch was chosen primarily for its unique technical expertise, combined with real world experiences, in developing large-scale desalination projects. Additionally, it has worked successfully with FPL before on the construction of several generating facilities in Florida and has worked closely with the Water and Sewer Department of Miami-Dade County on water related issues. Ex. 33 (Jacobs). These and other justifications were documented, and the contract was approved, in accordance with GO Procedure 705.3. *See* Ex. 33 (Jacobs). In determining the reasonableness of these costs, FPL’s experience with consultants in this marketplace was used to benchmark the proposed costs and ensure that they are reasonable for the services provided. Tr. 719 (Scroggs).

Compliance with Procurement Policy

Dr. Jacobs, testifying on behalf of OPC, attempted to demonstrate that FPL had not complied with its single and sole source controls because FPL pointed to schedule constraints as one justification. Tr. 321 (Jacobs). The record refutes that contention. GO Procedure 705.3 does not prohibit the consideration of schedule constraints as one basis for entering into a single or sole source contract. Unlike NP-1100 which governs procurement for the Uprate Projects, GO Procedure 705.3 does not even comment on the use of schedule constraints as a justification for a single or sole source contract. Tr. 715-16. As a result, Dr. Jacobs' assertion with respect to the Turkey Point 6 & 7 contracts is without merit.

It is in fact critically important that the contracted for services be performed in a manner that meets the schedule for implementation of the Turkey Point 6 & 7 project, and FPL has appropriately recognized a contractor's ability to meet the project schedule as one of the justifications for utilizing single or sole source contractors. *See* Tr. 717 (Scroggs). Any delay can be expected to increase overall costs based on escalation. *Id.* Furthermore, schedule delays would cause FPL's customers to forego the system benefits of reduced emissions, reduced fossil fuel consumption, and substantial fuel cost savings. *Id.*; Tr. 724 (Scroggs).

Moreover, it is clear from the evidence presented in this case that a number of other reasonable considerations, as documented in FPL's sole source justifications, also informed the selection of these single and sole source contractors. Tr. 716, 722 (Scroggs). As discussed in more detail above for each contractor, those considerations included (i) unique experience, (ii) proven past success with a similar scope of work, (iii) efficiencies resulting from or attributable to other similar projects, and (iv) cost-effectiveness. *See* Ex. 32, Ex. 33 (Jacobs); Ex. 44 (Labbe). Conspicuous in its absence is any reference to these documented justifications in Dr.

Jacobs' testimony. Tr. 576-77 (Jacobs). FPL has clearly demonstrated that its retention of the vendors and the associated costs were reasonable, and that Dr. Jacobs' criticisms are without merit and should be rejected.

Both Concentric Energy Advisors and the Commission Audit Staff disagreed with Dr. Jacobs' assessment, and determined that FPL had followed its project management controls with respect to single and sole source contracting. Tr. 743, 754 (Reed); Tr. 645-46 (Vinson); Ex. 40 (Vinson, Fisher). Specifically, as reflected in the audit report, Staff determined that FPL followed its contractor selection procedures and that FPL's use of sole source contractors was in keeping with reasonable business practices. Tr. 645-46 (Vinson); Ex. 40 (Vinson, Fisher).

FPL has demonstrated that its 2008 actual/estimated preconstruction costs are reasonable. Although Dr. Jacobs attempted to show that FPL did not follow its single and sole source contracting controls, the overwhelming evidence presented in this case demonstrates that those controls were in fact followed, and the numerous business reasons for entering into sole or single source contracts were appropriately documented and approved. Moreover, no party has attempted to demonstrate that FPL selected the wrong vendor for these activities or that the specific costs are unreasonable. Accordingly, the evidence supports a reasonable 2008 actual/estimated preconstruction amount of \$69,707,855 for the Turkey Point 6 & 7 project.

ISSUE 8B: What total amount should the Commission approve as FPL's 2008 actual and estimated costs to be recovered for the Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve site selection related carrying costs of \$723,484, pre-construction costs of \$69,707,855, and pre-construction related carrying costs of \$3,334,698 (total \$73,766,037) as FPL's reasonable 2008 actual and estimated costs for the Turkey Point 6 & 7 project. These costs, including those associated with single or sole source contracts, have been shown to be reasonable.*

As discussed above in Issues 4B and 8A, the amount of FPL's Turkey Point 6 & 7 site selection costs and 2008 actual/estimated preconstruction costs, and the related carrying charges for each, are reasonable. Accordingly, the amount that should be approved for recovery as FPL's reasonable 2008 actual and estimated costs for Turkey Point 6 & 7 include site selection related carrying costs of \$723,484, pre-construction costs of \$69,707,855, and pre-construction related carrying costs of \$3,334,698, for a total of \$73,766,037.

ISSUE 8C: What amount should the Commission approve as FPL's 2008 actual and estimated construction costs for the EPU project?

FPL: *The Commission should approve \$74,566,646 as FPL's reasonable 2008 actual and estimated construction costs for the EPU project, which will be the basis for the calculation of carrying charges to be collected in 2009. These costs, including those associated with single or sole source contracts, were incurred or developed in full compliance with FPL's management, procurement, and cost controls and are reasonable. *

FPL has incurred or is estimated to incur \$74,566,646 in reasonable 2008 construction costs for the Uprate Projects. Ex. 21 (Hale/Labbe, Ousdahl). This amount includes the prudent 2007 actual costs moved to Construction Work in Progress in January 2008. See Ex. 21 (Hale/Labbe, Ousdahl). The 2008 construction costs fall into the following categories: License Application; Engineering and Design; Permitting; Project Management; and Power Block Engineering, and Non-power Block Engineering. Tr. 434 (Hale/Labbe); Ex. 21 (Hale/Labbe, Ousdahl). All of these costs are for activities that are necessary to the project and were appropriately undertaken in 2008 in order to maintain the Uprate Projects schedule. Tr. 435, 438 (Hale/Labbe). FPL continued to use its project management system to ensure that the 2008 costs are reasonable and necessary. Tr. 438 (Hale/Labbe).

Some of the costs included in these categories continue to relate to the sole source contracts discussed in detail above in Issue 6C. As previously explained, each of those

contractors were selected for a variety of sound business reasons, including unique expertise, proven capabilities, access to proprietary information, and ability to meet the project schedule. Those reasons were properly documented and the contracts were approved consistent with NP-1100, and the costs were determined to be reasonable based on FPL's substantial experience in and knowledge of the industry, benchmark comparisons with similar services, and/or comparison with a recent similar RFP.

As a result, FPL has demonstrated that its 2008 construction costs are reasonable. Moreover, no party has attempted to demonstrate that FPL selected the wrong vendor for these activities or that the specific costs incurred were unreasonable. Accordingly, the evidence supports a reasonable 2008 actual/estimated construction amount for the calculation of carrying charges of \$74,566,646 for the Uprate Project.

ISSUE 8D: What amount should the Commission approve as carrying charges on FPL's 2008 actual and estimated construction costs for the EPU project?

FPL: *The Commission should approve \$3,733,003 as reasonable carrying charges on FPL's 2007 actual and 2008 actual and estimated construction costs for the EPU project for collection during 2009. These costs, including those associated with single or sole source contracts, have been shown to be reasonable.*

As described above in Issues 6C, FPL's 2007 actual construction costs are reasonable and prudent, and as described above in Issue 8C, its 2008 actual and estimated construction costs are reasonable. Accordingly, \$3,733,003 is the appropriate amount of carrying charges that should be recovered by FPL on those amounts.

ISSUE 8E: What total amount should the Commission approve as FPL's 2008 actual and estimated costs to be recovered for the EPU project?

FPL: *The Commission should approve \$3,733,003 as reasonable carrying charges on FPL's 2007 actual and 2008 actual and estimated construction costs for the EPU project for collection

during 2009.*

As described above in Issues 6C, FPL's 2007 actual construction costs are reasonable and prudent, and as described above in Issue 8C, its 2008 actual and estimated construction costs are reasonable. Accordingly, \$3,733,003 is the appropriate amount of carrying charges that should be recovered by FPL on those amounts.

2009 Projected Costs

ISSUE 10A: What amount should the Commission approve as FPL's 2009 projected preconstruction costs for the Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve \$109,540,915 as FPL's reasonable 2009 projected preconstruction costs for the Turkey Point Units 6 & 7 project for collection during 2009. These costs, including those associated with single or sole source contracts, were developed in full compliance with FPL's management, procurement, and cost controls and are reasonable.*

FPL's projected 2009 preconstruction costs for Turkey Point 6 & 7 are \$109,540,915. Ex. 23 (Scroggs, Ousdahl). Those costs are presented in the following categories: Licensing; Permitting; Engineering & Design; and Power Block Engineering & Procurement. Tr. 468-77 (Scroggs); Ex. 22 (Scroggs, Ousdahl). The projected 2009 preconstruction costs are for activities that are necessary to the project and will be appropriately undertaken in 2009 in order to maintain the Turkey Point 6 & 7 project schedule. Tr. 478 (Scroggs). These costs were developed consistent with FPL's extensive budgeting process, critically reviewed by key personnel, and determined to be reasonable. *See* 462-63 (Scroggs). All of FPL's project and cost management controls will be applied, as appropriate, to verify that the costs continue to be reasonable. Tr. 478 (Scroggs).

Some of the costs included in these categories continue to flow from the McNabb single source contract discussed in detail above in Issue 8A. As previously explained, this contractor was selected for a variety of sound business reasons, including its unique expertise and

experience in UIC permitting and construction. Those reasons were properly documented and the contract was approved consistent with GO Procedure 705.3, and the costs were determined to be reasonable based on a comparison to other quotes for similar activity on other projects. Tr. 719 (Scroggs).

As a result, FPL has demonstrated that its projected 2009 preconstruction costs are reasonable. Moreover, no party has attempted to demonstrate that FPL selected the wrong vendors or that the specific costs are unreasonable. Accordingly, the evidence supports a reasonable 2009 projected preconstruction cost amount of \$109,540,915 for Turkey Point 6 & 7.

ISSUE 10B: What total amount should the Commission approve as FPL's 2009 projected costs to be recovered for the Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve reasonable site selection related carrying costs of \$509,050, pre-construction costs of \$109,540,915 and pre-construction related carrying costs of \$7,344,813 (total \$117,394,778) as the total amount of FPL's 2009 projected costs for the Turkey Point Units 6 & 7 project to be recovered during 2009. These costs, including those associated with single or sole source contracts, have been shown to be reasonable.*

As discussed above in Issue 4B, the amount of FPL's site selection costs, and the associated carrying charges, are reasonable. Also, as discussed above in issue 10A, the amount of FPL's projected 2009 preconstruction costs, and the related carrying charges, are reasonable. Accordingly, a total of \$117,394,778 for 2009 projected costs should be recovered by FPL.

ISSUE 10C: What amount should the Commission approve as FPL's 2009 projected construction costs for the EPU project?

FPL: *The Commission should approve \$233,294,413 as FPL's reasonable 2009 projected construction costs for the EPU project during 2009. These costs, including those associated with single or sole source contracts, were developed in full compliance with FPL's management, procurement, and cost controls and are reasonable.*

FPL has projected 2009 construction costs of \$233,294,413 for the Uprate Projects. Ex. 21 (Hale/Labbe, Ousdahl). The 2009 construction costs fall into the following categories:

License Application; Engineering and Design; Permitting; Project Management; and Power Block Engineering. *Id.*; Tr. 434 (Hale/Labbe). All of these costs are for activities that are necessary to the project and will be appropriately undertaken in 2009 in order to maintain the Uprate Projects schedule. Tr. 435, 438 (Hale/Labbe). FPL continued to use its project management system to ensure that the 2009 costs are reasonable and necessary. Tr. 438 (Hale/Labbe).

Some of the costs included in these categories continue to flow from the sole source contracts discussed in detail above in Issue 6C. As previously explained, each of those contractors were selected for a variety of sound business reasons, including unique expertise, proven capabilities, access to proprietary information, and ability to meet the project schedule. Those reasons were properly documented and the contracts were approved consistent with NP-1100, and the costs were determined to be reasonable based on FPL's substantial experience in and knowledge of the industry, benchmark comparisons with similar services, and/or comparison with a recent similar RFP.

As a result, FPL has demonstrated that its projected 2009 construction costs are reasonable. Moreover, no party has attempted to demonstrate that FPL selected the wrong vendor for these activities or that the specific costs incurred were unreasonable. Accordingly, the evidence supports a projected 2009 construction amount of \$233,294,413 for the Uprate Projects.

ISSUE 10D: What amount should the Commission approve as carrying charges on FPL's 2009 projected construction costs for the EPU project?

FPL: *The Commission should approve \$16,553,019 as reasonable carrying charges on FPL's 2009 projected construction costs for the EPU project for collection during 2009. These costs, including those associated with single or sole source contracts, have been shown to be reasonable.*

As described above in Issue 10C, FPL's 2009 projected construction costs for the Uprate Projects have been shown to be reasonable. Accordingly, \$16,553,019 is the appropriate amount of carrying charges that should be recovered by FPL on that amount.

ISSUE 10E: What total amount should the Commission approve as FPL's 2009 projected costs to be recovered for the EPU project?

FPL: *The Commission should approve \$20,286,022 as reasonable carrying charges on FPL's 2007 actual, 2008 actual and estimated and 2009 projected construction costs for the EPU project for collection during 2009.*

As described above in Issue 6C, FPL's 2007 actual construction costs for the Uprate Projects are reasonable and prudent. As described in Issues 8C and 10C, its 2008 actual/estimated and 2009 projected construction costs for the Uprate Projects are reasonable. Accordingly, \$20,286,022 is the appropriate amount of carrying charges that should be recovered by FPL on those amounts.

Summary Issues

ISSUE 12: What total amount should the Commission approve for the Nuclear Cost Recovery Clause to be included in establishing FPL's 2009 Capacity Cost Recovery Clause factor?

FPL: *The Commission should approve the total amount of \$220,529,243 for the Nuclear Cost Recovery Clause to be included in establishing FPL's 2009 Capacity Cost Recovery Clause Factor.*

The record shows that FPL's 2007 actual costs, 2008 actual/estimated costs, and 2009 projected costs for the Turkey Point 6 & 7 project are reasonable. The record also shows that FPL's 2007 actual costs for the Uprate Projects are prudent and reasonable, and that its 2008 actual/estimated and 2009 projected costs for the Uprate Projects are reasonable. No party has identified a cost or category of costs and demonstrated that it is imprudent or unreasonable.

Accordingly, the Commission should approve the total amount of \$220,529,243 to be included in establishing FPL's 2009 Capacity Cost Recovery Clause Factor.

ISSUE 14: Should Docket No. 080149-EI, be closed?

FULL STIPULATION: Yes.

Respectfully submitted,
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CERTIFICATE OF SERVICE

Docket No. 080009-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing Post Hearing Brief has been furnished by electronic mail this 19th day of September, 2008, to the following:

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By: *s/ Jessica A. Cano*
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