

State of Florida



# Public Service Commission

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COMMISSION  
CLERK

**DATE:** September 24, 2009

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of Strategic Analysis and Governmental Affairs (Graves, Matthews, Ballinger, Trapp) *LEB*  
 Division of Economic Regulation (Bulecza-Banks, Chase, Hewitt, Lester, Maurey, Springer, Stallcup) *MCB* *QC* *CBH* *TW* *198* *RLT*  
 Office of the General Counsel (Brown, Arnold, Williams) *JB PL*  
 Division of Service, Safety & Consumer Assistance (Fletcher, Mills) *ALM*

**RE:** Docket No. 090172-EI – Petition to determine need for Florida EnergySecure Pipeline by Florida Power & Light Company.

**AGENDA:** 10/06/09 – Post Hearing – Participation is Limited to Commissioners and Staff

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** Deadlines pursuant to Section 403.9422, Florida Statutes, have been waived by Florida Power & Light Company until October 6, 2009.

**SPECIAL INSTRUCTIONS:** The Commission should vote on issues in the following order: Issue 1, 2, 4, 7, 8, 9, 10, 3, 6, 5, 14, 11 and 13 combined, 15, 16, and 17. Issue 12 was stipulated by the parties at the Prehearing Conference.

**FILE NAME AND LOCATION:** S:\PSC\SGA\WP\090172.RCM.DOC

### Case Background

On April 7, 2009, Florida Power & Light Company (FPL) petitioned the Commission to determine the need for its proposed Florida EnergySecure Pipeline, a 280-mile long, 30-inch

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diameter pipeline to transport natural gas entirely within Florida, commencing in Bradford County and extending southeast to its terminus at FPL's Martin Plant site. The supply of natural gas to the Florida EnergySecure Pipeline will be provided from an interconnection with an interstate natural gas pipeline to be constructed by a third party, known as "Company E" for confidentiality purposes. Taken together, FPL asserts that the entire project results in a third major natural gas pipeline originating in Alabama and terminating in South Florida. From the Martin Plant site, FPL will utilize existing and proposed pipeline infrastructure to transport natural gas to its Cape Canaveral and Riviera Beach sites. FPL asserts that the Florida EnergySecure Pipeline will be an intrastate natural gas pipeline to be certified under the provisions of Part VIII of Chapter 403, Florida Statutes (F.S.), the Natural Gas Transmission Pipeline Siting Act. FPL also asserts that the Florida EnergySecure Pipeline will be subject to the Commission's regulation of natural gas pipeline safety under Part I of Chapter 368, F.S., the Gas Safety Law of 1967.

FPL states the primary purpose in owning and operating the Florida EnergySecure Pipeline is to provide natural gas to its electric generating units. By 2014, the pipeline's initial transportation capacity will be 600 million cubic feet per day (MMcf/d) to serve a projected need of 400 MMcf/d per day at its Cape Canaveral and Riviera Beach plants (projected in-service dates of June 2013 and June 2014, respectively). FPL asserts that the remaining 200 MMcf/d will be delivered to FPL's Martin Plant for reliability purposes, but will also be offered to other entities within the state. Moreover, FPL claims that the 200 MMcf/d delivered to FPL's Martin Plant can displace deliveries from FGT or Gulfstream to that site, which can then be redirected to other FPL facilities or to other entities within the state. In its petition FPL claims that the resulting revenues will be credited to FPL's electric utility customers through the Fuel and Purchased Power Cost Recovery Clause. FPL projects that the pipeline's ultimate capacity could be expanded to 1.25 billion cubic feet per day (Bcf/d) by 2030 in order to meet the utility's future natural gas requirements. FPL proposes to include the approximate \$1.5 billion cost of the project in its electric rate base as electric plant, and it states that it anticipates filing a petition for a base rate increase in 2014, when the pipeline is placed in service.

On April 23, 2009, Florida Gas Transmission, LLC (FGT) filed a petition to intervene in the proceeding. Order No. PSC-09-0308-PCO-EI, issued May 7, 2009, granted FGT's petition for intervention. The Commission held a hearing on July 27 and July 28, 2009 to address FPL's petition to determine need for its proposed Florida EnergySecure Pipeline.

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S., Chapter 368, F.S., and Section 403.9422, F.S.

### **Introduction**

The permitting of an intrastate pipeline of the scope and magnitude of FPL's proposed Florida EnergySecure Pipeline is a relatively new process under the Natural Gas Transmission Pipeline Siting Act. Additional issues have also been raised regarding the applicability of Part II of Chapter 368, F.S., the Natural Gas Transmission Pipeline Intrastate Regulatory Act. In order to navigate the issues which have been raised in this case in a logical fashion, staff recommends addressing the issues in the following order.

#### **Planning Assumptions**

**Issue 1:** Is FPL's forecast of future natural gas pipeline transmission capacity requirements reasonable for planning purposes?

**Issue 2:** Do existing transmission pipelines in Florida have sufficient excess capacity to fulfill the forecasted need for transmission capacity?

**Issue 4:** Does the planned construction and operation of the proposed Florida EnergySecure Pipeline meet industry and government standards for safety?

**Issue 7:** Are FPL's construction cost estimates reasonable for planning purposes?

**Issue 8:** Are FPL's economic assumptions reasonable for planning purposes?

**Issue 9:** Are the fuel supply and transport costs used by FPL reasonable for planning purposes?

Determination of Need and Cost-Effectiveness

**Issue 10:** Will the proposed Florida EnergySecure Pipeline, including its connection with the upstream pipeline, provide the most cost-effective and reliable source of natural gas supply, transport, and delivery? (Contains Primary and Alternate Recommendations)

**Issue 3:** Is the proposed Florida EnergySecure Pipeline needed to improve or maintain natural gas delivery reliability and integrity within Florida? (Contains Primary and Alternate Recommendations)

**Issue 6:** Are the commencement and terminus of FPL's proposed facilities and laterals appropriate to serve the need identified in Issue 1?

**Issue 5:** Will the proposed Florida EnergySecure Pipeline improve the economic of natural gas transmission within Florida to assure the economic well-being of the public? (Contains Primary and Alternate Recommendations)

Future Rate Setting Method: Chapters 366 or 368, F.S.

**Issue 14:** If FPL owns and operates the Florida EnergySecure Pipeline as proposed, will it be subject to the Commission's jurisdiction as an intrastate pipeline company pursuant to Chapter 368, F.S.? (Contains Primary and Alternate Recommendations)

**Issue 11:** Is it appropriate for FPL to recover the costs associated with its proposed Florida EnergySecure Pipeline through its electric utility rate base? (Contains Primary and Alternate Recommendations)

**Issue 13:** Should a separate entity be established to own and operate the pipeline? (Contains Primary and Alternate Recommendations)

**Issue 15:** If FPL owns and operates the Florida EnergySecure Pipeline as proposed, will it "provide transmission access, subject to available capacity, on a basis that is not unreasonably preferential, prejudicial, or unduly discriminatory," as Section 368.105(6) F.S., requires? (Contains Primary and Alternate Recommendations)

Conclusion

**Issue 12:** Should FPL be required to file a post-construction report that details the final cost of the Florida EnergySecure Pipeline within 90 days of completion? (Stipulated at Prehearing)

**Issue 16:** Based on the resolution of the previous issues, should FPL's petition for determination of need for the Florida EnergySecure Pipeline, a natural gas transmission pipeline as defined in Section 403.9403(16), F.S., be approved? (Contains Primary and Alternate Recommendations)

**Issue 17:** Should this docket be closed?

### **Discussion of Issues**

**Issue 1:** Is FPL's forecast of future natural gas pipeline transmission capacity requirements reasonable for planning purposes?

**Recommendation:** Yes. (Hewitt, Stallcup, Graves, Matthews)

#### **Positions of Parties:**

**FPL:** Yes. FPL's forecast of future natural gas pipeline transmission capacity is based on a load forecast that is consistent with historical experience and utilizes reasonable assumptions and methodologies previously accepted by the Commission. FPL's forecast demonstrates a need to add approximately 2.7 Bcf/d of transportation capacity between 2013 and 2040.

**FGT:** No. FPL's need for 600 MMcf/d is unreasonable because the Cape Canaveral and Riviera Beach plants have a combined certified need of 400 MMcf/d, with FPL not needing any of the excess capacity until at least 2021. FPL's data is inconsistent and its adjustments to population demand data are overstated.

#### **Staff Analysis:**

### **PARTIES' ARGUMENTS**

**FPL:** FPL states that its forecast of future natural gas pipeline transmission capacity is based on sound methods. In addition to increased DSM, the utility maintains that it expects to add more than 17 GW of gas-fired capacity by 2040, which equates to a need for approximately 2.7 Bcf/d of gas transportation capacity. FPL expects the recently experienced declines in load growth to dissipate and affirms that its forecasts are reasonable and are based on Commission-approved methods. (FPL BR 13)

FPL contends that its population forecast, based on an adjusted UF October 2008 projection, compensates for UF's consistent under-forecasting of Florida's long-term population growth and accounts for other historical trends by bringing the state's population growth in back in line with the rebound that has historically followed recessions. In addition, FPL has itself consistently underestimated the peak load growth of its own system, and states it is simply compensating for these trends by making the forecast adjustments. In fact, the chances of over-forecasting are lower than the chances of under-forecasting, yet the risk to customers is much greater if the forecasts are too low. (FPL BR 14-15)

In addition to population and peak load forecasts, FPL must also consider its generation resource plan. In each of the three scenarios considered (the "Base Case," the "RPS Scenario," and the "Nuclear Delay Scenario"), the incremental gas transportation requirements are expected to grow to at least 2.7 Bcf/d by the year 2040. If the incremental 600 MMcf/d of capacity needed for FPL's West County Energy Center Units 1, 2, and 3 are also included, the incremental gas transportation needs would be at 800 MMcf/d as early as 2014. Finally, FPL states that, contrary to FGT witness Schlesinger's testimony, its natural gas price forecast was developed from authoritative sources using methodologies similar to those employed in previous

dockets brought before the Commission. Due to all of the forecasts and methods employed to produce FPL's resource plan, the assumption of a need for 2.7 Bcf/d by 2040 is reasonable for planning purposes. (FPL BR 16-17)

**FGT:** FGT asserts that the proposed pipeline, capable of transporting a maximum capacity of 1.25 Bcf/d, is overbuilding in light of the fact that only 400 MMcf/d needed until 2021. The initial transportation capacity will be 600 MMcf/d, which is 50 percent greater, and the maximum transportation capacity is 300 percent greater than the certified need. No new power plants are included in FPL's 2009 Ten Year Site Plan. FGT contends that FPL is asking for an initial capacity of 600 MMcf/d only because this pipeline transportation capacity was the smallest the Upstream Pipeline provider was willing to build. Although it may be appropriate to build a power plant with excess capacity, FGT does not believe this strategy to be appropriate for a pipeline project that provides no net economic benefit to customers for almost 30 years. (FGT BR 2-3)

FGT declares that FPL's adjustment to the UF population forecast is self-serving and unreasonable, and is structured to justify the minimum pipeline capacity that the Upstream Pipeline provider would agree to construct. The cumulative effect of this adjustment results in a population difference of approximately 500,000 people by 2018. FGT states that, although FPL claims that its adjustment reflects the rebound in population which has historically occurred after recessions and for which the UF forecast makes no accommodation, it has offered no evidence that UF's tendency to under-forecast population growth will continue. (FGT BR 3-5)

FGT calculates FPL's total required additional capacity to be approximately 200 MMcf/d, not the 600 MMcf/d in its proposal. However, FPL's forecasted natural gas requirement in this proposal is higher than that in its 2009 Ten Year Site Plan. In addition, FGT argues that FPL's request to overbuild a pipeline based on a future need ignores the reality of the natural gas pipeline industry, which normally builds only the capacity that is needed and fully subscribed in the immediate future. FGT contends that FPL's insistence on placing the entire cost of the project in its rate base, which will insulate its shareholders from any risk and place all the risk on its customers, demonstrates both a lack of need and a project that is not in its customers' best interests. (FGT BR 6-8)

### ANALYSIS

Pursuant to Order No. PSC-08-0591-FOF-EI,<sup>1</sup> the Commission approved the need for the Cape Canaveral and Riviera Beach modernizations which are scheduled to be completed by June 1, 2013 and June 1, 2014 respectively. During the need case for Cape Canaveral and Riviera Beach units, it was noted that construction of these plants will require additional gas-pipeline capacity into the state. (EXH 34) The gas requirements estimated at the time of the need case for the generating units are consistent with the gas needs FPL has estimated in this case. FPL's

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<sup>1</sup> Issued September 12, 2008 in Docket No. 080203-EI, In re: Petition to determine need for West County Energy Center Unit 3 electrical power plant, by Florida Power & Light Company, Docket No. 080245-EI, In re: Petition for determination of need for conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Company, and Docket No. 080246-EI, In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Company.

current plans are to complete the Cape Canaveral and Riviera Beach projects by their original in-service dates in order to maximize fuel savings and environmental benefits identified in Order No. PSC-08-0591-FOF-EI. (EXH 2, p. 14) FPL would require an additional 400 MMcf/d of gas transportation capacity by 2014 in order to satisfy the full output requirements of the Cape Canaveral and Riviera Beach projects. (TR 38)

For natural gas pipeline requirements beyond those induced by the modernization projects, FPL relies on its load forecast and a 20 percent reserve margin planning criterion to determine the timing of future unapproved resource additions. FPL assumed all future unapproved resource additions would be natural gas combined cycle power plants. (TR 318)

The load forecast submitted by FPL witness Morley was based upon the same methodology that has been found by the Commission in prior proceedings to be appropriate. (TR 185) This methodology consists of a set of econometric models used in conjunction with forecast assumptions from outside sources such as Global Insight (TR 184) and the University of Florida's Bureau of Economic and Demographic Research (UF Bureau). (TR 188) The load forecast submitted in this case is the same forecast submitted in FPL's current rate case, Docket 080677-EI. (TR 213-214)

FPL's customer growth forecast is based upon a Florida population forecast from the UF Bureau produced in October 2008. (TR 188, 190) This population forecast reflects a lower long term population growth rate than has been experienced historically. (TR 191) FPL applied an upward adjustment to the UF Bureau's population forecast so that after 2012, Florida's population growth would rebound more vigorously and more closely match the long term growth rates observed historically. (TR 192) FPL witness Morley supports this adjustment by citing that historically, Florida's population has grown more robustly following a recession than is indicated by the UF Bureau forecast. Furthermore, with a decline in housing prices and a pent-up demand from retiring baby boomers, Florida's population growth should return to a level consistent with historical trends. (TR 191-192) Finally, FPL witness Morley notes that the UF Bureau's population forecasts have historically underestimated actual population growth by 5.9 percent over a 10-year forecasting horizon. (TR 189) Therefore, FPL witness Morley believes that her upward adjustments to the UF Bureau's population forecast, and the associated forecast of the total number of customers served by FPL is reasonable. (TR 194)

FGT witness Langston testified that FPL's adjustments to the UF Bureau's population forecast are unreasonable. (TR 552) witness Langston notes that in March 2009, the University of Florida updated their population forecasts by revising downward short-term projected population growth before resuming the same long-term growth rate in 2012 contained in its October 2008 forecast. (TR 551) FGT witness Langston contends that this downward revision from the UF Bureau calls into question the basis used by FPL in adjusting the University's November 2008 forecast upward. (TR 552)

In her rebuttal testimony, FPL witness Morley defends her population forecast adjustment by noting that her adjustment results in an increase in projected Florida population in 2018 of 800,000. She then compares the magnitude of this adjustment to the UF Bureau's historical forecast accuracy of underestimating population growth over a 10 year forecasting horizon by an average of 1.3 million. She therefore concludes that since the UF Bureau has under-forecasted

population by 1.3 million over a 10 year forecast horizon, her adjustment to the University's forecast which increases that forecast by 800,000 over 10 years is reasonable. (TR 780)

FPL witness Morley also contends in her rebuttal testimony that her long-term population forecast is reasonable in light of the UF Bureau's revised March 2009 forecast. She points out in her rebuttal testimony Exhibit RM-22 (EXH 83) that the difference between her 2018 forecast and the UF Bureau's revised March 2009 forecast for 2018 is approximately equal to the UF Bureau's average error in underestimating population over a 10 year forecast horizon. (TR 732) She also contends that her rebuttal testimony Exhibit RM-23 (EXH 84) shows that her forecast falls within the low and high case projections provided in the UF Bureau's March 2009 forecast. Since these low and high band projections "provide reasonable alternative scenarios," she concludes that her forecasts fall within the reasonable range of expected population growth indicated by the UF Bureau's March 2009 forecast. (TR 733)

In FGT witness Langston's surrebuttal testimony, he stated that in light of current economic conditions there is no reasonable basis to conclude that the Florida economy will bounce back and once again be growing at its historic growth levels indicated by FPL witness Morley's forecast. (TR 585)

In evaluating the arguments offered by the parties, staff believes that the determination of whether or not FPL's load forecast is appropriate hinges on two factors. The first factor is whether it was appropriate for FPL witness Morley to have adjusted upwards the UF Bureau's base line population forecast for inclusion in her customer growth model. The second factor is whether the revised population projections released by the UF Bureau in March 2009 casts a material doubt on the long-term accuracy of FPL's customer forecasts.

With respect to the first factor, staff believes that FPL witness Morley's adjustment to the UF Bureau's base line population forecast is reasonable. This belief is based upon the un-rebutted evidence contained in Exhibit 83 that the UF Bureau has historically consistently underestimated Florida's actual population growth over a 10 year forecast horizon. Therefore staff believes it is reasonable for FPL to have adjusted the UF Bureau's population forecast to account for this observed tendency to underestimate Florida's long-term population growth. Also, staff believes that FPL did not create this adjustment to the UF Bureau's projections simply to help justify the need for the Florida EnergySecure Pipeline. As FPL witness Morley indicated under cross examination, this same population forecast was also used in FPL's pending rate case. (TR 213-214) In a rate case setting, a utility would benefit by under-forecasting population growth, not by over-forecasting population growth. Therefore staff finds reassurance that the adjustment to the UF Bureau's population forecast was intended to improve the forecast accuracy rather than simply to help justify the determination of need in the instant case.

With respect to the second factor, staff does not believe that the UF Bureau's March 2009 revision to their October 2008 population projections materially alters the long-term reliability of FPL's population forecast. As FGT witness Langston correctly points out, the UF Bureau's March 2009 revision reduces the short term population growth forecast through 2010 before resuming the same long term growth rate contained in their October 2008 forecast. (TR 551-552) However, as shown in Exhibit 83, by the time these revisions are carried forward to 2018, the resulting difference in FPL forecasts and the March 2009 revised forecasts are within the UF

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Bureau's observed tendency to under-forecast long term population growth. Therefore, staff concludes that the revised March 2009 UF Bureau population forecasts do not materially cast doubt on the appropriateness of FPL's population forecast.

### **CONCLUSION**

Based on the foregoing, staff recommends that FPL's load forecast and supporting assumptions are appropriate for use in this docket.

**Issue 2:** Do existing transmission pipelines in Florida have sufficient excess capacity to fulfill the forecasted need for transmission capacity?

**Recommendation:** No. Although up to 214 MMcf/d of capacity may be available from the existing FGT system, incremental additions would still be required to supply the full forecasted need of 400 MMcf/d by 2014. (Graves, Matthews)

**Positions of Parties:**

**FPL:** No. The existing infrastructure is substantially subscribed on a long-term firm contractual basis. As such, absent the introduction of incremental pipeline capacity, the infrastructure cannot fulfill FPL's or Florida's need for transmission capacity.

**FGT:** FGT would be able to serve both the Cape Canaveral and Riviera Beach plants with existing and incremental additions to its system in a timely and cost effective manner and at a total cost significantly less than FPL's multibillion dollar pipeline.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL contends that there is insufficient existing pipeline capacity available to serve FPL's or Florida's projected firm resource needs. FPL asserts that it will require a total of 400 MMcf/d of incremental natural gas supply just to support the Modernization Projects. Furthermore, FPL argues that the incumbent pipelines are substantially subscribed and will remain so after completion of proposed expansion projects. Neither FGT's nor Gulfstream's existing pipelines, including currently planned upgrades, can meet the firm gas requirements of the Modernization Projects. (FPL BR 18)

**FGT:** FGT contends that following the company's Phase VIII expansion it will have up to 214 MMcf/d of available capacity to serve FPL's Cape Canaveral and Riviera Beach plants. FGT continues that following the expansion, FGT could serve the Riviera Beach plant with one compressor station at an estimated cost of \$50 million. As for Cape Canaveral, FGT would need to construct a lateral, and other facilities to deliver the gas. (FPL BR 8-9)

**ANALYSIS**

It is noted that the immediate need for transportation capacity is driven by the modernization of FPL's Cape Canaveral and Riviera Beach plants. Each plant will require 200 MMcf/d of natural gas capacity once in-service. (TR 39)

FPL points out that Florida has two incumbent pipeline transmission companies, FGT and Gulfstream, which supply nearly 90 percent of the state's natural gas transmission needs. (TR 45) FPL's system is only served by these two companies. (TR 451-452) Both FGT's and Gulfstream's current pipeline systems are fully committed. (TR 478)

FGT contends that it has 139 MMcf/d of excess capacity that will be available following its Phase VIII expansion in 2011. (TR 546) FGT has additionally indicated that an extra 75 MMcf/d of capacity may be available depending on the election of an existing shipper. (TR 546)

When considering the 214 MMcf/d (139 MMcf/d + 75 MMcf/d) that may be available, there still exists a nearly 200 MMcf/d shortfall of capacity necessary to meet the projected 400 MMcf/d needed by 2014 for the repowering projects. Existing infrastructure will not provide any additional capacity for system growth beyond 2014. As FGT acknowledges in its position statement, incremental additions are necessary to serve both the Cape Canaveral Energy Center and the Riviera Beach Energy Center.

### **CONCLUSION**

Although FGT may have as much as 214 MMcf/d of excess capacity available following its Phase VIII expansion, without incremental additions there is not sufficient capacity available to meet FPL's natural gas needs following the Cape Canaveral and Riviera Beach modernizations.

**Issue 3:** Is the proposed Florida EnergySecure Pipeline needed to improve or maintain natural gas delivery reliability and integrity within Florida?

**Primary Recommendation:** Yes. The proposed Florida EnergySecure Pipeline is necessary to improve natural gas delivery reliability and integrity to FPL's Cape Canaveral Energy Center and Riviera Beach Energy Center as well as long term natural gas delivery and integrity of FPL's future generation expansion plans. (Graves, Matthews)

**Alternative Recommendation:** No. The proposed Florida EnergySecure Pipeline is not needed to maintain natural gas delivery reliability and integrity within Florida. Further, the Florida EnergySecure Pipeline will not improve reliability and integrity within Florida. (Bulecza-Banks)

**Positions of Parties:**

**FPL:** Yes. The Florida EnergySecure Pipeline will increase natural gas deliverability within Florida by adding 600 MMcf/d of new supply. By providing additional access to unconventional onshore supplies, the Florida EnergySecure Pipeline will also diversify supplies and mitigate risk of supply disruptions associated with severe weather events along the Gulf Coast.

**FGT:** No. Existing natural gas pipelines provide sufficient capacity to meet reasonable projected demand for approximately 8 to 10 years. If there is additional demand requiring additional pipeline capacity, the option that is more cost effective for consumers is to expand existing pipelines through minimal laterals, looping or additional compression.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL contends that the introduction of the Florida EnergySecure Pipeline -- a third major pipeline into Florida -- will increase the reliability of Florida's natural gas infrastructure and reduce capacity concentration of the FGT and Gulfstream systems. Moreover FPL asserts that the result will be enhanced reliability of pipeline operations and increased flexibility in delivery in the event of any interruption on the existing Gulfstream or FGT pipelines, and will help to make gas available when and where it is needed within the state. (FPL BR 19)

FPL further states that a unique physical pipeline route receiving gas from growing unconventional on-shore sources will reduce the dependence on onshore Gulf Coast and offshore Gulf of Mexico sources and will provide further protection against weather-related disruptions to the Gulf supply. (FPL BR 19)

FPL asserts that the Cape Canaveral and Riviera Beach plants are currently capable of receiving supplies only from the FGT system. After connections with the proposed pipeline are installed, there will be two pipelines connected to each plant (FGT and the new pipeline), which will provide protection against loss of supplies to the plant. FPL further contends that in the event of a Gulfstream outage, FPL could flow natural gas to its Martin Plant via the new pipeline and displace a like amount of capacity on the Gulfstream system. Finally, FPL argues that, the interconnection of the Florida EnergySecure Pipeline with the Upstream Pipeline and FGT in the

northern part of the state, and the opportunity to interconnect with FGT and Gulfstream at the Martin Plant in the southern part of the state, will provide significant operational flexibility. (FPL BR 20-21)

**FGT:** FGT argues that the Florida EnergySecure Pipeline would essentially run parallel to the FGT system offering nothing new in terms of physical path. FGT points out that, by being a single pipeline, the Florida EnergySecure Pipeline lacks the looping, interconnects, and redundancies that its system has, making it less reliable in the event of system failures. (FGT BR 11)

FGT contends that during recent storms, onshore gas supplies replaced offshore supplies, indicating that there are no supply issues associated with storms. FGT asserts that FPL's real issue relates to gas price, not gas supply. The reliability of the pipeline capacity infrastructure is not the issue. FGT pointed out that during hurricanes Katrina and Rita, curtailment of pipeline capacity was not an issue. FPL never said there was a pipeline capacity problem and never said that it lacked gas transportation services or gas supply, only that it paid more for such supply. FGT asserts that any gas purchaser attempting to buy gas on the spot market during a supply disruption will pay prices that are higher than those that can be negotiated in long-term supply contracts. Further, FGT states that its existing supply points offer more liquid and diverse supplies of gas, including on-shore shale supplies, than FPL's proposed pipeline's supply at Transco Station 85. (FGT BR 11-13)

### **PRIMARY STAFF ANALYSIS**

Current facilities at FPL's Cape Canaveral and Riviera Beach plants have low gas-pressure requirements due to the older technology of the existing units. (TR 45) Pursuant to Order No. PSC-08-0591-FOF-EI, the Commission approved the need for the Cape Canaveral and Riviera Beach modernizations which are scheduled to be completed by June 1, 2013, and June 1, 2014, respectively. The modernization of the Cape Canaveral and Riviera Beach plants will require a high inlet pressure that cannot be served with the existing pipeline infrastructure. (TR 45-46)

In addition to the increased pressure necessary to serve the modernizations, firm capacity requirements will also increase to a combined total of 400 MMcf/d by 2014. (TR 139-140) The Florida EnergySecure Pipeline is designed to initially supply 600 MMcf/d. (TR 58) The evidence in the record indicates that the incremental cost of increasing the initial capacity rating of the line from 400 MMcf/d to 600 MMcf/d is \$15 million associated with the addition of compression facilities. This represents less than 1 percent of the total estimated cost of \$1.5 billion. Additionally, FPL has indicated that it can use the "excess" 200 MMcf/day for reliability purposes at the Martin Plant site as well as to release capacity from existing natural gas transmission agreements, where cost-effective, and credit the resulting revenues to the Fuel and Purchased Power Cost Recovery Clause. (TR 60) Such transactions would be regulated under FERC tariffs. (TR 60)

Once the immediate need of the modernizations is met, FPL's plans anticipate additional gas-fired generation capacity by 2021. (TR 338) As discussed in Issue 10, FPL may require the full 600 MMcf/d capacity as early as 2017 if the in-service dates of the nuclear units are delayed.

Therefore, the “excess” capacity will be available for use as a system resource for a period of time between three and seven years for reliability purposes. As growth occurs on FPL’s electric system, the full 600 MMcf/day capacity of the pipeline will be used to provide firm transportation to FPL electric generating plants. The Florida EnergySecure Pipeline can also be expanded to a maximum capacity of 1.25 Bcf/d in order to accommodate future gas transportation needs on FPL’s system. (TR 46)

FGT argues that the Florida EnergySecure Pipeline’s lack of interconnection presents reliability issues in the event of a system failure. (FGT BR 11) As noted, the power plants that will be served by the Florida EnergySecure Pipeline are connected with FGT’s system and temporary boost compression can be used to fulfill short-term pressure requirements. Staff expects FPL to evaluate potential interconnections with existing systems.

FPL contends that the Florida EnergySecure Pipeline will improve delivery reliability during storms; however, Florida’s existing pipeline systems did provide adequate gas delivery during recent major hurricane events. (TR 701) Although Florida’s existing pipeline system performed admirably during these events, the proposed line would provide additional access to on-shore fuel supplies which should enhance reliability. (TR 49)

#### **PRIMARY STAFF CONCLUSION**

As discussed in Issues 1 and 2, staff recommends that there is not sufficient capacity available to meet FPL’s natural gas needs following the Cape Canaveral and Riviera Beach modernizations. As discussed in Issue 10, the Florida EnergySecure Pipeline is the most cost-effective alternative to ensure the continued reliability of natural gas deliveries to FPL. Furthermore, staff believes that additional gas transportation capacity will facilitate increased access to gas supply. Natural gas delivery, reliability and integrity will be improved by the construction of additional natural gas transmission capacity to increase the availability of natural gas supplies. The reliability of the transportation system in Florida will be improved through the additional capacity provided by the Florida EnergySecure Pipeline.

#### **ALTERNATIVE STAFF ANALYSIS**

FPL argues that the Florida EnergySecure Pipeline will enhance reliability of pipeline operations and increase flexibility in delivery in the event of any interruption on the existing Gulfstream or FGT pipelines. Alternative staff disagrees that the Florida EnergySecure Pipeline will enhance the reliability of Florida’s pipeline operations. FPL has identified only three anticipated delivery points on the Florida EnergySecure Pipeline: the Cape Canaveral plant, the Riviera Beach plant, and the Martin plant. Currently, the Florida EnergySecure Pipeline has no plans to add additional delivery points. (EXH 2, BSP 134, 301)

While natural gas delivery may be improved for FPL based on having an additional transportation source, there is no support for the assertion that the state of Florida will see increased reliability or flexibility. Further, lack of looping and interconnects may actually reduce reliability when compared to Florida’s existing pipelines. (FGT BR 11) Current pipeline customers in Florida rely on the existing pipeline infrastructure to obtain their natural gas supplies. The existing pipelines transport supplies either directly to the customers or through distribution facilities owned

by investors or municipal governments. Physical location dictates where the gas is delivered. Excess capacity on the Florida EnergySecure Pipeline does not help existing pipeline customers. While FPL may argue that by releasing capacity on FGT or Gulfstream improves reliability, alternative staff does not concur. FPL has acknowledged that it will not release capacity on either Gulfstream or FGT on a permanent basis (EXH 81); FPL will only release excess capacity on a recallable basis. Customers will not be able to consistently obtain additional supplies; they will only obtain supplies when FPL does not need it, typically during off-peak times. FPL also acknowledged that it will likely be unable to obtain revenues equating to the full cost of the capacity it releases. (TR 357, 501) This is because capacity is typically released during off-peak times when demand for the capacity is low. As a result, this scenario does not support the assertion that reliability of pipeline infrastructure in Florida will be improved because of the addition of the Florida EnergySecure Pipeline in Florida's natural gas infrastructure portfolio.

According to FPL, the Florida EnergySecure Pipeline has a unique physical pipeline route thus, allowing it to receive gas from growing unconventional on-shore sources of gas supply. (TR 425) Access to these on-shore supplies will reduce the dependence on onshore Gulf Coast and offshore Gulf of Mexico sources. Alternative staff agrees that the Florida EnergySecure Pipeline, as designed, will connect to a to-be-built interstate Pipeline E, which will connect to other pipelines which interconnect to onshore supplies. However, access to these supplies will not benefit Florida as a whole; at best, access to these supplies may serve to diversify FPL's gas supply portfolio. It is important to note that there are alternatives to obtaining the diverse supplies FPL wishes to include in its portfolio. In fact, FPL currently receives shale gas through the Southeast Supply Header to FGT. (TR 684-685) Further, as the Florida EnergySecure Pipeline lacks looping and interconnects, the reliability of the line has considerable room for improvement. (TR 594) Should an incident occur on the Florida EnergySecure Pipeline, its electric plants, which it was designed to serve, could face interruption.

### **ALTERNATIVE STAFF CONCLUSION**

This issue addresses whether the Florida EnergySecure Pipeline is necessary to maintain or improve natural gas delivery reliability and integrity within Florida. Alternative staff does not believe the Florida EnergySecure Pipeline is necessary to maintain or improve natural gas delivery reliability. This issue is based on the requirements set forth in Section 403.9422(b), F.S.:

In the determination of need, the commission shall take into account the need for natural gas delivery reliability, safety, and integrity; the need for abundant, clean-burning natural gas to assure the economic well-being of the public; the appropriate commencement and terminus of the line; and other matters within its jurisdiction deemed relevant to the determination of need.

Delivery reliability is important to the well-being of the citizens of state of Florida. As a result, maintaining natural gas delivery reliability is critical to Florida. The existing infrastructure has been reliable and there is no reason to believe it will somehow become unreliable. (TR 700-701) Had the Florida EnergySecure Pipeline been designed in a manner that provided redundancies to the existing infrastructure and provided open access transportation, one could possibly see the benefits that Florida could derive. Florida EnergySecure Pipeline's lack

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of looping and interconnects does not offer the reliability necessary to ensure FPL's power plants remain operational should a pipeline incident occur. (FGT BR 11; TR 594)

**Issue 4:** Does the planned construction and operation of the proposed Florida EnergySecure Pipeline meet industry and government standards for safety?

**Recommendation:** Yes. The construction and operation of the Florida EnergySecure Pipeline will meet industry and government standards for safety. (Mills, Fletcher)

**Positions of Parties:**

**FPL:** Yes. The proposed pipeline will comply with all applicable engineering, construction, and operation standards, including those for safety. FPL focuses on safety in all aspects of its business. FPL brings established project management skills, a highly qualified staff, and the necessary ancillary support to undertake a project of this magnitude.

**FGT:** No. FPL's general assertions regarding design, operation, and maintenance procedures combined with its lack of any previous experience in safely and efficiently operating a long haul, multicounty, high pressure mainline natural gas pipeline does not demonstrate FPL's ability to construct or operate the pipeline in compliance with applicable standards.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL asserts that the Florida EnergySecure Pipeline will be designed, constructed, tested, operated and maintained in accordance with the requirements of federal pipeline safety regulations, and will meet or exceed stringent industry standards. FPL further contends that the engineering, construction, and operation of the project will comply with Chapter 368, F.S.; Chapter 25-12, F.A.C.; and Title 40, Code of Federal Regulations Parts 190 through 199, and the codes and standards incorporated therein. (FPL BR 21)

FPL asserts that it has a long standing history of safe and reliable operations of far more complex and sophisticated systems than the facilities currently proposed in the Florida EnergySecure Pipeline, including transmission and piping systems. FPL further argues that it has demonstrated its ability to engineer and construct numerous electric transmission lines and power plants throughout Florida and that it brings established project management skills, a highly-qualified staff, and the necessary ancillary support services, procedures, and staff to undertake projects of this magnitude. (FPL BR 22)

**FGT:** FGT contends that FPL offers insufficient detail with regard to the safety of the Florida EnergySecure Pipeline. FGT also points out that FPL has not operated a pipeline system the magnitude of the Florida EnergySecure Pipeline. (FGT BR 13-14)

**ANALYSIS**

FGT's position that FPL lacks the ability to construct and operate the Florida EnergySecure Pipeline in compliance with industry and government safety standards is not supported by the record. Part I Chapter 368, F.S., Chapter 25-12 F.A.C., Federal rules and regulations in Title 40, Code of Federal Regulations Parts 190 through 199, and codes and

industry standards incorporated within are the rules and regulations for pipeline safety. These natural gas pipeline rules and regulations set the safety standards for materials, pipe and component design, welding, construction requirements for transmission, corrosion control, test requirements, maintenance, qualifications of pipeline personnel, transmission integrity management, damage prevention, emergency plans, and drug and alcohol testing. These rules and regulations are to assure the public's safety regarding the integrity of construction and operations of natural gas pipelines. FPL intends to comply with these safety requirements. (TR 239-240, 249-254, 256, 758; EXH 70, 77)

FGT alleges that FPL or its contractors will lack the experience to construct and operate a large diameter gas transmission pipeline. Staff believes the Florida EnergySecure Pipeline will be making use of personnel within FPL's affiliate companies that have years of experience in the design, construction and operation of pipelines. (TR 42) Additionally, FPL already has experience operating and maintaining pipelines located within the state of Florida. (TR 262, 758) FPL has a history of constructing and operating large and technically complex projects and the Florida EnergySecure Pipeline would be within the company's core competencies. (TR 42, 246-247, 256, 262, 758)

In addition, the Florida EnergySecure Pipeline will be a member of the state's Sunshine State One Call (One-Call) system for damage prevention. The One-Call system operates a toll-free system that excavators are required to call before digging. This will reduce the possibility of damage to the pipeline from outside parties. The pipeline will be marked with signs to alert possible excavators there is a pipeline present. (TR 252; EXH 78)

To insure the public's safety, the Commission will have continued oversight of the project under Part I of Chapter 368, F.S., and Chapter 25-12 F.A.C.

### **CONCLUSION**

Based on the evidence in the record as well as the Commission's statutory authority, staff believes the proposed pipeline will comply with all applicable engineering, construction, and operation standards, including those for safety.

**Issue 5:** Will the proposed Florida EnergySecure Pipeline improve the economics of natural gas transmission within Florida to assure the economic well-being of the public?

**Primary Recommendation:** Yes. FPL is Florida's largest electric utility as well as the state's largest natural gas consumer. FPL's ownership of a third pipeline into the state is likely to improve the economics of natural gas alternatives available to FPL in the future. (Graves, Matthews)

**Alternative Recommendation:** No. The Florida EnergySecure Pipeline, as designed, will not improve the economics of gas transmission within Florida to assure the economic well-being of the public. (Bulecza-Banks)

**Positions of Parties:**

**FPL:** Yes. The Florida EnergySecure Pipeline will promote competition by introducing a third major pipeline into Florida. It will promote economic efficiency by cost-effectively meeting FPL's transportation needs and increasing fuel reliability and operational flexibility. It also will help boost Florida's economy and provide significant tax benefits to state and local governments.

**FGT:** No. FPL's proposal is significantly more expensive than the most cost effective proposal to supply the approved demand of 400 MMcf/d provided by FGT, and FPL's pipeline would lack redundancy, looping, and interconnection, causing economic inefficiency. Existing pipeline operations with incremental expansion could reliably serve existing and projected needs.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL asserts that the Florida EnergySecure Pipeline introduces a competitive pipeline alternative into peninsular Florida where today there is no meaningful pipeline competition. (TR 502-503) Increasing competition will benefit consumers by providing goods and services at a lower cost while using fewer resources. FPL states that incumbent pipelines in Florida, such as FGT, possess market power so that the negotiated rates offered shippers are greater than the competitive level. (TR 838) FPL argues that entry by a new pipeline will promote competition and put downward pressure on negotiated rates; this has already been demonstrated by FGT's revised proposal.

FPL points out that to the extent that FPL makes excess capacity available to third parties, either directly or via capacity release on existing pipelines, the Florida EnergySecure Pipeline will have a significant effect and promote efficiency in the broader transmission market serving Florida. (FPL BR 23) FPL points out that since the Florida EnergySecure Pipeline is the least-cost alternative to supply increased gas transmission capacity over the life of the project, it promotes economic efficiency. (FPL BR 23)

Further, FPL claims that the Florida EnergySecure Pipeline will provide a boost to the state and local economies in the form of new construction jobs and substantial purchase of materials and supplies. (FPL BR 25) FPL argues that the Florida EnergySecure Pipeline will

create over 3,500 direct construction jobs and over 7,600 total direct and indirect jobs through the multiplier effect of direct spending from wages and output during construction. FPL also argues that the project will generate \$20 million in sales and use tax revenues. Overall, FPL asserts that the overall benefit to state and local economies is \$1.2 billion. (FPL BR 25)

**FGT:** FGT states that the Florida EnergySecure Pipeline will not improve the economics of natural gas transmission in Florida. FGT argues that the Florida EnergySecure Pipeline will not enhance competition in Florida because the pipeline only interconnects with three FPL plants. No other interconnection points have been identified. As a result, FGT argues that the Florida EnergySecure Pipeline is essentially a “private driveway” for FPL. Any benefits resulting from the Florida EnergySecure Pipeline/Company E proposal would be no different than if provided by any other pipeline operators. (FGT BR 14-15)

According to FGT, the Florida EnergySecure Pipeline will not serve to reduce prices on FGT or Gulfstream because it offers no true competition. No empirical evidence has been presented that substantiates FPL’s arguments that the Florida EnergySecure Pipeline will enhance competition. (TR 687) FGT argues that FPL’s assertion that FGT’s rates are in excess of the “competitive rate” is baseless. According to FGT’s witness Dr. Schlesinger, “FERC Order 636 et seq., has fostered the most reliability competitive gas transmission market in the world, one whose rules FPL is seeking to circumvent in this proceeding by claiming it has a need for a new \$1.5 billion pipeline that must be operated as a ‘private driveway’ in order to succeed economically.” (TR 688)

FGT further points out that FPL’s attempt to compare the benefits inured by the California experience to the Florida EnergySecure Pipeline, is merely a last ditch effort to show the line provides competitive benefits. FGT argues that the California experience cannot be compared to FPL’s proposal because in California, the intrastate pipelines are regulated as open access entities and have separate utility owners. (FGT BR 16; Schlesinger TR 689) Moreover, the benefits experienced in California did not inure because of the additional pipeline, but resulted from the introduction of a new source of gas supply. (FGT BR 16) FGT states that the shale gas FPL seeks to obtain at Transco 85 is already flowing to FPL through the Southeast Supply Header contracted into the FGT pipeline. Thus, access to shale gas is not resulting from construction of the Florida EnergySecure Pipeline; the gas supplies are already available to FPL. (Schlesinger TR 609)

Lastly, FGT argues that the economic benefits cited by FPL, namely jobs, taxes, and economic development, are accomplished on the backs of the monopoly rate payers. (FGT BR 17) These cited economic benefits are not factors to be considered in a determination of need for an intrastate pipeline pursuant to Section 403.9422(1)(b), F.S. (FGT BR 18) FGT concludes with its assertion that the pipeline would be paid for by ratepayers for 27 years or more before any cumulative net benefit accrues to these customers. (FGT BR 18)

### **PRIMARY STAFF ANALYSIS**

In Docket No. 920807-GP, the Commission explored the effect the proposed SunShine intrastate pipeline would have on natural gas competition in Florida.<sup>2</sup> In the proceeding, the Commission also examined the potential for job creation as a result of the project and addressed the need for new gas transmission infrastructure in order to ensure that new gas plants would have sufficient supply infrastructure. For the purposes of this issue, staff will analyze the proposed Florida EnergySecure Pipeline's effect on gas competition, job creation, and the need for new gas infrastructure to serve new gas plants. Issue 10 addresses whether the Florida EnergySecure Pipeline is the least-cost alternative.

#### *Competition*

FGT serves nearly 60 percent of the states needs and approximately 66 percent of FPL's peak gas supply. (TR 419-420) Moreover, FGT is the only supplier which currently provides service to the Cape Canaveral Energy Center and Riviera Beach Energy Center. (TR 420) FPL witness Ogur describes competition as the absence, or if present the regulation of, market power. (TR 413) The witness adds that regulation can mitigate market power but does not eliminate the exercise of market power. (TR 828, 836) It is further claimed that high levels of market concentration raise competitive concerns that sellers may be able to exercise market power. (TR 418) Primary staff believes that the presence of the Florida EnergySecure Pipeline will reduce FGT's market concentration and market power regarding FPL's future gas transmission needs.

FGT witness Schlesinger argues that the Florida EnergySecure Pipeline is a private driveway for FPL's power plants. (TR 673) FPL acknowledges that the Florida EnergySecure Pipeline is proposed to serve FPL customers and their needs. As discussed in Issue 14, FPL is not holding itself out as an open access natural gas transportation company. FPL is Florida's largest utility, and the potential benefits to FPL's more than four million retail customers should be given great weight.

Additionally, the construction of the Florida EnergySecure Pipeline, as proposed, would enhance the State's electric grid by ensuring a reliable supply of fuel to FPL's units. As an interconnected utility, FPL can also sell electric power to other utilities throughout the state when economic or needed for reliability purposes.

#### *Job Creation*

As stated in Order No. PSC-93-0987-FOF-GP:

SunShine is an approximate \$600 million project. As this amount of expenditure disseminates into the local economy, it should have a multiple effect.....At a time when both the state and our nation most need new economic boosts and job creating opportunities, it would be very unfortunate to shut down our plans for constructing the SunShine Pipeline.

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<sup>2</sup> Order No. PSC-93-0987-FOF-GP, In re: Application for a Determination of Need for an Intrastate Natural Gas Pipeline by SunShine Pipeline Partners, issued 7/2/93.

As has been documented in this docket, the severity of the current recession is greater than those seen recently. (EXH 4) Although the benefits may not be quantifiable the Commission has recognized in the past that the local economy can benefit from projects such as the Florida EnergySecure Pipeline. Additionally notable is the fact that the Commission in Order No. PSC-93-0987-FOF-GP recognized the potential benefits to the nation. Witness Morley indicates that Florida's slowed population growth is strongly influenced by many baby boomers delaying their retirement and eventual migration to Florida. (TR 192) Such a statement indicates that the health of the Nation's economy has a significant effect on Florida's economy. As discussed in the alternative staff analysis, any new gas pipeline or other gas transportation infrastructure built to satisfy the need for additional gas in Florida would have the same impact.

#### *Need for New Gas Infrastructure*

As stated in Order No. PSC-93-0987-FOF-GP:

With greater supplies of gas available through additional capacity, Florida's electric generators may view natural gas as a more viable fuel option. Increased use of natural gas for electric generation will assist utilities in complying with the Clean Air Act.

The order discussed above recognized a need for utilities to meet generation requirements with a "clean" fuel source. Although the Clean Air Act has been in place for more than a decade now, potential legislation regarding emissions looms. FPL witness Enjamio indicates that there is greater uncertainty in the support for nuclear generation, which makes the addition and timing of future nuclear units more uncertain. (EXH 2, p. 4) Witness Enjamio further claims that there also has been increased opposition to the construction of coal-fired generation, including IGCC units, making the future of new coal generation significantly less certain. (EXH 2, 4) Staff believes that the uncertainty surrounding both coal-fired and nuclear generation leaves natural gas-fired generation as the only viable base-load option. Therefore, increasing gas transmission infrastructure is critical to ensuring the State and FPL can continue to meet its customers needs. As discussed in the alternative staff analysis, any new gas pipeline or other gas transportation infrastructure built to satisfy the need for additional gas in Florida would have the same impact.

### **PRIMARY STAFF CONCLUSION**

Based on the summation of the three topics discussed above, staff believes that the Florida EnergySecure Pipeline will improve the economics of natural gas transmission within Florida to assure the economic well-being of the public.

### **ALTERNATIVE ANALYSIS**

Similar to primary staff's analysis, in this discussion alternate staff will analyze competition, job creation, and the need for new gas infrastructure to serve new gas plants. For the reasons discussed below, staff believes that competition would not be enhanced if FPL's Florida EnergySecure Pipeline is not subject to open access transportation. Further, as discussed

below, staff maintains that the Florida EnergySecure Pipeline would not be unique in its impact on the creation of new jobs and satisfying the need for new gas infrastructure. Any new gas pipeline or other gas transportation infrastructure built to satisfy the need for additional gas in Florida would have the same impact.

### *Competition*

FPL asserts that the Florida EnergySecure Pipeline will introduce competition where there is no meaningful competition. Alternative staff does not agree with FPL's assertion. While FPL repeatedly states that it will either make excess capacity available to third parties, either directly or via capacity release on existing pipelines, FPL witness Forest states that the more likely scenario is that FPL will release excess FGT or Gulfstream capacity. (EXH 81)

Alternative staff believes that if the Florida EnergySecure Pipeline is recognized as simply an asset of FPL, and is not subject to open access transportation, then the Florida EnergySecure Pipeline will not improve the economics of natural gas transmission in Florida. FPL states that it will release capacity on existing pipelines. The releases will be short term in nature and thus, interested shippers, if any, will have to forfeit the capacity when FPL has need for the capacity. (FPL BR 7) FPL reinforces this argument stating that any sale of excess capacity is likely to be short term in nature and therefore poses little threat to incumbent pipelines. (FPL BR 47) If the incumbent pipelines will face little threat, then there is a question as to the true competitive force imposed by the Florida EnergySecure Pipeline.

The arguments made by FPL are difficult to reconcile. On one hand, FPL alleges that the Florida EnergySecure Pipeline will be a third major pipeline that provides competition to the incumbent pipelines. On the other hand, FPL argues that the Florida EnergySecure Pipeline will pose little threat to the incumbent pipelines since any sales will be short term in nature. (FPL BR 47) Moreover, FPL has not announced that it will initiate an open season to offer capacity to potential shippers on the Florida EnergySecure Pipeline, which would be necessary in order to provide true competition to the existing pipelines. Further, as designed, the Florida EnergySecure Pipeline only has three delivery points, one to serve the Cape Canaveral plant, one to serve the Riviera Beach plant, and one to serve the Martin plant. (EXH 2, BSP 134) No other laterals have been identified or proposed, which also would be necessary in order to provide true competition. (EXH 2, BSP 301) Since the proposed line would not provide true competitive benefits to the state, alternative staff concludes that it would not serve to improve the economics of natural gas transmission in Florida.

### *Job Creation*

FPL also claims that the state of Florida will benefit from increased jobs, increased tax base, and substantial local purchases of materials and supplies. While such ancillary benefits are not determinant of a positive finding of need, FPL's claimed benefits are questionable. While labor will be needed to construct and operate the pipeline, FPL could not provide the number of Florida residents that would be offered employment. (EXH 2, BSP 297, 299) FPL stated that it plans to hire outside contractors and so it does not know how many, if any, Florida EnergySecure Pipeline employees will be Florida residents. (EXH 2, BSP 298) Further, once the pipeline is constructed, the majority of construction employees will be terminated. (EXH 2, BSP 300)

There will be limited long-term employment resulting from the Florida EnergySecure Pipeline. However, these labor “benefits” would be no different for the Florida EnergySecure Pipeline than it would be for any other entity constructing a similar pipeline in Florida. Similarly, the increased tax base and local purchases of materials and supplies would again be no different if another entity constructed a similar pipeline.

*Need for New Gas Infrastructure*

With regard to the need for new gas infrastructure, we agree with the primary staff analysis that increased gas transportation infrastructure is needed to meet future electricity needs, given the uncertainty surrounding both coal-fired and nuclear generation in the state. However, we do not conclude that the only way this need can be met is with the Florida EnergySecure Pipeline as proposed by FPL. Any new gas pipeline or other gas transportation infrastructure could satisfy this need for additional gas capacity, and the Florida EnergySecure Pipeline does not assure the economic well-being of the public.

**ALTERNATIVE STAFF CONCLUSION**

Alternative staff does not believe the Florida EnergySecure Pipeline, as designed, will improve the economics of gas transportation in Florida. As designed, the Florida EnergySecure Pipeline will not provide competitive benefits to the state of Florida as alleged by FPL. At best, the line may provide limited benefits to FPL’s customers by 2031, if, all of FPL’s projections hold true.

**Issue 6:** Are the commencement and terminus of FPL's proposed facilities and laterals appropriate to serve the need identified in Issue 1?

**Recommendation:** Yes. The proposed commencement near FGT Station 16, in Bradford County, Florida, will allow for connection with "Company E's" proposed interstate pipeline which will originate at Transco 85, in Choctaw County, Alabama. The proposed terminus of the Florida EnergySecure Pipeline, near FPL's Martin Plant, will allow for FPL to use an existing lateral to deliver fuel to the company's Riviera Beach Energy Center. FPL is also proposing two new laterals, one which will facilitate natural gas delivery to FPL's Cape Canaveral Energy Center and one that will connect the Riviera Beach Energy Center with an existing FGT mainline. (Graves, Matthews)

**Positions of Parties:**

**FPL:** Yes. Commencement at FGT Station 16 will create a north Florida hub that will increase supply reliability and competition. Terminus at FPL's Martin Plant will increase reliability and enable use of an existing FPL pipeline to deliver gas to the Riviera Beach Energy Center lateral and thereby avoid construction in environmentally sensitive areas.

**FGT:** No. The commencement point does not offer new, unique or significant supply diversity to Florida. FGT's pipeline already provides supply diversity, including the on-shore shale supply and "east coast LNG" requested by FPL, at significantly less cost.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL states that the 30-inch mainline of the Florida EnergySecure Pipeline's commencement point is near FGT Station 16 in Bradford County, Florida, and extends southeast to its termination point at FPL's Martin Plant in Martin County, Florida. The natural gas supply into the Florida EnergySecure Pipeline will come into Florida from the "Upstream Pipeline," a new interstate pipeline which commences from Choctaw County, Alabama at Transco Station 85. This receipt point for the Upstream Pipeline provides access to unconventional shale gas resources in Central and East Texas, North Louisiana, Arkansas, and Oklahoma. FPL asserts that these unconventional sources provide added supply diversity which also increases supply reliability. (FPL BR 26)

FPL asserts that the selection of this area for the receipt point will create a hub in northern Florida where the Florida EnergySecure Pipeline, the Upstream Pipeline, FGT, and potentially the Cypress Project will all be operating. This scenario will increase competition and enhance the reliability of gas supplies. (FPL BR 26)

The pipeline will extend along approximately 250 miles of FPL's existing transmission corridors, which minimizes environmental and residential impacts. Terminating the line at FPL's Martin Plant increases the supply reliability to that plant, as well as the potential for interconnection with other existing pipelines in that area, creating another hub on the southern end. (FPL BR 26)

The siting for the pipeline will allow the use of an existing lateral which reduces the total project cost and minimizes environmental impacts. Additional laterals to provide gas to the Cape Canaveral and Riviera Beach plants will be constructed as part of this project. (FPL BR 27)

**FGT:** FGT states that existing pipelines already provide the supply diversity that FPL has requested. The Florida EnergySecure Pipeline cannot provide natural gas to either the Cape Canaveral or the Riviera Beach plants without the construction of the Upstream Pipeline. Gas supplies at Transco 85 are not new or unique and provide no significant supply diversity that cannot be obtained from FGT's Zone 3. The construction of the new pipelines does not provide access to anything that is not currently available. Therefore, the proposed pipeline at Transco 85 is not necessary or appropriate. (FGT BR 20-21)

### ANALYSIS

Section 403.9422, F.S., requires the Commission to determine the appropriate commencement and terminus of any new intrastate gas pipeline as part of its need determination process. The proposed commencement near FGT Station 16, in Bradford County, Florida, will allow for connection with Company E's proposed interstate pipeline, which will originate at Transco 85, in Choctaw County, Alabama. (TR 148) Staff believes that Company E's proposed line will provide an adequate supply of natural gas to the proposed Florida EnergySecure Pipeline. Although FPL and FGT debate the benefits, or lack thereof, regarding access to Transco 85, evidence in the record indicates that the same diverse sources of natural gas will be available regardless of the locations discussed. (TR 604) Staff would note that the interstate connection is not an issue to be decided in this docket.

FPL contends that approximately 250 miles of the Florida EnergySecure Pipeline's total length of approximately 280 miles will be constructed within existing utility right of ways. (TR 149-150) Staff agrees that such a design would minimize environmental and residential impacts.

The proposed terminus of the Florida EnergySecure Pipeline, near FPL's Martin Plant, will allow for FPL to use an existing lateral to deliver fuel to the company's Riviera Beach Energy Center. (TR 234) The existing lateral is currently used to transport oil from FPL's 45<sup>th</sup> Street Terminal, in Palm Beach County, to the Martin Plant. (TR 263) After the proposed in-service date of the Florida EnergySecure Pipeline, the primary use of the lateral will be to flow gas from the Florida EnergySecure Pipeline to the Riviera Beach Energy Center; however, the lateral will still be capable of delivering oil. (TR 269-271)

FPL is also proposing two new laterals, one which will facilitate natural gas delivery to FPL's Cape Canaveral Energy Center and one that will connect the Riviera Beach Energy Center with an existing FGT mainline. Interconnection with FGT will increase gas delivery reliability to FPL during times in which the existing lateral is used to flow oil. (TR 270-271; EXH 5)

Both the commencement and the terminus points provide opportunity for future connection with existing FGT and Gulfstream infrastructure, which would enhance the reliability of natural gas delivery reliability in the state. (TR 49)

**CONCLUSION**

For the reasons discussed above, staff believes that the proposed commencement and terminus of the Florida EnergySecure Pipeline are appropriate to efficiently serve the gas transportation needs of FPL's Cape Canaveral Energy Center and Riviera Beach Energy Center.

**Issue 7:** Are FPL's construction cost estimates reasonable for planning purposes?

**Recommendation:** Yes. FPL relied on a major pipeline engineering consultant to produce a preliminary scope and project cost estimate. (Graves, Matthews)

**Positions of Parties:**

**FPL:** Yes. FPL's construction cost estimates are reasonable for planning purposes. FPL's estimates are based on an estimate prepared by a major pipeline engineering consultant, modified by FPL to reflect the final project scope, FPL's experience, and current and future market conditions.

**FGT:** No. FPL does not consider all upstream pipeline costs that are necessary, fails to provide detail in its gross cost information and relies on inconsistent gas price forecasts to skew the economics to make its proposal appear reasonable.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL states that the preliminary project estimates, which were prepared by a major pipeline engineering consultant, were modified to reflect FPL's construction experience, market conditions both current and future, and the final project scope. The current expected cost for the project includes all costs for land acquisition, materials, compressor and metering stations, construction labor and equipment, project management, and so forth. The costs include \$1.0 billion in direct material installation costs, \$325 million in indirect costs for project start-up and development, \$100 million in land costs, and \$106 million for AFUDC, for a total cost of \$1.531 billion. (FPL BR 27-28)

FPL points out that future expansions of the pipeline capacity would be approximately \$125 million to \$200 million for each incremental upgrade of 200 MMcf/d. This equates to a 33 percent increase in capacity for an increase in cost of only 8 percent. (FPL BR 28)

**FGT:** FGT asserts that FPL's construction cost estimates lack the detail that was provided by SunShine Pipeline Partners in its Application for a Determination of Need for an Intrastate Natural Gas Pipeline. In this application, 569 pages of detailed cost data were provided, including estimates of mainline, meters, laterals, transformers, and so forth. FGT states that the data provided by FPL was not close to this level of cost data. The cost detail for the Upstream Pipeline, a huge dollar component of this project, was not provided, nor was the cost or identity of the pipeline construction company with whom FPL is considering contracting. In addition, the primary FPL witness providing construction information only provided a minimum of materials in his Exhibits. (FGT BR 21-22)

FGT states that no detail regarding the construction of the pipeline are provided in the appendices to FPL's petition, and therefore has failed to provide an appropriate level of detail to substantiate the pipeline's cost. FGT states that the forecasts provided by FPL are unreasonable and skewed in an attempt to make the proposal appear reasonable, and has failed to meet its very high burden of proof for the intrastate and interstate pipeline project. (FGT BR 21-22)

### **ANALYSIS**

FPL relied on Wilbros, a major pipeline engineering consultant, to produce a preliminary scope and project cost estimate. Wilbros projected cost estimate for the Florida EnergySecure Pipeline was nearly \$2.5 billion. Project specific changes were made to Wilbros' estimate. FPL's changes resulted in an approximate \$1 billion reduction in the initial cost estimate. More than \$700 million of the \$1 billion reduction is associated with the initial estimate assuming 36-inch diameter pipe (The Florida EnergySecure Pipeline is designed to use 30-inch diameter pipe) and changes in commodity prices. Changes in escalation factors accounted for the remaining \$270 million. (TR 257; EXH 2, 205)

FGT contends that FPL's filing was insufficient and lacked detail. Staff notes however that, if approved, the Commission will review the costs associated with the Florida EnergySecure Pipeline during a rate case. As stipulated by the parties in Issue 12, FPL will file a post-construction report that details the final cost of the Florida EnergySecure Pipeline within 90 days of completion. The Commission has in the past denied a utility recovery of costs associated with a supply-side resource, based on unreasonable planning assumptions. This authority gives the Commission assurance that rate-payers will be protected from utility estimates.

FGT also contends that the cost detail associated with the upstream pipeline was insufficient. FPL did provide a transportation cost from Company E. However, specific details regarding the construction costs of this project are not necessary for the Commission's decision.

### **CONCLUSION**

Staff believes that FPL's reliance on an engineering consultant is appropriate and reasonable for planning purposes. Staff also believes that the Commission's future review, if necessary, of the costs associated with the Florida EnergySecure Pipeline provides assurance with regard to the prudence of expenditures made for the Florida EnergySecure Pipeline.

**Issue 8:** Are FPL's economic assumptions reasonable for planning purposes?

**Recommendation:** No. The updated long-term financial assumptions used in FPL's economic analysis are not reasonable for planning purposes. However, the long-term financial assumptions included in the Company's original filing are reasonable. (Springer)

**Positions of Parties:**

**FPL:** Yes. The assumptions utilized in FPL's economic analyses are based on reasonable assumptions used in other Commission dockets or are otherwise consistent with prior need determinations or other orders issued by the Commission.

**FGT:** No. FPL's data supporting the pipeline is inconsistent and lacks specificity. Its assumptions regarding population growth and demand are overstated and disregard accepted projections from the UF Bureau.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** The key economic assumptions underlying the analyses are reasonable and consistent with prior need determinations approved by the Commission. These assumptions include FPL's load forecast, energy savings from DSM, renewable resources, purchased power, and new generation. FPL represents that all of these items are reasonable for planning purposes and should be accepted by the Commission. (FPL BR 28-29)

**FGT:** FGT contends that the assumptions FPL has used in its analysis are not reasonable, and that a comprehensive review of all the evidence shows that FPL's proposal offers no cumulative net benefit to customers for at least 27 years. (FGT BR 23)

FGT identifies a number of assumptions utilized by FPL in its economic analyses that FGT believes skew the results of the analysis in FPL's favor. (FGT BR 27) The alleged errors that FGT identifies in FPL's analyses are:

- 1) FPL inappropriately used a \$0.20 adder to FGT's rate proposal to address transportation from Transco Station 85 to Citronelle;
- 2) FPL escalates the FGT rate 2.5 percent each year in order to establish a future price for additional expansions of the FGT system;
- 3) FPL depreciates the FPL pipeline costs over 40 years but fails to recognize depreciation associated with the Company E or FGT rate proposals; and
- 4) FPL assumes instantaneous rate adjustments each year so that the benefits of the depreciation are immediately reflected in rates, even though this would require yearly rate cases.

(FGT BR 25 - 27)

## ANALYSIS

FPL provided an updated analysis which assumes an overall cost of capital and discount rate of 8.89 percent for all pipeline-related capital costs. (TR 855; EXH 87) This rate of return is based on a capital structure consisting of 55.8 percent equity at a cost rate of 12.50 percent and 44.2 percent debt at a cost rate of 7.03 percent. (TR 805; EXH 87) The updated cost rates for equity and debt are consistent with information filed in Docket No. 080677-EI (FPL's rate case), but are not consistent with the financial assumptions included in recent Commission-approved need determination filings.<sup>3</sup> (TR 855) The updated financial assumptions for the weighted average cost of capital, debt cost rate, and return on equity all represent the high end of the range of possible outcomes in a proceeding that has not been adjudicated, and therefore are too speculative to be considered reasonable for planning purposes. (EXH 87)

FPL's original analysis assumed an overall cost of capital and discount rate of 8.35 percent for all pipeline-related capital costs. (EXH 45) This rate of return was based on a capital structure consisting of 55.8 percent equity at a cost rate of 11.75 percent and 44.2 percent debt at a cost rate of 6.60 percent. (EXH 45) FPL's original long-term financial assumptions are consistent with the assumptions used in recently approved generation plant need determination filings and are reasonable for purposes of planning. (TR 317) Neither FPL nor FGT discussed the updated financial assumptions in their respective briefs.

While FGT disagrees with FPL's use of a 2.5 percent escalation rate in its analyses, FGT did not recommend what an appropriate escalation rate would be for purposes of this proceeding. The use of an escalation rate for purposes of long-term financial analyses is consistent with past Commission need determination proceedings. In addition, the 2.5 percent escalation rate FPL has used for the Company E and FGT proposals is consistent with the escalation rate FPL used for the operations and maintenance (O&M) costs for its self-build option. (TR 794)

Issues regarding depreciation and annual rate adjustments are discussed in Issues 2 and 10. The issue concerning the appropriate adder to FGT's rate proposal to address transportation from Transco Station 85 to Citronelle is addressed in Issue 2. The issue regarding FPL's population forecast is addressed in Issue 1.

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<sup>3</sup> Order No. PSC-06-0555-FOF-EI, issued June 28, 2006, in Docket No. 060255-EI, In re: Petition for determination of need for West County Units 1 and 2 electrical power plants in Palm Beach County, by Florida Power & Light Company; Order No. PSC-08-0021-FOF-EI, issued January 7, 2008, in Docket No. 070602-EI, In re: Petition for determination of need for expansion of Turkey Point and St. Lucie nuclear power plants, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through the Commission's Nuclear Power Plant Cost Recovery Rule, Rule 25-6.0423, F.A.C.; Order No. PSC-08-0237-FOF-EI, issued April 11, 2008, in Docket No. 070650-EI, In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company; Order No. PSC-08-0591-FOF-EI, issued September 12, 2008, in Docket No. 080203-EI, In re: Petition to determine need for West County Energy Center Unit 3 electrical power plant, by Florida Power & Light Company; Order No. PSC-08-0591-FOF-EI, issued September 12, 2008, in Docket No. 080245-EI, In re: Petition for determination of need for conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Company; and Order No. PSC-08-0591-FOF-EI, issued September 12, 2008, in Docket No. 080246-EI, In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Company.

### **CONCLUSION**

Based on this review, staff recommends that the updated long-term financial assumptions associated with cost of capital used for FPL's economic analysis are not reasonable for planning purposes. However, the long-term financial assumptions included in the Company's original filing are reasonable. In addition, staff recommends that the 2.5 percent escalation rate is also reasonable for planning purposes. Finally, as discussed in more detail in Issue 10, while the change in the cost of capital assumptions substantially reduces the cumulative present value revenue requirement of the project, even with the updated financial assumptions the project still has a positive cumulative present value revenue requirement.

**Issue 9:** Are the fuel supply and transport costs used by FPL reasonable for planning purposes?

**Recommendation:** Yes. (Lester)

**Positions of Parties:**

**FPL:** Yes. The fuel supply and transport cost forecasts used in FPL's economic analyses are consistent with forecasts utilized by FPL and accepted by the Commission in prior proceedings.

**FGT:** No. Because FPL provides flawed demand analysis, its resulting assumptions are unreliable. FPL's conclusions about supply and transportation costs fail to account for the risks of supply or the lack of redundancy on its pipeline. FPL's proposal fails to account for the full range of gas supply and pricing risks.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL argues that its fuel supply and transport cost estimates are reasonable for several reasons. In contrast to FGT's opinion, higher gas prices will not significantly affect FPL's gas demand for a large range of forecasted prices. In addition, differences in gas prices would not cause a substantial change the economic analysis of the project. In fact, due to its more efficient gas transport capabilities, higher gas prices will improve the economics of the Florida EnergySecure Pipeline. (FPL BR 30)

FPL declares that its sources of information that provided a foundation for its projections are highly reputable, world-recognized sources with extensive expertise in the natural gas industry, and that the methodology employed is consistent with that which has been accepted by the Commission in previous dockets. (FPL BR 30-31)

FPL contends that, in the absence of information on future markets beyond 2010, it is reasonable to assume that the basis differential between gas prices at Transco 85 and those at Perryville will continue throughout the planning horizon. In addition, it is reasonable to assume that the transport rates used in the life cycle analysis will remain flat since these rates have never decreased. (FPL BR 31-32)

**FGT:** FGT asserts that, in order to economically justify its project, FPL had to stretch its projections over a 40 year forecast. FGT contends that the time between the construction of FPL's Florida EnergySecure Pipeline and the point where the net cumulative benefits begin to accrue is so long that the customers who will pay for the asset do not derive any economic value from their investment. According to FGT, the Commission has never approved a project with such a lengthy period of time before the consumers begin to see some economic benefit, and it should not approve this project wherein no net cumulative benefit exists until 2041. Therefore, the fuel supply and transport costs are not reasonable and should be rejected. (FGT BR 33-34)

**ANALYSIS**

*Fuel Supply Costs*

FPL used forecasted natural gas prices as part of the economic evaluation of the projects. The gas price forecasts include the price forecast for gas delivered to Henry Hub and forecasts of gas price basis differentials that show the difference in gas prices at various hubs compared to Henry Hub.<sup>4</sup> In addition, FPL employed assumed pipeline rates, i.e., for the Florida EnergySecure Pipeline, Company E, and FGT's proposal. These forecasts are an integral and important part of the economic evaluation of the projects.

FPL witness Sexton provided a gas cost savings analysis that compared the costs of the Florida EnergySecure Pipeline project over the 40 year project life to the costs of the Company B proposal over the same period. In his rebuttal testimony, witness Sexton updated the gas cost savings analysis to incorporate FGT's March 18, 2009 proposal. (TR 855; EXH 89) According to witness Sexton, the updated analysis showed the net present value savings of the Florida EnergySecure Pipeline compared to the Company B project ranged from \$123 million to \$757 million. (TR 857; EXH 89, p. 1) The gas cost savings analysis used forecasted natural gas prices and basis differentials as inputs. (EXH 57, pp. 11, 20, 23, & 24; EXH 89, pp. 11, 20, 23, & 24)

FGT witness Schlesinger testified that FPL's forecasted gas and gas transport prices are not reasonable for planning purposes. (TR 659, 661) While he noted that no one can predict gas prices with certainty, he stated that FPL's basic gas price forecast, i.e., the forecast of Henry Hub prices, is simplistic. Witness Schlesinger particularly objected to FPL's forecast increasing in a linear fashion for the years 2020 through 2062. (TR 662, 678) Witness Schlesinger also objected to the forecasted prices at locations other than Henry Hub, i.e., basis differentials. He objected to the basis differentials being constant over the forecast period. (TR 663, 679-680) He objected to FPL not having a high, medium, and low gas price forecast. (TR 681) In addition, FGT witnesses Schlesinger and Langston objected to FPL's use of a declining rate for the Florida EnergySecure Pipeline, while using a flat pipeline rate for the Company E and Company B pipelines. (TR 587-588, 669-670)

FPL witnesses Sharra, Forrest, and Sexton testified on rebuttal that FPL's fuel forecast is reasonable for planning purposes. They testified that FPL's natural gas price forecast is based on projections from the PIRA Energy Group, the Energy Information Administration, and the NYMEX forward price curve. (TR 751-752, 732-733, 858) According to FPL witness Sharra, FPL's forecast of natural gas basis for different delivery points recognized that basis could increase or decrease over time. Since the direction and level of basis differentials cannot be accurately forecasted, FPL assumed basis prices would remain unchanged through the planning horizon. (TR 752) FPL witness Sharra noted that FPL's fuel price forecast methodology is consistent with the methodology reviewed and accepted by the Commission in the need determination proceedings for the Cape Canaveral and Riviera Beach modernizations projects and West County Unit 3 (Docket Nos. 080203-EI, 080245-EI, and 080246-EI). (TR 752) In rebuttal to FGT witness Schlesinger's criticism of FPL's gas price forecast, witness Sharra pointed out that higher forecasted gas prices would improve the economics of the Florida EnergySecure Pipeline relative to FGT's proposal. (TR 753)

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<sup>4</sup> Henry Hub is located in Erath, Louisiana and is the most important pricing point for wholesale natural gas. It is the delivery point for the New York Mercantile Exchange (NYMEX) futures contract. (TR 661)

In its brief, FPL argued that its natural gas price forecast methodology is consistent with the methodology reviewed and approved by the Commission in previous need filings. It also argued that using a constant basis differential over the life of the project is appropriate because more precise information on the magnitude of the differential is not available. Regarding the assumed pipeline rates, FPL argued that it is appropriate to assume flat rates for FGT since there is no reason to conclude FGT's rates would decline over time. FPL further points out that it used a flat rate for the Company E proposal. (FPL BR 30-32)

FGT argued in its brief that the cross-over point for FPL's evaluation of this project – the point at which the net cumulative benefits begin to accrue to customers – is too far into the future. FGT noted that it argued this specific point more completely in Issues 5 and 8.

Staff notes that long-term gas price forecasts and basis differential forecasts are inherently uncertain. (TR 662, 752) Staff believes the important consideration is whether the forecasting methodology is reasonable. Staff believes FPL's methodology is reasonable and is consistent with the methodology used in previous need determinations. FPL's forecasting methodology for natural gas prices and basis differentials utilized information from reliable, recognized sources. (TR 751-752) Further, FPL provided a sensitivity analysis showing that the Florida EnergySecure Pipeline project remained the most economical with a 10 percent increase in the forecasted gas prices. Higher gas prices make the Florida EnergySecure Pipeline project more cost-effective. (TR 753; EXH 2, pp. 319-328)

#### *Transportation Costs*

Transportation rates for FGT's proposal and Company E's upstream line were based on negotiated rates. The transportation rate for the Florida EnergySecure Pipeline was based on the estimated capital investment of approximately \$1.5 billion. (EXH 2, p. 423) FPL assumed fixed rates for FGT's proposals over the 40 year study period. FPL also assumed Company E's rates would remain fixed over the 40 year study period. FPL witness Enjamio testified that FPL used declining revenue requirements for the Florida EnergySecure Pipeline because FPL intends to recover the costs in electric rate base. A declining depreciation schedule would cause a decrease in revenue requirements over the life of the project. (TR 800-801) Witness Enjamio states that had FPL levelized the revenue requirements over the life of the project, the economic analysis would have been the same. (TR 801)

In addition to the negotiated rate provided by FGT, FPL included a \$.20/MMBtu adder to account for to move the commencement of the FGT proposal to Transco 85. (EXH 2, p. 18) FGT contends that adder should be significantly lower. Evidence in the record indicates that FGT's initial proposal reflects a rate of \$.48/MMBtu to move the commencement of the FGT proposal to Transco 85. (TR 614) FGT indicates that the rate was provided at a time of high steel prices and contends that lower steel prices would decrease the cost. (TR 614) FGT further claims that steel prices may account for 50 percent of a transportation charge. (TR 615) A 50 percent reduction of a \$.48/MMBtu would equal \$.24/MMBtu. Therefore, staff believes that FPL's \$.20/MMBtu adder is reasonable.

FGT argues that FPL's pipeline transportation rate assumptions were inconsistent and skewed. While FGT argues that its rates should also decline, FGT witness Langston indicated

that he could not identify a time in which an FGT rate case resulted in reduced rates. (EXH 4, p. 12) Additionally, FPL assumed that the transportation costs associated with Company E's upstream pipeline would remain fixed over the study period, therefore, the treatment of all negotiated rates was consistent. Witness Enjamio states that had FPL leveled the revenue requirements over the life of the project, the economic analysis would have been the same. (TR 801)

Although the circumstances are unique (utility asset compared to a fixed contract), staff believes that FPL's assumptions reasonably represent the economic effect of each option.

### CONCLUSION

Staff believes FPL's natural gas price forecast, basis differential forecast, and pipeline rates are based on reasonable assumptions. Therefore, staff believes FPL's fuel supply and transports costs are reasonable for planning purposes.

**Issue 10:** Will the proposed Florida EnergySecure Pipeline, including its connection with the upstream pipeline, provide the most cost-effective and reliable source of natural gas supply, transport, and delivery?

**Primary Recommendation:** Yes. FPL's economic life-cycle analysis shows that the Florida EnergySecure Pipeline is the most cost-effective alternative, under a variety of assumptions, to meet the future natural-gas transmission needs of its customers. (Graves, Matthews)

**Alternative Recommendation:** FPL has not shown by a preponderance of the evidence that the proposed Florida EnergySecure Pipeline is the most cost-effective and reliable source of natural gas supply, transport, and delivery. Accordingly, as a prudent course of action, staff recommends that FPL be required to rebid the project consistent with the discussion below. (Bulecza-Banks, Chase)

**Positions of Parties:**

**FPL:** Yes. The FPL proposal provides the lowest life-cycle cost to customers even without considering potential revenues from capacity releases or third party sales. By introducing a new pipeline and increasing access to on-shore supplies, the FPL proposal also represents the most reliable option of the available alternatives.

**FGT:** No. The costs of the FPL pipeline combined with the upstream pipeline impose an excessive burden on ratepayers without any real benefits. This combined pipeline proposal offers no new, unique or significant supply diversity compared to the FGT pipeline. Ratepayers are better served by incremental additions to existing pipeline systems.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL states that it requested proposals for gas transportation under three alternative scenarios: 1) an interstate pipeline commencing at Transco Station 85 and terminating at its Cape Canaveral and Riviera Beach generating plants, 2) an upstream pipeline commencing at Transco Station 85 and terminating at FGT Station 16, and 3) an intrastate pipeline commencing at FGT Station 16 and terminating at the two plants. Each alternative was also analyzed for capacities of 600 MMcf/d and 400 MMcf/d. FPL determined that a minimum initial capacity of 600 MMcf/d with a pipeline size of 30 inches in diameter would be the most economical due to the lower cost of future expansion. (FPL BR 32-33)

FPL contends that its own Florida EnergySecure Pipeline combined with the "Company E" Upstream Pipeline segment offered the lowest CPVRR cost to customers over the 40 year project life, as evaluated under each of three resource plans: the "Base Case," the "RPS Scenario," and the "Nuclear Delay Scenario." As evaluated against FGT's latest updated proposal, FPL states that the Florida EnergySecure Pipeline is more economical by at least \$115 million. FPL also states that these results were confirmed by a third party expert, and that none of the analyses included the additional savings that could be seen by release of excess capacity or

short-term gas sales, which would only serve to increase the economic benefits of its proposal. (FPL BR 33-34)

FPL declares that in developing its proposal, FGT did not include the cost of providing access to Transco Station 85. Although FGT claimed its costs would be reduced by having FPL's 18-inch dual-fuel pipeline available from the Martin Plant to the terminal near the Riviera Beach plant, it failed to account for the cost of upgrading this pipeline. In addition, FGT relies on a potentially available capacity of 214 MMcf/d in its analysis, but ignores the fact that 75 MMcf/d of that capacity is subject to an option by a third party shipper and may not actually be available to FPL. (FPL BR 35-36)

FPL asserts that the reliability of the natural gas infrastructure in Florida will be increased by the introduction of a third major pipeline into the state. The unconventional shale gas resources available at the Florida EnergySecure Pipeline commencement point are not affected by hurricanes, and production has grown and will continue to grow rapidly in the near future. Currently 90 percent of the gas transportation capacity available into Florida is provided by FGT and Gulfstream. The natural gas provided by these two companies is primarily from traditional Gulf of Mexico and Mobile Bay Area sources, and the production from these areas has been in decline for the past several years. Also, these sources are prone to disruption from hurricane activity. Having access to the unconventional sources via Transco Station 85 will provide supply diversity which in turn increases supply reliability. (FPL BR 37-39)

**FGT**: In its argument, FGT contends that the economic analysis performed by FPL in support of its proposal is flawed, and that the natural gas source diversity that FPL claims is available only at Transco Station 85 is in fact already available on FGT's existing system at a significantly lower cost. (FGT BR 34)

FGT continues its argument stating that the majority of natural gas supplies that FPL plans to access via Transco Station 85 can presently be accessed using its existing South Eastern Supply Header capacity from the Perryville, Louisiana area. According to FGT witness Schlesinger, the Perryville hub is presently the largest in the U.S., and both of the new pipelines bringing additional capacity to Transco Station 85 also pass through Perryville. FGT further alleges that FPL predetermined that Transco Station 85 would be the commencement point for its proposal and then exaggerated its supply diversity and reliability in an effort to justify rejecting FGT's more cost-effective alternative. (FGT BR 35-36)

### **PRIMARY STAFF ANALYSIS**

#### *Solicitation Process*

While not required under any State or Federal rule, FPL conducted a solicitation from a select number of pipeline companies. On July 17, 2008, FPL sent a Solicitation Letter to seven entities, including incumbent pipeline companies, who had previously expressed an interest in providing FPL's gas transportation needs. (EXH 2, pp. 115-116) Responses to the Solicitation letters were filed with FPL in September 2008. FPL evaluated the seven responses and filed its need determination petition with the Commission in April 2009. Overall, the solicitation,

evaluation, and filing preparation process took approximately eight months. FPL requested that the respondents consider the following three potential pipeline alternatives:

Interstate Pipeline Alternative: FPL's interstate pipeline request was based on the respondent developing a new pipeline or upgrading an existing pipeline from Transcontinental Pipeline Company's Compressor Station Number 85 (Transco 85) in Choctaw County, Alabama, to FPL's modernization projects. (TR 282)

Upstream Pipeline Segment Alternative: FPL's upstream pipeline request was based on the respondent providing only the segment of the pipeline needed to deliver gas from Transco 85 to FGT's Compressor Station Number 16 (FGT BR 16) in Bradford County, Florida. This segment could be combined with proposals responsive to the third alternative, discussed below, to create a total pipeline project capable of delivering gas from Transco 85 to Cape Canaveral Energy Center and Riviera Beach Energy Center. (TR 282)

Florida Pipeline Segment Alternative (Intrastate Pipeline): FPL's Florida pipeline request was based on the respondent providing only the segment of the pipeline needed to deliver gas from FGT 16 to FPL's modernization projects. This segment could be combined with proposals responsive to the second alternative, discussed above, to create a total pipeline project capable of delivering gas from Transco 85 to Cape Canaveral Energy Center and Riviera Beach Energy Center. (TR 282-283)

FPL's initial solicitation was for quantities of 400 MMcf/d, 800 MMcf/d, and 1.0 billion cubic feet per day (Bcf/d). FPL followed up its initial solicitation with an additional request for 600 MMcf/d. FPL indicates that its additional request for 600 MMcf/d was driven by two factors. The first factor was declining load growth, which shifted the Company's focus away from the larger capacity requests (800 MMcf/d and 1.0 Bcf/d) to the 400 MMcf/d and 600 MMcf/d capacities. The second factor was a desire to increase solicitation responses and to determine the minimum capacity that would be required to attract a new pipeline into Florida, which FPL states was desirable if economical. (TR 157, 279-280; EXH 4)

The solicitation letter informed respondents of FPL's intentions to develop an intrastate pipeline as an alternative to the third-party proposals. (TR 279) FPL received multiple responses to each of the three pipeline alternatives described above as well as a number of alternate proposals for consideration. (TR 284-286)

### *Economic Evaluation*

FPL evaluated the various proposals to determine the lowest cost proposal for each of the three pipeline alternatives. For the interstate pipeline alternative, FPL determined that FGT provided the lowest transportation cost for the required 400 MMcf/d. For the upstream pipeline alternative, FPL determined that Company E's proposal provided the lowest transportation cost for 600 MMcf/d. For the intrastate alternative FPL's Florida EnergySecure Pipeline was determined to provide the lowest transportation cost for 600 MMcf/d. FPL notes that none of the proposals for 400 MMcf/d were designed to bring new pipeline infrastructure into the state and allow access to Transco 85. (TR 289)

Once the lowest cost alternatives were determined, FPL conducted a 40-year life cycle economic analysis to find out which proposal resulted in the lowest cost to customers. Basically, FPL compared two alternatives; the FGT proposal and the combined Company E and Florida Energy Pipeline proposals. FPL's analysis of the two alternatives considered the following three scenarios: (1) Base case Scenario, (2) Nuclear Delay Scenario, (3) and Renewable Portfolio Standard Scenario. As discussed below, primary staff does not consider the Renewable Portfolio Standard Scenario a plausible scenario at this time. Table 1 below, summarizes the results of FPL's economic evaluation of the Florida EnergySecure Pipeline when compared to an FGT alternative.

**Table 1 - Summary of Florida EnergySecure Pipeline Savings (\$ millions)**

	<b>Base</b>	<b>Nuclear Delay</b>
<b>FPL Original Filing</b>	<b>208</b>	<b>513</b>
<b>Sensitivities</b>		
<b>FGT March Proposal</b>	<b>26</b>	<b>313</b>
<b>Cost of Capital Assumptions Requested in Docket No. 080677-EI</b>	<b>54</b>	<b>344</b>
<b>Decreased Load Growth</b>	<b>-7</b>	<b>101</b>

A description and summary of each scenario and subsequent analysis follows.

Base Case Scenario: FPL's Base Case scenario includes all approved generating units up to 2020. (TR 318) Beyond 2020, FPL relied on its load forecast, as discussed in Issue 1, and a 20 percent reserve margin planning criterion to determine the timing of future generation resource additions. Additionally FPL assumed its current DSM programs, as well as all cost-effective DSM savings identified after the establishment of current goals through 2018. Beyond 2018 DSM savings are held constant. (TR 323-324)

When considering the Base Case scenario, the proposed Florida EnergySecure Pipeline is estimated to provide a cumulative net present value savings of approximately \$200 million compared to the FGT proposal. Net savings to customers are projected to be realized by 2040, approximately 26 years after the in-service date of the Florida EnergySecure Pipeline. (EXH 2, pp. 34, 38)

Nuclear Delay Scenario: As currently planned, FPL's Turkey Point Nuclear Units 6 & 7 have in-service dates of 2018 and 2020, respectively. (TR 322) Under FPL's nuclear delay scenario the in-service dates of both units are delayed four years. (TR 313) More significantly, FPL assumes approximately 1,200 MW of gas-fired generation would be built in 2018 and 2020 (totally approximately 2,400 MW). (TR 324) Aside from the described delay of Turkey Point Nuclear Units 6 & 7, FPL's assumptions regarding future supply side resources and savings from DSM were consistent with those in the Base Case Scenario. (TR 315)

Assuming FPL's Nuclear Delay scenario, the proposed Florida EnergySecure Pipeline is estimated to provide a cumulative net present value savings of approximately \$500 million compared to the FGT proposal. (EXH 2, pp. 36, 40) Net savings to customers are projected to be realized by 2030, approximately 16 years after the in-service date of the Florida EnergySecure Pipeline. The significant difference between the two scenarios is the acceleration of new gas capacity needs. (TR 350) Under the Nuclear Delay scenario new gas generation, and subsequently the need for new gas capacity, is accelerated three years (from 2021 to 2018).

Renewable Portfolio Standard Scenario: FPL's Renewable Portfolio Standard Scenario assumes that the state of Florida will adopt a renewable portfolio standard rule with a target of 20 percent renewable energy by 2020, constrained by a 2 percent cap on increased retail revenues. Under the Renewable Portfolio Standard scenario, between 2010 and 2020, FPL assumed an average addition of 42 MW of solar photovoltaic resources and 28 MW of biomass resources every year. It was then assumed that after 2020 FPL would continue to build renewable resources following the 2010-2020 trend. This results in the addition, of 3,290 MW of renewable resources to FPL's generation resource portfolio by 2040. (TR 320-322)

Although staff believes that renewable energy will play a significant role in Florida's future energy needs, staff does not consider the Renewable Portfolio Standard scenario as a plausible scenario for evaluating FPL's proposed Florida EnergySecure Pipeline at this time. Staff believes that the nature of a future Renewable Portfolio Standard is speculative because the potential inclusion of non-greenhouse gas emitting generation continues to be debated at the state and federal levels. Moreover the results of FPL's analysis under the Renewable Portfolio Standard Scenario were, in most cases, within \$5 million dollars of the Base Case Scenario results. (EXH 4)

#### FGT Updated Proposal

Subsequent to FPL beginning its economic analysis, FGT submitted an unsolicited proposal (March Proposal) which provided a lower transportation cost than its initial proposal discussed above. (TR 294) FPL's analysis of the initial cost estimate of the Florida EnergySecure Pipeline and FGT's March Proposal showed that the Florida EnergySecure Pipeline remained the most cost-effective option to meet FPL's projected future natural gas transportation needs. (EXH 2, p. 47) More specifically, the Florida EnergySecure Pipeline was projected to provide cumulative net present value savings of approximately \$26 million for the Base Case and approximately \$313 million for the Nuclear Delay case, a reduction of approximately \$180 million and \$200 million respectively. (EXH 2, p. 47)

Witness Langston indicates that the declining cost of steel was the primary driver of FGT's March Proposal. (TR 900) Following FPL's response to staff's request, witness Enjamio testified that updating the price of steel pipe to reflect the current market price resulted in lower overall transportation rate for all parties. (TR 795) If the lower cost of materials were included in FPL's original estimates, staff believes it is reasonable that the cost-effectiveness of the Florida EnergySecure Pipeline would not be significantly impacted.

Additionally, FPL repeatedly indicated that it was skeptical of FGT's March Proposal based on prior business dealings. FPL witness Stubblefield claims that recently FGT has

approached FPL to increase already agreed upon rates. (EXH 2, p. 273) There is some question however, regarding the completeness of FGT's March Proposal. As discussed in Issue 2, a maximum of 214 MMcf/d of excess capacity may be available. FGT's March Proposal assumes usage of all 214 MMcf/d, although 75 MMcf/d is still contingent upon the election of an existing shipper. (EXH 2, p. 771) Therefore, it is reasonable to believe that some costs may change.

### Additional Sensitivities

FPL is proposing to place the Florida EnergySecure Pipeline in its rate base. (TR 58) Therefore, the capital assumptions with regard to the company's return on equity have a significant effect on the cost-effectiveness of the project. FPL's original analyses assumed a return of equity (ROE) of 11.75 percent. Staff requested FPL to perform a sensitivity, using the Company's proposed ROE of 12.5 percent from the current rate case in Docket No. 080677-EI.<sup>5</sup> This resulted in a cumulative net savings of approximately \$50 million for the Base Case and approximately \$350 million for the Nuclear Delay case, a reduction of approximately \$150 million. (EXH 4)

Lastly, staff requested an analysis based on a load forecast assuming UF Bureau's March 2009 population growth projections. The subsequent decreased forecast results in FPL's need for new natural gas generation being delayed three years under each scenario. As previously discussed, under the Nuclear Delay Scenario, the Florida EnergySecure Pipeline is estimated to provide significantly greater savings than those projected under the Base Case Scenario. The significant difference between the two scenarios is the acceleration of new gas capacity needs. The "deceleration" of new capacity needs likewise has a significant effect on the outcome of FPL's economic analysis. (TR 354) Based on the decreased load forecast, the Florida EnergySecure Pipeline is projected to have cumulative net present value savings of approximately \$100 million assuming the Nuclear Delay Scenario. (EXH 4) Under the Base Case Scenario, the Florida EnergySecure Pipeline is projected to have a net cost of approximately \$7 million.

FGT argues that the economic analyses prepared by FPL contain erroneous assumptions and utilize favorable, unsupported load forecasts. The reasonableness of FPL's load forecast is discussed in Issue 1. FGT also argues that FPL's pipeline transportation rate assumptions were inconsistent and skewed. FPL witness Enjamio testified that FPL used declining revenue requirements for the Florida EnergySecure Pipeline because FPL intends to recover the costs in electric rate base. A declining depreciation schedule would cause a decrease in revenue requirements over the life of the project. (TR 800-801) FGT provided a 25 year fixed rate as its proposal. FPL assumed fixed rates for FGT's proposals over the 40 year study period. (TR 343, 554) While FGT argues that its rates should also decline, FGT witness Langston indicated that he could not identify a time in which an FGT rate case resulted in reduced rates. (TR 621) Additionally, FPL assumed that the transportation costs associated with Company E's upstream pipeline would remain fixed over the study period. (TR 361-362) Although the circumstances are unique (utility asset compared to a fixed contract), staff believes that FPL's assumptions reasonably represent the economic effect of each option.

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<sup>5</sup> Note: Issue 8 discusses an updated analysis performed by FPL which considers several "updated" assumptions, including an ROE of 12.5 percent. In response to staff's request, only the ROE was changed.

As discussed in Issue 3, the initial “excess” capacity on the Florida EnergySecure Pipeline will be available for use as a system resource for a period of time between three and seven years for reliability purposes. As growth occurs on FPL’s electric system, the full 600 MMcf/day capacity of the pipeline will be used to provide firm transportation to FPL electric generating plants. During cross examination, FPL witness Stubblefield clarified that the “excess” 200 MMcf/day will be utilized by FPL to displace higher cost gas transportation on the FGT system. This is because on a daily basis the incremental cost of transporting the 200 MMcf over the Florida EnergySecure Pipeline has a lower variable cost than what FGT is charging. Therefore, the dispatch of gas-fired generation over the new pipeline will result in reduced transportation costs to FPL’s ratepayers. (TR 300–302) FPL has stated its intent to release the gas transportation which is freed up on the FGT system as a result of the more economical usage of the Florida EnergySecure Pipeline. To the extent practicable, FPL may also seek to make short term interruptible sales of gas transportation to third parties. The revenues from these third party sales were not included in the above cost-effectiveness analyses. However, FPL did claim that such revenues will be flowed back to FPL’s electric ratepayers through the Fuel and Purchased Power Cost Recovery Clause.

### **CONCLUSION**

The record demonstrates that the Florida EnergySecure Pipeline is estimated to provide net savings to FPL’s ratepayers in seven out of the eight scenarios analyzed. Such savings are greatly dependent on the timing of new generation beyond the Cape Canaveral Energy Center and Riviera Beach Energy Center. As discussed, the proposed line becomes cost-effective 16 years after its in-service date of 2014, assuming the Nuclear Delay Scenario and 26 years after its in-service date when assuming the Base Case Scenario. Such a timeframe is analogous to when other large capital additions, such as a high-voltage transmission line or large base-load generating plant, are added to a utility system. Normally, capacity additions are “lumpy” in size and do not exactly match a utility’s needs. The result is a short term excess of capacity which the utility must grow into over time. Under any and all scenarios FPL has indicated that the excess 200 MMcf/d can be used for reliability purposes at its Martin Plant or for the cost-effective release of existing gas transportation capacity or short term sales of transportation pursuant to FERC regulated market pricing. (TR 145)

Past Commission practice has been to allow such additions to be made as long as (1) the project is cost-effective over the life of the plant, and (2) the company takes steps to mitigate short term capacity surpluses through off-system sales.

### **ALTERNATIVE STAFF ANALYSIS**

#### *Economic Evaluation*

FGT maintains that the Florida EnergySecure Pipeline is not the most cost-effective and reliable source of natural gas transport and delivery and is not in the best interest of FPL’s ratepayers. FGT argues that the economic analyses prepared by FPL contain erroneous assumptions and utilize favorable, unsupported load forecasts.

The record demonstrates that the economic benefits of the proposed pipeline are greatly dependent on the amount and timing of need for new generation beyond the Cape Canaveral and Riviera Beach plants. One of the major factors affecting the timing of need is the demand forecast. The population projections used by FPL in its demand forecasts are based on the UF Bureau with upward adjustments for a more robust population growth after 2012. (TR 191-192) The cumulative effect of FPL's adjustments is that by 2018 the population difference between the two forecasts is approximately 500,000 people. (TR 585) Based on its demand forecast, FPL is projecting it will have a need for the excess pipeline capacity in 2021. (TR 338) If the utility's demand projections are overstated, the need for the excess capacity would be pushed out farther into the future. The economic benefits of the proposed pipeline would likewise be pushed out farther than projected by FPL. In fact, a rerun of the economic analyses using a population forecast based on unadjusted data from the UF Bureau indicates that the FGT proposal is the more economic proposal under two scenario analyses (the Base Case and the Renewable Portfolio Standard scenarios). (EXH 4)

Under the utility-proposed rate base treatment of the pipeline, FPL is insulated from the risk that the pipeline's excess capacity will not be needed as projected. Rather, the financial risk that these forecasts are accurate would be borne entirely by FPL's ratepayers. Staff concluded in Issue 1 that FPL's forecasts of future need is reasonable. In this analysis, alternative staff is not questioning that conclusion. We are, however, pointing out that whether, and to what magnitude, the FPL proposed line is the most cost-effective option is highly dependent on the accuracy of the demand forecasts.

Variables other than the population forecasts also have significant impact on the results of the cost-effectiveness analyses. For instance, FGT claims that FPL based its analyses on the January 2009 rate proposal and not the lower March 2009 proposal. A rerun of the economic analyses using FGT's lower March 2009 rate proposal dropped the base case advantage for FPL from \$208 million to \$26 million. (EXH 2, FPL's Response to Staff Interrogatory No. 27). There was a different rerun of the analyses using the Company's proposed return on equity of 12.5 percent from its current rate case rather than the equity cost rate of 11.75 percent contained in its original filing. This single change dropped the base case advantage for FPL from \$208 million to approximately \$50 million. (EXH 87). Again, staff is not questioning which return on equity is appropriate for the analyses. Rather, we are pointing out the sensitivity of the analyses when certain assumptions are replaced with reasonable alternatives.

There are other assumptions used in the cost-effectiveness analyses that are in dispute between the parties. FGT asserts that FPL added 20 cents to the FGT rate proposal to address transportation from Transco Station 85 to Citronelle – the commencement point of the FGT proposal. (TR 286, 493, 808) FGT argues that there is no need for any rate increase, but, if appropriate, the increase would be no more than nine cents. (TR 615-616, 642-643) The analyses were not rerun using the lower transportation rate, but it would logically have the effect of lowering the cost-effectiveness advantage of FPL's proposal.

Another concern raised by FGT regarding the cost-effectiveness analyses is that FPL escalates the FGT rate 2.5 percent each year in order to establish a future price for additional expansions of the FGT system that may be needed. (TR 794, 808) FGT asserts that there is no

basis for that level of increase. (FGT BR 27) Obviously, the effect of this escalation is to increase the cost of the FGT proposal as compared to the FPL pipeline.

A further concern with the cost-effectiveness analyses is that FPL depreciates its proposed pipeline costs over 40 years but fails to depreciate the FGT proposal. (TR 587-589) Recognizing depreciation in the FGT proposal would increase its cost-effectiveness. A related concern expressed by FGT is that FPL assumes instantaneous rate adjustments each year so the benefits of depreciation of the pipeline are immediately reflected in rates. (TR 341-342; EXH 44) As admitted by FPL witness Forrest, yearly rate reductions would require yearly rate cases, which are not anticipated nor practical. (TR 342) Therefore, FPL has overstated the benefits of the FPL pipeline in all of its analyses.

Alternative staff concludes from the above discussion that FPL has not adequately shown that the proposed Florida EnergySecure Pipeline is the most cost-effective option. As discussed above, the reruns of the cost analyses highlight the sensitivity of the results when a significant variable is changed. Staff believes that if the analyses were rerun changing more than one variable, the variations in the results could be even greater. Further, as discussed above, there were concerns raised with other assumptions used the cost-effectiveness analyses that were not quantified. The volatility in the results of the analyses under reasonable, alternative assumptions as well as other non-quantified concerns leads staff to conclude that the degree to which the proposed pipeline is the most cost-effective option is questionable. Given the significant financial risk that FPL is asking be assumed by its customers, alternative staff encourages the Commission to be cautious in concluding that the FPL project, as filed, is the most cost-effectiveness option.

### *Rebidding the Project*

However, alternative staff also believes that FPL makes compelling arguments in support of another major natural gas pipeline into Florida. As stated by FPL witness Forrest, "This request is as much about the future of gas supply in Florida as it is for the immediate need to supply gas to the modernizations at Cape Canaveral and Riviera Beach." (TR 65) The advantages of a new major pipeline into Florida identified by FPL include: enhancement of the delivery and reliability of natural gas transmission in Florida; access to adequate and diverse natural gas supplies and upstream pipeline capacity; and the unique opportunity Florida has at this time to expand the existing pipeline infrastructure into and within Florida. Unfortunately, based on the record, it is difficult to conclude that all of the stated advantages of a new pipeline can be realized under FPL's proposal. While FPL argues that the pipeline will serve to improve the delivery and reliability of gas transmission in the state, FGT maintains that by being a single pipeline to three existing plants, FPL's pipeline would lack the looping, interconnects, and other redundancies found on the FGT system, making it less reliable in the event of system failures. (FGT BR 11) Further, FPL states that the primary purpose of the pipeline is to provide gas to FPL's generating units and not as an open-access natural gas transportation pipeline. (TR 67-68) Under this scenario, the line will essentially serve as a "private driveway" for FPL. As such, the benefits associated with a true open-access pipeline will be lost for Florida.

Given the wide variations in the cost-effective analyses, the risk to FPL ratepayers associated with a significant increase in rate base, and the importance of a new major pipeline in Florida, staff believes that the Commission should consider requiring FPL to rebid the pipeline project. A rebidding process would also address some of staff's concerns with the solicitation conducted by FPL. In its July 2008 solicitation letter, FPL stated that it was currently evaluating the development of a new intrastate pipeline. FPL invited interested parties to work with FPL to provide pricing for gas deliveries into this new intrastate pipeline. In its solicitation, FPL did not preclude parties from using new or existing facilities for delivery to the Cape Canaveral and Riviera Beach plants. However, the solicitation specifically stated that "any perceived economic advantages of such proposals will be weighed against their more limited role in meeting FPL's long-term needs." (EXH 34) Staff believes this language could have had a chilling effect on potential bidders in that it appears that FPL was already convinced of the need for the EnergySecure Pipeline. A clear and specific solicitation will allow and encourage other potential bidders to provide proposals for a new pipeline that can be evaluated by FPL.

If the Commission decides to require a rebidding process, staff recommends that the new solicitation letter contain a specific request for proposals for a new pipeline and specifications of the long term natural gas needs of FPL. Further, we believe the solicitation should be provided to staff for its approval prior to its issuance to ensure it is clear and complete.

Staff believes there is sufficient time in which to conduct a new solicitation. In this case, FPL issued the solicitation letter in July 2008. According to the letter, "We are requesting all parties provide firm pricing in the attached format by September 2, 2008 in order for us to have sufficient time to evaluate the alternatives and make a selection in November." (EXH 34) Thus, the entire process from solicitation to selection was approximately four to five months. Staff believes FPL can repeat the process in roughly the same amount of time. Staff also notes that the Upstream Pipeline (Company E) will require certification by FERC pursuant to the provisions of the Natural Gas Act. Company E currently plans to file its application in the fall of 2011 to meet the January 2014 in-service date. (TR 154) Given this timeline for construction of the Upstream Pipeline, a necessary precursor to the construction of the intrastate pipeline, staff believes there is sufficient time to complete a new solicitation process and obtain Commission approval of a revised project.

**Issue 11:** Is it appropriate for FPL to recover the costs associated with its proposed Florida EnergySecure Pipeline through its electric utility rate base?

**Primary Recommendation:** No. The costs associated with the proposed Florida EnergySecure Pipeline should not be included in FPL's rate base. (Bulecza-Banks)

**Alternative Recommendation:** Yes. As addressed in Issue 14, the primary purpose of the Florida EnergySecure Pipeline is to provide natural gas to FPL's electric generation plant. As such, it is appropriate for FPL to recover the costs associated with the project as part of its electric rates pursuant to the Commission's ratemaking jurisdiction under Chapter 366, F.S. FPL should be required to develop and maintain the appropriate books, records, and sub-accounts to be able to determine and calculate the fully allocated cost of the Florida EnergySecure Pipeline. The methodology for determining fully allocated costs should be reviewed by the Commission as part of any docket requesting cost recovery for the Florida EnergySecure Pipeline. (Ballinger, Trapp)

**Positions of Parties:**

**FPL:** Yes. The primary function of the Florida EnergySecure Pipeline is to serve the immediate and future natural gas transportation needs of FPL's electric generating units. Therefore, all prudently incurred costs for the Florida EnergySecure Pipeline should be included in FPL's electric utility rate base.

**FGT:** No. There is no legal, policy or economic basis for including the Florida EnergySecure Pipeline in the electric rate base where the entire cost will be borne by ratepayers, with no financial risk to FPL or its shareholders, providing FPL with an unfair competitive advantage in the natural gas transmission market.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:**

**Inclusion in Rate Base**

FPL asserts that the Florida EnergySecure Pipeline was not developed as a strategic investment asset for FPL Group, but was developed to meet FPL's obligation to serve. FPL further asserts that it did not develop this asset with an eye to enter the gas pipeline business as a direct competitor to FGT and Gulfstream. According to FPL, its customers will benefit from the Florida EnergySecure Pipeline and as a result, all costs associated with the Florida EnergySecure Pipeline should be included in electric rate base, just as the costs of all other assets owned and used in the generation and delivery of electric service are treated. As such, the construction costs of the line should be classified as electric plant and the related depreciation and operation and maintenance costs should be accounted for as electric expense. (FPL BR 42-43, 47)

FPL has identified instances where natural gas infrastructure has been included in a utility's rate base. FPL's 18-inch, 36-mile line that is in place to serve its Martin Plant was recorded as Electric Plant in Service when the line went into service in 1980. Another example identified by FPL related to the rate base treatment of gas infrastructure associated with Portland General Electric. According to FPL, a 17-mile line, known as the Kelso-Beaver interstate gas pipeline, received approval from the FERC to account for the line in accordance with the USOA requirements for public utilities and licenses. FPL also points out that FPL has been recovering the capital costs of its rail cars through the Fuel and Purchased Power Cost Recovery Clause. FPL's position is that neither the length of pipe nor the type of product transported is determinative of whether rate base treatment is appropriate. (FPL BR 44-45)

FPL asserts that including the Florida EnergySecure Pipeline in its rate base will not provide FPL an unfair advantage if the pipeline is underutilized. Since FPL's Florida EnergySecure Pipeline is the most cost effective alternative, any possible sales or capacity release to third parties only serves to improve the economics to FPL's rate payers. As FPL states, the 200 MMcf/d of excess capacity will be available for FPL to use to displace higher variable cost transportation on FGT. (FPL BR 46)

#### Requirement of Separate Subsidiary

FPL asserts that there is no reason to establish a separate entity to own and operate the Florida EnergySecure Pipeline. FPL asserts that owning and operating a gas pipeline will help to meet its generation requirements in an effective manner and improve supply diversity and reliability. FPL states that it can either sell the excess capacity on the Florida EnergySecure Pipeline or release capacity currently held on FGT or Gulfstream pipelines. (FPL BR 50) FPL will reduce its requested recovery of fuel cost by the monies received from released capacity. The reduced fuel costs will be accounted for in the Fuel and Purchased Power Cost Recovery Clause, thus directly benefitting FPL's customers. (TR 51, 60) FPL argues that a separate entity is not necessary to achieve this benefit.

FPL also claims that establishing a separate entity could unnecessarily trigger affiliate transaction rules, resulting in increased legal and administration expenses that would be passed on to FPL's customers. FPL states that since the Commission will have oversight over any of the Florida EnergySecure Pipeline's tariffs, thus, there is no need to require the establishment of a separate entity. FPL's proposal to maintain accounting records to permit the identification of depreciation, operation and maintenance, and other costs further supports its argument that a separate entity is unnecessary. (FPL BR 50)

#### **FGT:**

##### Inclusion in Rate Base

FGT asserts that FPL is seeking a new Florida legal and regulatory precedent by asking that its Florida EnergySecure Pipeline be included in its electric utility rate base. FGT further asserts that adoption of this new policy would have dangerous and far-reaching consequences that would be in opposition to the public interest. From FGT's perspective, the fact that FPL will

not undertake the pipeline project if it is not granted rate base treatment, demonstrates that the pipeline is not in the best interest of consumers. (FGT BR 37)

FGT summarizes FPL's argument for approving the inclusion of the Florida EnergySecure Pipeline in its rate base as follows: "anything used in the generation of electricity should be included in the electric utility plant." FGT argues that FPL failed to identify any long distance, high pressure line, traversing multiple counties that Florida or any other jurisdiction has allowed to be included in rate base. The only example that FPL identified was a 17-mile line that functioned as a lateral, rather than mainline transmission pipeline. FGT further argues that there is a distinction between lateral lines and transmission pipeline and that FPL understands that distinction. (FGT BR 37-38)

FGT acknowledges that FPL currently has some 70 miles in total pipe in rate base, including an 18-inch oil pipeline that would be converted to natural gas as part of this project. However, FGT points out that FPL witness Collins admitted that the pipe was built to support the infrastructure of FPL's plants. In other words, the constructed pipe was not transmission pipeline, but simply lateral lines necessary to transport the gas from an interstate pipeline to FPL's plants. FGT notes that these lateral lines do not cross county boundaries and are clearly not principal transmission facilities which extend from supply areas to market area. (FGT BR 38-39) FGT asserts that including the Florida EnergySecure Pipeline in FPL's rate base would be especially egregious since the revenue requirement for the first year of the \$1.5 billion pipeline is \$288 million, of which approximately \$137 million is associated with excess capacity. (FGT BR 43)

#### Requirement of Separate Subsidiary

As asserted by FGT, the Commission previously certified the need for a pipeline and that proposed pipeline was to be established as a separate corporate entity. FGT expands its argument by pointing out that coal mines have been owned and operated through separate corporate entities by both Tampa Electric and Progress Energy. FPL, however, argues that a coal barge transportation system would be appropriate for inclusion in electric rate base. FGT argues that based on FPL witness Guest's position, even the coal mine would qualify for rate base treatment. While FPL asserts that it would be burdensome to have the pipeline in a separate subsidiary, it offered no analysis or support for its alleged monetary impacts. (FGT BR 39-41)

FGT proposes that if the need for the pipeline was established, which FGT contests, the Florida EnergySecure Pipeline should be placed in a separate subsidiary and subject to Commission regulation under Chapter 368, F.S. FGT argues that the Florida EnergySecure Pipeline would be subject to the cost of serve rate authorized under Chapter 368, F.S., so that the capacity actually utilized by FPL could be recovered under the fuel cost recovery mechanism, just like all other electric utilities in Florida. Under this proposal, the Florida EnergySecure Pipeline would conduct business just like other natural gas transmission pipeline companies operating in Florida. (FGT BR 42)

### **PRIMARY STAFF ANALYSIS**

The determination of the appropriate treatment of the Florida EnergySecure Pipeline requires a comprehensive analysis involving several factors. The significance of the investment clearly requires a diligent, analytical effort, to ensure that FPL's rate payers are not harmed by inclusion of an approximately \$1.5 billion dollar investment in FPL's rate base.

In evaluating the merits of FPL's proposed rate base treatment, primary staff analyzed the applicability of Chapter 368, F.S., to the Florida EnergySecure Pipeline and examined the costs and benefits of requiring FPL to establish a separate entity to own and operate the Florida EnergySecure Pipeline.

#### **Appropriate Treatment of a Natural Gas Transmission Company**

To decide whether the Florida EnergySecure Pipeline would be appropriately included in rate base, a determination must be made whether the 300-mile pipeline is a natural gas transmission company as defined by Chapter 368, F.S. Section 368.103(4), F.S., provides the following definition:

“Natural gas transmission company” means any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas, but shall not include any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof or a special district created by special act to distribute natural gas.

FPL repeatedly asserts that the Florida EnergySecure Pipeline will be the third major pipeline in Florida. (TR 49, 56, 66, 143, 157, 162) FPL further asserts that it will sell any excess capacity of the Florida EnergySecure Pipeline either directly by offering customers capacity on the Florida EnergySecure Pipeline, or indirectly, by releasing capacity held on either FGT or Gulfstream. (TR 60, 423, 431, 501) In fact, on six different occasions in its brief, FPL claims that it would engage in offering capacity on the Florida EnergySecure Pipeline. (FPL BR 7, 23, 23, 24, 50, 52)

According to the definition in Chapter 368, F.S., the Florida EnergySecure Pipeline clearly is a “Natural gas transmission company.” Based on the clear language of Section 368.104, F.S., the Commission is vested with the regulation of such transmission companies:

368.104 Jurisdiction, authority to ensure compliance; rate regulation.--Subject to ss. 368.101-368.112, the commission is vested with all authority and power of the state to ensure compliance of natural gas transmission companies with the obligations imposed by ss. 368.101-368.112. For this purpose, the commission is empowered to fix and regulate rates and services of natural gas transmission companies, including, without limitation, rules and regulations for determining the classification of customers and services, for determining the applicability of rates, and for ensuring that the provision (including access to transmission) or

abandonment of service by a natural gas transmission company is not unreasonably preferential, prejudicial, or unduly discriminatory. In the exercise of its jurisdiction, the commission shall have the power to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of ss. 368.101-368.112.

Based on claims made by FPL, it wishes to have the flexibility to make capacity available on the Florida EnergySecure Pipeline. As such, the Florida EnergySecure Pipeline falls under the definition of Natural Gas Transmission Company, and as a result, falls under the jurisdiction of the Commission. As a regulated entity, the Commission will approve the rates and charges of the Florida EnergySecure Pipeline and ensure that the Florida EnergySecure Pipeline complies with the requirements of Chapter 25-7, Part IV, F.A.C. As a regulated entity, the Florida EnergySecure Pipeline is subject to the accounting requirements of Chapter 25-7, Part IV, F.A.C.

Based on the fact that the Florida EnergySecure Pipeline would be a regulated entity subject to Commission jurisdiction, it would be inappropriate to include the Florida EnergySecure Pipeline in the rate base of FPL. The Florida EnergySecure Pipeline should be treated as a separate entity apart from FPL. FPL itself is a regulated entity, and it would be inappropriate to put the assets of one regulated entity on the accounting books of another regulated entity.

FPL identified an example where an electric utility was permitted by the FERC to include a 17-mile line in its rate base. (TR 378-379; EXH 47) FPL states that the FERC repeatedly allowed inclusion of this line in Portland General Electric's rate base. Staff notes that FPL did not elaborate as to the reason for the inclusion, only that the FERC allowed the line in rate base. A careful examination of Exhibit 47 provides the basis for the FERC's decision. FERC allowed this 17-mile line in rate base because the potential sales off the line were characterized by Portland General as "interruptible" and would constitute "minimal" amounts.

The excess capacity on the Florida EnergySecure Pipeline represents one-third of the total capacity of the line (TR 567); Portland General's 17-mile line, which is a lateral line, does not correlate to a 300-mile pipeline traversing several counties. These two situations are not comparable. In fact, FPL could not identify any example whereby a natural gas transmission line of such magnitude has ever been included in the rate base of an electric utility in any state of the United States. (EXH 2, BSP 292)

While primary staff believes that the Florida EnergySecure Pipeline is subject to Chapter 368, F.S., and as a natural gas transmission pipeline, electric rate base treatment is not warranted, primary staff believes there are other reasons for prohibiting rate base treatment.

The electric industry is not open to competition like the natural gas industry. The need for electric plants are approved at a particular capacity level that the Commission determines is appropriate to accommodate future growth. Competition in the gas industry dictates a different approach. Other pipelines operating in Florida are subject to FERC regulation (TR 571); FERC-regulated pipelines set rates for transportation based on their cost of service, including an equity return, based on an assumed 100 percent load factor on the system. (TR 573) If the pipeline is unable to obtain contracts for the full capacity, it will not earn the approved return on equity; the

pipeline's stockholders will bear the cost of the idle capacity. (TR 576) Inclusion in rate base will require FPL's rate payers to essentially finance a project that does not become cost effective until 2031. FPL will not be at risk for under recovery of the costs of the project. Staff sees no reason to slant the competitive playing field in favor of one entity over another.

Staff has found it difficult to fully analyze the merits of FPL's proposal because FPL has made contradictory statements that staff finds difficult to reconcile. On one hand, FPL asserts it will be a third major pipeline to Florida, while on the other hand, FPL claims that it likely will use all capacity on the Florida EnergySecure Pipeline and only release capacity on FGT and Gulfstream pipelines on a temporary basis. (TR 49, 56, 66, 143, 727, 728, 906; FPL BR 49, 52) The latter statement contradicts FPL witness Forrest who states, "FPL is committed to offering any excess capacity available from the Florida EnergySecure Line in an open, transparent and non-discriminatory basis at a level of service commensurate with that provided to FPL's generating facilities, but this is only a secondary purpose of the Project, intended to help lower its costs to FPL's customers." (TR 729) Staff questions FPL's claim that it will be a third major pipeline in Florida. The Florida EnergySecure Pipeline will not provide enhanced competition that a true third major pipeline would provide. In primary staff's view, the pipeline can either be deemed a natural gas transmission company that is open access and provides transportation service on a nondiscriminatory basis to all qualified shippers in Florida, such that it is a third major pipeline in Florida, or the Florida EnergySecure Pipeline is a \$1.5 billion dollar asset, used solely for the benefit of FPL. Allowing the Florida EnergySecure Pipeline to be constructed solely as a \$1.5 billion dollar asset serving only FPL would be a detriment to Florida, as it would likely preclude the future construction of a true major pipeline that would offer natural gas transmission service to all interested shippers, thus bringing competitive benefits to Florida, not just FPL.

#### Separate Subsidiary Benefits and Cost

FPL argues that there is no reason to establish a separate entity to own and operate the Florida EnergySecure Pipeline. (TR 728-729) FPL's declaration that the Florida EnergySecure Pipeline was not developed as a strategic investment asset for FPL Group serves as FPL's basis for inclusion in rate base and dismissal of the need to establish a separate subsidiary.

Primary staff believes that the appropriate accounting treatment of the Florida EnergySecure Pipeline is to exclude the assets from rate base and establish a separate entity to own and operate the pipeline. From a legal perspective, the Florida EnergySecure Pipeline should be deemed a natural gas transmission company and regulated per Chapter 368, F.S. In addition to the legal argument discussed above, staff has additional reasons for proposing that the Florida EnergySecure Pipeline be structured as a separate subsidiary: rate payers will be protected from cost overruns and increasing operating costs; rate payers will not be forced to pay for excess, unused capacity; the Florida EnergySecure Pipeline will be subject to open access, providing enhanced competition; and intergeneration issues resulting from high front-end costs will be mitigated.

FPL projects the pipeline to cost approximately \$1.5 billion dollars. As indicated by FPL, it will file for a rate case to seek recovery of the pipeline costs coinciding with its

anticipated 2014 in-service date. (EXH 2, BSP 142) The actual cost of the Florida EnergySecure Pipeline could be even higher than the \$1.5 billion dollar projection, especially considering the construction of the line is not scheduled to begin until 2012. By requiring that the Florida EnergySecure Pipeline be accounted for as a separate subsidiary, rate payers will not be burdened if construction costs exceed FPL's projection. Similarly, FPL's projected operating costs may also increase over time. In fact, FPL acknowledged that O&M associated with the pipeline would likely escalate over time. (EXH 2, BSP 449) If FPL is permitted to include the Florida EnergySecure Pipeline in rate base, the cost to operate the pipeline will be included in recoverable operating expenses. However, if the Florida EnergySecure Pipeline is not included in rate base, FPL rate payers will be protected from such increases. Rate payers will also be protected from liability issues that could arise from incidents on the pipeline.

With respect to excess capacity, as structured, FPL's rate payers will be paying for the 200 MMcf/d of excess capacity on the Florida EnergySecure Pipeline. (TR 566-567) While FPL argues that the project is still cost effective as structured, staff believes that rate payers would benefit if such excess capacity costs were removed from rate payer responsibility. FPL claims that it could release capacity on FGT or Gulfstream and these revenues would offset the capacity costs currently being paid to these pipeline companies. However, FPL witness Enjamio admitted that it is unlikely that FPL would be able to obtain sufficient capacity release revenues to offset the costs that rate payers are currently paying and will continue to pay as long as FPL holds capacity on these two pipelines. (TR 348, 501) Staff notes that capacity releases that FPL states it could undertake would only be on a temporary basis. (TR 61; EXH 81) FPL will not permanently release capacity on FGT or Gulfstream for it believes it will need the capacity in the future. As such, no entity could purchase the capacity FPL holds on FGT or Gulfstream without risk of the capacity being recalled. In other words, potential shippers could only obtain the capacity on a temporary basis. By having FPL account for the Florida EnergySecure Pipeline in a separate subsidiary, rate payers will not be responsible for paying for capacity for which they will not receive the full benefit. (TR 501)

Another benefit that results from requiring FPL to account for the Florida EnergySecure Pipeline in a separate subsidiary is that it will be incentivized to provide open access competition. In this scenario, the Florida EnergySecure Pipeline could issue notice that it was making available capacity on the line which could result in the expanded availability of natural gas in Florida. Such expansion would truly result in a third major pipeline which would serve to benefit the citizens of the state of Florida. However, as proposed, FPL would construct 300 miles of pipe that would provide, at best, a minimal benefit only to its rate payers, perhaps by 2031.

A final benefit that staff identifies by requiring the establishment of a separate subsidiary is that intergenerational inequities are removed. The Florida EnergySecure Pipeline has \$1.5 billion in upfront costs that FPL's rate payers will pay for through increased rates. FPL will begin to accrue AFUDC on the costs incurred beginning in 2010. (EXH 2, BSP 133) As stated earlier, FPL will be filing a rate case to seek recovery of the total costs of the Florida EnergySecure Pipeline. (EXH 2, BSP 142) Rate payers will be responsible for recovery of these costs through depreciation, the equity return on these assets, and the costs for operating the Florida EnergySecure Pipeline. The rate payers will not realize the economic benefit until 2031.

Such intergenerational inequities must be analyzed to see if the intangible benefits outweigh the inequities. In this case, staff believes there are no compelling reasons to justify the inclusion of such costs at the burden of FPL's rate payers.

Requiring FPL to establish a separate subsidiary for purposes of owning and operating the Florida EnergySecure Pipeline does not preclude FPL from realizing a reasonable rate of return. As proposed by primary staff, the Florida EnergySecure Pipeline would be subject to Commission jurisdiction under Chapter 368, F.S. As a result, rates can be set to permit FPL the opportunity to earn a reasonable return on its investment. Based on FPL's calculation, the Florida EnergySecure Pipeline project is the most cost effective. By using those calculations, a per MMBtu rate can be charged to FPL which provides the Florida EnergySecure Pipeline the opportunity to earn a reasonable return.

Primary staff recommends that if FPL pursues construction and operation of the Florida EnergySecure Pipeline, that it be done under a separate affiliate of FPL Group. This corporate structure is consistent with the structure of the three other intrastate natural gas transmission pipeline companies that the Commission has addressed since the Natural Gas Transmission Pipeline Regulatory Act was enacted. The Sunshine intrastate pipeline, the Peninsula pipeline and the Seacoast pipeline were all chartered as separate entities from their monopoly regulated affiliates, Florida Power Corporation, Chesapeake Gas, and Peoples Gas Company.<sup>6</sup> Primary staff finds no compelling reason why the Commission should deviate from its prior practice.

Staff notes that the establishment of a separate subsidiary will require FPL to expend funds to organize the entity. (EXH 2, BSP 188) Also, there will be costs for regulatory filings such as tariffs and annual reports. Staff believes these costs will be minimal and will probably be no different than the cost FPL would incur to account for the pipeline assets in rate base necessary to provide the Commission the detail necessary to establish the proper amount of assets, depreciation, and expenses. In addition, FPL will be required to file regulatory assessment fees on the revenues it receives from providing transportation services.

The natural gas transmission industry is subject to competition. (TR 580) Pipelines compete for customers and those that are more successful will provide a greater return for their stockholders. In a competitive industry, one must be careful not to interfere with the forces of competition. Allowing FPL to include the Florida EnergySecure Pipeline in the rate base of FPL could potentially alter the competitive forces by providing the recovery and a return of excess capacity that other pipeline competitors are not entitled to. The appropriate treatment of the Florida EnergySecure Pipeline would be to require the establishment of a separate subsidiary and to preclude the inclusion of \$1.5 billion dollars in rate base.

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<sup>6</sup> See Order No.PSC-93-0987-FOF-GP, issued July 2, 1993, in Docket No. 920807-GP, In re: Application for determination of need for intrastate natural gas pipeline by SUNSHINE PIPELINE PARTNERS; Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 050584, In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.; Order No. PSC-08-0747-TRF-GP, issued November 12, 2008, in Docket No. 080561-GP, In re: Petition for approval of natural gas transmission pipeline tariff by SeaCoast Gas Transmission, LLC.

The Commission should treat this pipeline -- as it has the other pipelines in the state -- as a separate entity from the monopoly-regulated utility, and regulated under the provisions of Chapter 368, F.S.

### ALTERNATIVE STAFF ANALYSIS

As discussed in Issues 3, 5, and 10, respectively, the Florida EnergySecure Pipeline will improve natural gas delivery reliability to FPL's electric generation, will promote economic efficiency and competition in natural gas transportation markets in Florida, and is the most cost-effective and reliable source of natural gas supply, transport, and delivery to FPL. Because the Florida EnergySecure Pipeline will be an asset used to provide fuel to FPL's electric plants, the related costs of the pipeline should be classified as electric utility plant just as any other company owned asset used for that purpose. (TR 387)

While the addition of the Florida EnergySecure Pipeline may result in a temporary excess of gas transportation capacity, this is not unusual for a long-lived, capital intensive project where economies of scale can result in overall savings to ratepayers over the life of the facility. The Commission has dealt with circumstances such as this in numerous other need determinations for major electric power plant and transmission line additions. In each case, based on the specific facts of the case, the Commission has established appropriate regulatory accounting and ratemaking policies at the time of cost recovery to protect electric ratepayers from any undue risk. In this case, similar ratepayer protections can be established with or without establishing a separate corporate entity. (Whether a separate corporate entity should be formed is addressed in Issue 13.)

The primary purpose of the Florida EnergySecure Pipeline will be to deliver natural gas to FPL's electric generating units. FPL is not holding itself out as an open-access natural gas transportation provider. Rather, FPL seeks to construct the Florida EnergySecure Pipeline to provide additional cost-effective natural gas supplies to fuel its electric power plants for the benefit of its electric ratepayers. As discussed in Issues 3 and 10, because of economies of scale, FPL decided to construct the Florida EnergySecure Pipeline, and to interconnect with an intrastate pipeline to be constructed by Company E with an initial capacity of 600 MMcf/day and an ultimate capacity, with future expansion as needed, to 1.6 Bcf/day. FPL indicates that it has a need for firm transportation capacity of 400MMcf/day to serve its Cape Canaveral and Riviera Beach plants. The remaining 200MMcf/day of capacity will be delivered to FPL's Martin Plant and be used as a system resource for a period of time between three and seven years for reliability purposes. As growth occurs on FPL's electric system, the full 600 MMcf/day capacity of the pipeline will be used to provide firm transportation to FPL's electric generating plants.

During Cross examination, FPL witness Stubblefield clarified that the "excess" 200 MMcf/day will be utilized by FPL to displace higher cost gas transportation on the FGT system. This is because on a daily basis the incremental cost of transporting the 200 MMcf over the Florida EnergySecure Pipeline has a lower variable cost than what FGT is charging. Therefore, the dispatch of gas fired generation over the new pipeline will result in reduced transportation costs to FPL's ratepayers. (TR 300-302) FPL has stated its intent to release the gas transportation which is freed up on the FGT system as a result of the more economical usage of

the Florida EnergySecure Pipeline. To the extent practicable, FPL may also seek to make short term interruptible sales of gas transportation to third parties. The revenues from these third party sales will be flowed back to FPL's electric ratepayers through the Fuel and Purchased Power Cost Recovery Clause.

With regard to revenues derived from third party sales from the line, staff agrees that the revenues from such sales should be credited to ratepayers in the Fuel and Purchased Power Cost Recovery Clause. Staff does take issue, however, with one aspect of the company's proposed regulatory treatment of third party sales revenues. FPL contends that any revenue generated from third party sales should be deemed appropriate and prudent, regardless of whether they cover costs. Staff would recommend that to the extent that any sales revenues do not cover fully allocated costs, FPL should be required to fully justify the difference. For example, if the fully allocated cost of the line is \$1.00 per MMcf/day and FPL makes a sale which only produces \$0.80 per MMcf/day, then FPL would be required to explain and fully justify why they were unable to recover the full cost of \$1.00 per MMcf/day. While this example is perhaps overly simplistic, it does serve to show how FPL should be held accountable for seeking the best deal possible for its electric ratepayers.

Concurrent with this recommendation, FPL should be required to develop and maintain the appropriate books, records, and sub-accounts to be able to determine and calculate the fully allocated cost of the Florida EnergySecure Pipeline. While staff is not recommending that FPL be forced to establish a separate corporate affiliate to accomplish this (see Issue 13) that is an option FPL may wish to consider. The methodology for determining fully allocated costs should be reviewed by the Commission as part of any docket requesting cost recovery for the Florida EnergySecure Pipeline.

The decision on the amount of prudently incurred investment in the proposed pipeline and associated expenses should be determined when FPL places the pipeline in service and files for cost recovery. FPL has stated that it intends to file a rate case in the 2014 time frame, coinciding with the project in-service date, to seek recovery of the costs associated with the Florida EnergySecure Pipeline. In the interim, FPL will accrue AFUDC on plant construction costs. In that future rate case, the Commission could include the total costs of the Florida EnergySecure Pipeline in retail base rates and credit any sales of gas transportation to third parties associated with the Florida EnergySecure Pipeline project through the fuel adjustment clause to offset the cost of any excess gas transportation capacity that is not utilized. In addition, there are a number of other alternatives the Commission could consider regarding inclusion of the Florida EnergySecure Pipeline in base rates. These options include the following:

Removal of incremental costs of the initial excess capacity

Initially, the pipeline will have 200 MMcf per day of excess capacity. Rather than requiring the ratepayers to pay for this excess capacity when it is not needed, the Commission could remove the associated incremental costs from rate base. However, the record indicates that the incremental plant would include only some compression facilities at a cost of approximately \$15 million, or less than 1 percent of the total estimated cost of \$1.5 billion. The precise level of incremental costs would be at issue during the utility's base rate proceeding. Since the

incremental costs would be borne by stockholders under such a treatment, any revenues derived from third party sales would be credited to FPL stockholders.

Imputation of revenue associated with an estimated level of sales of the excess

The Commission could include the cost of the entire pipeline in rate base but provide an incentive for FPL to sell the excess capacity to third parties. This would be accomplished by imputing revenue based on an estimated level of sales of the excess capacity. In this way, the FPL stockholders would assume the risk of being able to sell the excess capacity rather than the ratepayers. Any revenues derived from third party sales would be credited to FPL stockholders. However, such treatment would be a departure of how the Commission currently accounts for revenues from released natural gas transportation agreements. Obviously, the estimate of sales of excess capacity and the amount of revenue realized from this sale would be issues during the utility's base rate proceeding.

Application of FERC pricing techniques

FERC sets rates for natural gas transportation based on an assumed 100 percent load factor on the system. If the owner of the FERC-regulated pipeline does not contract for the full capacity, it will not recover the equity return that is allowed in the rate determination. Such a technique places the burden of any excess transportation capacity on the company's shareholders, not their ratepayers. This option most closely resembles an independent third party providing the gas transportation services to FPL. However, it is unlikely that the FPL pipeline could operate under this option and be regulated pursuant to Chapter 366, F.S.

As discussed in Issue 10, while the pipeline may be the most cost-effective alternative discussed in this proceeding, the magnitude of the advantage of the pipeline option varies depending on the assumptions used and changes to the forecasts of growth and demand. Given the uncertainty of the level of cost-effectiveness and the potential risk to its ratepayers associated with the significant cost of this plant investment, the Commission may want to put FPL on notice that in the upcoming rate case not only the level of the prudent investment in the pipeline will be at issue but also the method of recovery in retail rates. The ratemaking options discussed above and perhaps others should be considered in that proceeding.

Docket No. 090172-EI  
Date: September 24, 2009

**Issue 12:** Should FPL be required to file a post-construction report that details the final cost of the Florida EnergySecure Pipeline within 90 days of completion?

**Recommendation:** This issue was stipulated at the Prehearing.

**Positions of Parties:**

**FPL:** Yes. (Stipulated)

**FGT:** Stipulated.

**Staff Analysis:** At the Prehearing, the parties stipulated to the position above. FPL will be required to file a post-construction report that details the final cost of the Florida EnergySecure Pipeline within 90 days of completion.

**Issue 13:** Should a separate entity be established to own and operate the pipeline?

**Primary Recommendation:** Yes. Consistent with prior Commission practice, FPL should establish a separate entity to own and operate the Florida EnergySecure Pipeline. (Bulecza-Banks)

**Alternative Recommendation:** No. A separate entity is not needed to protect ratepayers. As discussed in Issue 11, however, FPL should be required to establish and maintain the books, records, and sub-accounts necessary for the Commission to determine the fully allocated cost of the Florida EnergySecure Pipeline used to make third-party transportation sales. (Ballinger, Trapp)

**Positions of Parties:**

**FPL:** No. The Florida EnergySecure Pipeline was not developed as a strategic investment for FPL Group; it was developed to serve FPL's customers by providing the most cost-effective and reliable source of gas supply. A separate entity is not necessary or appropriate to achieve these benefits.

**FGT:** Yes. Assuming FPL establishes need (which FGT does not concede), the only proper ratepayer treatment is for the entire cost and operation of the asset to be placed in a separate subsidiary and regulated under Chapter 368, F.S.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**FPL:** FPL asserts that there is no reason to establish a separate entity to own and operate the Florida EnergySecure Pipeline. FPL asserts that owning and operating a gas pipeline will help to meet its generation requirements in an effective manner and improve supply diversity and reliability. FPL states that it can either sell the excess capacity on the Florida EnergySecure Pipeline or release capacity currently held on FGT or Gulfstream pipelines. (FPL BR 50) FPL will reduce its requested recovery of fuel costs by the monies received from released capacity. The reduced fuel costs will be accounted for in the Fuel and Purchased Power Cost Recovery Clause thus, directly benefitting FPL's customers. (TR 51, 60) FPL argues that a separate entity is not necessary to achieve this benefit.

FPL also claims that establishing a separate entity could unnecessarily trigger affiliate transaction rules, resulting in increased legal and administration expenses that would be passed on to FPL's customers. FPL states that since the Commission will have oversight over any of the Florida EnergySecure Pipeline's tariffs there is no need to require the establishment of a separate entity. FPL's proposal to maintain accounting records to permit the identification of depreciation, operation and maintenance, and other costs further supports its argument that a separate entity is unnecessary.

**FGT:** As asserted by FGT, the Commission previously certified the need for a pipeline and that proposed pipeline was to be established as a separate corporate entity. FGT expands its

argument by pointing out that coal mines have been owned and operated through separate corporate entities by both Tampa Electric and Progress Energy. FPL however, argues that a coal barge transportation system would be appropriate for inclusion in electric rate base. FGT argues that based on FPL witness Guest's position, even the coal mine would qualify for rate base treatment. While FPL asserts that it would be burdensome to have the pipeline in a separate subsidiary, it offered no analysis or support for its alleged monetary impacts.

FGT proposes that if the need for the pipeline was established, which FGT contests, the Florida EnergySecure Pipeline should be placed in a separate subsidiary and subject to Commission regulation under Chapter 368, F.S. FGT argues that the Florida EnergySecure Pipeline would be subject to the cost of service rate authorized under Chapter 368, F.S., so that the capacity actually utilized by FPL could be recovered under the fuel cost recovery mechanism, just like all other electric utilities in Florida. Under this proposal, the Florida EnergySecure Pipeline would conduct business just like other natural gas transmission pipeline companies operating in Florida.

### **PRIMARY STAFF ANALYSIS**

As Issues 11 and 13 are so interrelated, primary staff has included its analysis related to the establishment of a separate entity Issue 11. As discussed in Issue 11, primary staff believes FPL should establish a separate entity to own and operate the Florida EnergySecure Pipeline for the following reasons:

- FPL's rate payers will be protected from cost overruns and increasing operating costs;
- FPL's rate payers will not be forced to pay for excess, unused capacity;
- The Florida EnergySecure Pipeline will be subject to open access, providing enhanced competition;
- Intergenerational issues resulting from high front-end costs will be mitigated;
- Establishment of a separate subsidiary for purposes of owning and operating the Florida EnergySecure Pipeline does not preclude FPL from realizing a reasonable rate of return; and,
- Inclusion of the Florida EnergySecure Pipeline in FPL's rate base could potentially alter the competitive forces by providing the recovery and a return of excess capacity that other pipeline competitors are not entitled to.

While FPL argues that there is no reason to require the establishment of a separate entity to own and operate the pipeline, primary staff believes that it is in the best interest of FPL's rate payers if the Florida EnergySecure Pipeline is established as a separate entity. Requiring the Florida EnergySecure Pipeline to be owned and operated independent of FPL will promote accuracy in accounting so that FPL's rate payers are only paying for the service provided. Primary staff believes that if the Florida EnergySecure Pipeline is cost effective, it should be cost effective regardless of whether the assets are owned directly by FPL or a related company.

While FPL has offered to credit the Fuel and Purchased Power Cost Recovery Clause with any revenues it receives from capacity releases or interruptible sales, primary staff does not believe this will provide FPL's rate payers with sufficient compensation for the costs they will assume. FPL acknowledged that it will only receive a portion of the capacity costs it is obligated to pay FGT and/or Gulfstream. (TR 501) Primary staff is particularly concerned with the possibility that the costs to operate the Florida EnergySecure Pipeline will increase over time. FPL even acknowledged that operating costs could increase over time. (EXH 2, BSP 449) As discussed in Issue 11, the Florida EnergySecure Pipeline does not become cost effective until 2031. Up until 2031, FPL's ratepayers will pay higher costs than if FGT's proposal was accepted.

### **ALTERNATIVE STAFF ANALYSIS**

As discussed in Issue 11, staff agrees that the revenues from capacity releases and interruptible sales from the Florida EnergySecure Pipeline should be credited to ratepayers in the Fuel and Purchased Power Cost Recovery Clause. Staff does take issue, however, with one aspect of the company's proposed regulatory treatment of third party sales revenues. FPL contends that any revenue generated from third party sales should be deemed appropriate and prudent, regardless of whether they cover costs. Staff would hold that to the extent that any sales revenues do not cover the fully allocated cost of the pipeline, FPL should be required to fully justify the difference. For example, if the fully allocated cost of the line is \$1.00 per MMcf/day and FPL makes a sale which only produces \$0.80 per MMcf/day, then FPL would be required to explain and fully justify why they were unable to recover the full cost of \$1.00 per MMcf/day. While this example is perhaps overly simplistic, it does serve to show how FPL should be held accountable for seeking the best deal possible for its electric ratepayers. Concurrent with this recommendation, FPL should be required to develop and maintain the appropriate books, records, and sub-accounts to be able to determine and calculate the fully allocated costs of the Florida EnergySecure Pipeline. The methodology for determining fully allocated costs should be reviewed by the Commission as part of any docket requesting cost recovery for the Florida EnergySecure Pipeline.

**Issue 14:** If FPL owns and operates the Florida EnergySecure Pipeline as proposed, will it be subject to the Commission's jurisdiction as an intrastate pipeline company pursuant to Chapter 368, F.S.?

**Primary Recommendation:** Yes. FPL has indicated that it intends to provide excess capacity on its proposed Florida EnergySecure Pipeline to third parties for compensation. Because it intends to provide excess capacity for compensation, the plain language of Section 368.103, F.S., indicates that FPL will be a natural gas transmission pipeline company subject to Commission regulation under Part II of Chapter 368, F.S. (Brown, Bulecza-Banks)

**Alternative Recommendation:** No. The primary purpose of the Florida EnergySecure Pipeline is to provide natural gas to FPL's electric generation plant. As such, it is appropriate for FPL to recover the costs associated with the project as part of its electric rates pursuant to the Commission's ratemaking jurisdiction under Chapter 366, F.S. Whether FPL should establish a separate Commission regulated subsidiary to own and operate the Florida EnergySecure Pipeline is addressed in Issue 13. (Brown, Ballinger, Trapp)

#### **Positions of Parties**

**FPL:** The Florida EnergySecure Pipeline will be properly treated as electric plant, subject to FPSC jurisdiction under Chapter 366, F.S. However, if and when FPL proposes to sell excess capacity off the Line, FPL would seek Commission approval under Chapter 368, F.S., of tariffs pursuant to which FPL would make capacity available.

**FGT:** Yes. If approved, the entire pipeline is subject to regulation under Chapter 368, F.S., and should be placed in a separate entity, regardless of whether FPL sells excess capacity. The Legislature intended Chapters 368 and 403, F.S., to operate in tandem for the approval and regulation of natural gas transmission pipelines.

#### **Staff Analysis:**

### **PARTIES' ARGUMENTS**

**FPL:** FPL has asked the Commission to determine the need for its proposed Florida EnergySecure Pipeline, a 280-mile long, 30-inch diameter, high pressure transmission pipeline that it proposes to own and operate to transport natural gas to its electric generating units in Cape Canaveral and Riviera Beach. FPL proposes to include the approximate \$1.5 billion cost of the project in its electric rate base as electric plant, and it states that it anticipates filing a petition for a base rate increase in 2014, when the pipeline is placed in service. The pipeline's initial transportation capacity is 600 MMcf per day, with an ultimate capacity of 1.25 billion cubic feet per day (Bcf/d). FPL indicates that presently it has a need for 400 MMcf/d to serve its Cape Canaveral and Riviera Beach plants. FPL states that: "[t]he remaining 200 MMcf/d of capacity will be delivered to FPL's Martin Plant for reliability purposes, but will also be offered to other entities within Florida with all resulting revenues to be credited to FPL's electric utility customers through the Fuel and Purchased Power Cost Recovery Clause." (TR 145) FPL states that it may also make use of the excess capacity to supply natural gas to its plants and release the

capacity it holds by contract on FGT's and Gulfstream's pipelines pursuant to FERC's capacity release rules.

FPL asserts that the pipeline will be an intrastate natural gas pipeline to be certified under the provisions of Part VIII of Chapter 403, F.S., the Natural Gas Transmission Pipeline Siting Act (Pipeline Siting Act). FPL also asserts that the Florida EnergySecure Pipeline will be subject to the Commission's regulation of natural gas pipeline safety under Part I of Chapter 368, F.S., the Gas Safety Law of 1967, Sections 368.01-368.061, F.S. FPL contends that it will not become a natural gas transmission pipeline company subject to the Commission's rate and service regulation under Part II of Chapter 368, F.S., the Natural Gas Transmission Pipeline Intrastate Regulatory Act (Pipeline Regulatory Act), the companion statute to the Pipeline Siting Act. According to FPL, this is so because its primary purpose in owning and operating the Florida EnergySecure Pipeline will be to provide natural gas to its electric generating units, even though it intends to make available excess capacity on the line to third parties for compensation. (FPL BR 5) FPL asserts that it is still entitled to an exemption from FERC's natural gas regulation under the Hinshaw Amendment to the Natural Gas Act, even though it claims not to be subject to the Commission's oversight under Part II of Chapter 368, F.S., because it is subject to the Commission's electric utility rate regulation under Chapter 366, F.S. (EXH 2, p. 305)

FPL does indicate that when it prepares to provide excess capacity on the Florida EnergySecure Pipeline to third parties for compensation, it will voluntarily file tariffs with the Commission, and charge rates for the capacity that are consistent with the provisions of Chapter 368, F.S. In its Brief, citing to Witnesses Forrest's and Ogur's testimony, FPL states:

These rates would be regulated by the Commission pursuant to Section 368.105(2), F.S., which requires the Commission "to ensure that all rates and services made, demanded, or received by any natural gas transmission company are just and reasonable and are not unreasonably preferential, prejudicial, or unduly discriminatory."

(FPL BR 53; TR 727, 833, 61-62, 422-23,; EXH 81)

**FGT:** FGT asserts that by seeking authority to construct an intrastate natural gas transmission pipeline as part of its electric utility operations, FPL has impermissibly attempted to impose the costs and risks of that pipeline on its electric ratepayers, while escaping the Commission's jurisdiction under Chapter 368, F.S. (FGT BR 44) FGT argues, however, that FPL's admission that it intends at some point to sell excess capacity places it within the jurisdiction of Chapter 368, F.S. FGT states that the Commission's jurisdiction is not optional, and if FPL, as the owner and operator of the proposed Florida EnergySecure Pipeline project, meets the statutory definition of a natural gas transportation company, then it is a pipeline company subject to the Commission's jurisdiction under Chapter 368, F.S. (FGT BR 45)

FGT further explains that in its view, whether FPL ultimately sells natural gas capacity on its pipeline or not, the Legislature intended that all intrastate pipelines would be regulated under Chapter 368, F.S. FGT believes that as a matter of law the Commission has already decided that Chapter 368, F.S., and Part VIII of Chapter 403, F.S., are part of the same statutory

structure.<sup>7</sup> FGT maintains that the Florida Supreme Court also made that determination in Florida Gas Transmission Co. v. Public Service Commission, 635 So. 2d 941 (Fla. 1994), when it upheld the constitutionality of the Natural Gas Pipeline Siting Act and the Commission's decision determining the need for the SunShine pipeline, the first intrastate natural gas pipeline approved under the new act. FGT argues that the history of the two acts demonstrates that the two provisions:

. . . [w]ork in tandem to govern all intrastate gas pipelines in Florida. As such, a pipeline company petitions the Commission for a determination of need under Chapter 403, and if that need is certified by the Commission and later authorized by the Governor and Cabinet sitting as the Siting Board, the resulting pipeline is regulated by the Commission under 368.

(FGT BR 47-48)

Finally, FGT argues that under 15 U.S.C. §717(c), the Hinshaw Amendment to the Natural Gas Act, the Florida EnergySecure Pipeline is only exempt from FERC jurisdiction if the rates and service of the pipeline are subject to this Commission's jurisdiction under Chapter 368, F.S. FGT asserts that FPL should not be permitted to subvert the Commission's jurisdiction by constructing an intrastate gas pipeline to serve its native load and recovering all costs of the project through its rate base. FGT states that no major, long distance, high pressure gas pipeline in the country is included in an electric utility's rate base, and if the Commission finds the need for the project, it must require FPL to place the pipeline in a separate subsidiary governed by Chapter 368, F.S. (FGT BR 41, 43-44)

### **PRIMARY STAFF ANALYSIS**

FPL asserts that the pipeline will be an intrastate natural gas pipeline to be certified under the provisions of Part VIII of Chapter 403, F.S., the Natural Gas Transmission Pipeline Siting Act (Pipeline Siting Act). Section 403.9403(16) of the Pipeline Siting Act defines "Natural Gas Transmission Pipeline" as:

the transmission pipeline and any related equipment, facility, or buildings used in the transportation of natural gas or its treatment or storage during the course of transportation. The term does not include a gathering line, but the term includes a transmission pipeline that transports gas from a gathering line or a storage facility or that operates at a hoop stress of 20 percent or more of specified minimum yield strength, as defined by federal law, or that transports gas within a storage field.

According to FPL, as a natural gas transmission pipeline company it is a proper applicant for site certification under the Pipeline Siting Act.<sup>8</sup> A natural gas transmission pipeline company is defined in Section 403.9403(17), F.S., as; "a person engaged in the transportation, by natural gas

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<sup>7</sup> See, Order No. PSC-07-1012, issued December 21, 2007, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Co., Inc.*, pp. 3-4.

<sup>8</sup> "'Applicant' means any natural gas transmission pipeline company that applies for certification pursuant to ss. 403.9401-403.9425." Section 403.9403(3), F.S.

transmission pipeline, of natural gas.” FPL also asserts that the Florida EnergySecure Pipeline will be subject to the Commission’s regulation of natural gas pipeline safety under Part I of Chapter 368, F.S., the Gas Safety Law of 1967. Section 368.05, F.S.

FPL contends, however, that it will not become a natural gas transmission pipeline company subject to the Commission’s rate and service regulation under the Pipeline Regulatory Act, because its primary purpose in owning and operating the Florida EnergySecure Pipeline will be to provide natural gas to its electric generating units, even though it intends to make available excess capacity on the line to third parties for compensation. The Pipeline Regulatory Act defines “Natural Gas Transmission Company” as:

Any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas, but shall not include any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et.seq., or any municipalities or any agency thereof or a special district created by special act to distribute natural gas.

Section 368.103(4), F.S.

FPL also asserts that it is still entitled to an exemption from FERC’s natural gas regulation under the Hinshaw Amendment to the Natural Gas Act, even though it claims not to be subject to the Commission’s oversight under Part II of Chapter 368, F.S., because it is subject to the Commission’s electric utility rate regulation under Chapter 366, F.S. (EXH 2, p. 305)

#### The Pipeline Regulatory Act

As the Commission explained in Order No. PSC-06-0023-DS-GP,<sup>9</sup> the Pipeline Regulatory Act was adopted by the Florida Legislature in 1992 as Part II of Chapter 368, F.S. The act was passed in conjunction with the Pipeline Siting Act, Part VIII of Chapter 403, F.S. Chapter 92-284, Laws of Florida. (EXH 2, Item 25) At the time they were enacted, the laws contemplated the filing of a proposal for a major natural gas transmission pipeline that would serve local distribution companies and major electric power generators in Florida, and that would be regulated by the Florida Public Service Commission rather than FERC.<sup>10</sup> The pipeline at issue when the statutes were enacted was to be jointly owned as a separate affiliate of Florida Power Corporation and an interstate natural gas pipeline company. The legislative history of the enactment does not indicate that the legislation contemplated the construction and operation of a major natural gas transmission pipeline by a regulated electric utility, with costs of the project recovered through the utility’s electric ratebase.

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<sup>9</sup> Issued January 9, 2006, in Docket No. 050584-GP, In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S.

<sup>10</sup> See, In re: Application for a Determination of Need for an Intrastate Natural Gas Pipeline by SunShine Pipeline Partners, Order No. PSC-93-0987-FOF-GP issued July 2, 1993, in Docket No. 920807-GP.

Chapter 368, F.S. enables an intrastate pipeline company to be exempt from FERC jurisdiction under the Hinshaw Amendment to the Federal Natural Gas Act mentioned above. The Hinshaw Amendment, contained in section 1(c) of the Natural Gas Act, 15 U.S.C. § 717(c), provides as follows:

The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission.

Part II of Chapter 368, F.S., provides for this Commission's regulation of an intrastate pipeline's rates and service consistent with the Hinshaw Amendment's requirements. Section 368.104, F.S., provides:

Subject to ss. 368.101-368.112, the commission is vested with all authority and power of the state to ensure compliance of natural gas transmission companies with the obligations imposed by ss 368.101-368.112. For this purpose, the commission is empowered to fix and regulate rates and services of natural gas transmission companies, including, without limitation, rules and regulations for determining the classification of customers and services, for determining the applicability of rates, and for ensuring that the provision (including access to transmission) or abandonment of service by a natural gas transmission company is not unreasonably preferential, prejudicial, or unduly discriminatory. In the exercise of its jurisdiction, the commission shall have the power to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of ss. 368.101-368.112.

The Intrastate Regulatory Act and the Pipeline Siting Act have rarely been invoked since they were enacted 16 years ago. The major pipeline project was never constructed, and today there are no intrastate transmission pipelines operating in the state, although two intrastate transmission pipelines, the Peninsula pipeline and the SeaCoast pipeline do have tariffs approved by the Commission under Part II of Chapter 368, F.S.<sup>11</sup> Peninsula is a separate affiliate of Central Florida Gas Company, a local natural gas distribution company regulated by the Commission under Chapter 366, F.S. SeaCoast is a separate affiliate of Tampa Electric Company and Peoples Gas Company, both of which are regulated by the Commission under Chapter 366, F.S.

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<sup>11</sup> See, Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc., and Order No.PSC-08-0747-TRF-GP, issued November 12, 2008, in Docket No. 080561-GP, In re: Petition for approval of natural gas transmission pipeline tariff by SeaCoast Gas Transmission, LLC.

Because there has been so little activity under the acts, there is little precedent to guide the interpretation of the applicable laws, and what little precedent there is does not address the unique legal and regulatory questions raised by FPL's request to build its Florida EnergySecure Pipeline and recover the costs through its electric utility ratebase. As a consequence, staff has relied heavily on fundamental principles of statutory construction to determine whether FPL will be a natural gas transmission company under Section 368.103 (4), F.S., the Pipeline Regulatory Act's definition of natural gas transmission pipeline company, if it owns and operates the Florida EnergySecure Pipeline as proposed.

Statutes are generally considered to have been enacted in a manner which allows for their interpretation according to the settled principles of statutory interpretation. 48A Fla. Jur. 2d, Statutes p. 629.<sup>12</sup> In interpreting statutes, courts are generally charged with determining the legislative intent in enacting the legislation. Depart v. Macri 902 So. 2d 271 (Fla. 1<sup>st</sup> DCA 2005); Deltona Corp. v. Florida Public Service Commission, 220 So. 2d 905, 907 (Fla. 1969) ( a statute should be construed to give effect to the intention of the legislature as expressed in the statute).

Courts are tasked with giving statutory language effect without resort to any canon of construction, if possible. Accordingly, in determining the legislature's intent, courts look first at the statute's plain language and consider the plain meaning of the language used. . . . A court's duty when constructing a statute is to give clear statutory language its natural effect. . . . It is not the province of the court to vary the clear legislative intent expressed in a statute merely because of a court's belief as to the lack of wisdom of the enactment.

48A Fla. Jur. 2d, Statutes, p. 630.

In interpreting the language of Section 368.103 (4), F.S., the Commission, like a court, is without authority to construe a statute in a way that would extend, modify, or limit its express terms, in order not to abrogate legislative power. University of Florida, Bd. of Trustees v. Sandal, 837 So. 2d 512 (Fla. 1<sup>st</sup> DCA 2003). Where the language of the statute is clear and unambiguous, the statute must be given the interpretation reflected in the plain language without resort to other statutory construction principles. A. R. Douglass, inc. v. McRaney, 137 So. 157, 159 (Fla. 1931); Verizon Florida, Inc v. E. Leon Jacobs, Jr., 810 So. 2d 906 (Fla. 2002) ( "There is no need to resort to other rules of statutory construction when the language of the statute is unambiguous and conveys a clear and ordinary meaning.") Where the language of a statute is not plain, however, and there is ambiguity as to its meaning or application, it is appropriate to interpret the statute according to established canons of statutory construction.

Where there is uncertainty in the meaning to be given the words employed in a statute, or when a statute does not define a term, the court must resort to the

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<sup>12</sup> Staff would note that this is a case of first impression, and Courts will give great weight to the Commission's interpretation of a statute it is charged with administering. Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So. 2d 716 (Fla. 1983); Level 3 Communications, LLC v. E. Leon Jacobs, Jr., 841 So. 2d 447 (Fla. 2003).

canons of statutory construction in order to derive the proper meaning. It is only when a statute is ambiguous that a court may resort to rules of statutory construction.

48A Fla. Jur. 2d, Statutes, p. 633.

Section 368.103(4), F.S.

As cited above, the statute at issue here, Section 368.103(4), F.S., defines natural gas transmission company as any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas. The statute provides specific exemptions from the definition, and thus from the operation of the regulatory provisions of the Chapter, for local gas distribution companies, pipelines subject to FERC's jurisdiction under the Natural Gas Act, municipalities, and special districts.

No mention is made in the language of the statute that a person owning or operating the pipeline is only a transmission company if its primary purpose is to provide gas transmission for compensation. Nor does the language of the statute provide an exclusion for a company whose primary purpose is to transport natural gas for its own use. The plain language of the statute clearly indicates that if the entity offers transmission for compensation it is a natural gas transmission company subject to regulation under Chapter 368, F.S. The statute makes no statement either about the amount of sales made, and staff would submit that if any sales of capacity are made, the owner and operator would be a natural gas transmission company.<sup>13</sup>

Even if the Commission determines that the language of Section 368.103(4), F.S., is not plain, and it is necessary to apply canons of construction to determine the legislature's intent, the statutory construction principle "expressio unius est exclusio alterius," the mention of one thing implies the exclusion of another, leads to the same interpretation. When a law expressly describes a situation where something should apply, the inference must be drawn that what is not included by specific reference was intended by the legislature to be excluded. St John v. Coisman, 799 So. 2d 1110 (Fla. 5<sup>th</sup> DCA 2001). Section 368.103(4), F.S., does not expressly exempt the owner and operator of a transmission pipeline constructed with the primary purpose of serving its electric generating units from the statute's effect. If the Florida EnergySecure Pipeline intends to provide capacity on the line to third parties for compensation, it is subject to the regulatory strictures of Chapter 368, F.S., Part II.

FPL has also indicated that it would release capacity it holds by contract on FGT's and Gulfstream's pipeline in order to take advantage of the additional capacity on the Florida EnergySecure Pipeline. Staff does not believe that this activity would trigger regulation under

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<sup>13</sup> This interpretation is similar to the Commission's and the Florida Supreme Court's interpretation of the definition of "public utility" found in Section 366.02(1), F.S., which provides that "'Public utility' means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state. . . ." In PW Ventures, Inc. v. Nichols, 533 So.2d 281 (Fla. 1988), the Court upheld the Commission's interpretation of that definition to encompass the sale to one member of the public. The sale of electric service to one person other than itself would make the supplier a public utility subject to the Commission's regulation under Chapter 366, F.S.

Chapter 368, F.S., because it would not involve the specific provision of capacity on the Florida EnergySecure Pipeline to third parties for compensation. The plain language of Section 368.103(4), F.S., does not encompass capacity release.

FGT argues that since the Pipeline Siting Act and the Pipeline Regulatory Act were enacted together, the Legislature intended that all intrastate pipelines would be regulated under Chapter 368, F.S., whether or not transmission capacity is offered for compensation. As cited above, Section 403.9403(17), F.S., defines natural gas transmission pipeline company as a person engaged in the transportation by transmission pipeline of natural gas. Section 368.103(4), F.S., adds the words “for compensation. . . for the transportation or delivery for sale of natural gas” to its definition of natural gas transmission company. Staff agrees with FGT that the two statutes should be read together to reach a proper determination of legislative intent. Staff does not agree with FGT’s conclusion, however. Similar words in related statutes should be given similar meanings, unless there is a discernible difference in the usage that would indicate legislative intent to distinguish between them.

It is a general canon of statutory construction that, when the legislature includes particular language in one section of a statute but not in another section of the same statute, the omitted language is presumed to have been excluded intentionally.

Armstrong v. City of Edgewater, 157 So. 2d 422 (Fla. 1963).

The difference in the definition of natural gas transmission company between the two statutes indicates that an entity may receive site certification as an intrastate pipeline without being subject to regulation under Chapter 368, F.S., if it does not offer transmission pipeline capacity for compensation.

#### The Hinshaw Amendment

FPL asserts that if it is not subject to rate regulation, it would still be entitled to an exemption from federal regulation by FERC under the Hinshaw Amendment to the Natural Gas Act because it is subject to regulation by the Florida Commission as an electric utility under Chapter 366, F.S.

This is a unique argument. Staff’s research has not revealed any opinion or ruling in the nation that has applied the Hinshaw Amendment to a natural gas transmission pipeline on the grounds that the company owning the pipeline was subject to state electric utility rate regulation. Staff would point out that FPL has not supported its position with citations to authority on this issue. On the other hand, staff is not aware of, and FGT has not provided citations to, any authority that would prohibit the application of the Hinshaw Amendment to a pipeline owned by an electric utility subject to electric rate regulation. Thus, while staff believes the better decision here would be to require a separate affiliate to own the pipeline, subject to regulation under Part II of Chapter 368, F.S., we have found no precedent that would preclude a pipeline operated by a rate-regulated electric utility from exemption from FERC regulation under the Hinshaw Amendment.

Staff recognizes that this is a somewhat tentative legal opinion on the scope and application of the Hinshaw Amendment. It results from the uniqueness of FPL's position in this case and the lack of legal authority. Staff would note that if the Commission would like additional guidance on this matter, or on whether the FERC's Uniform System of Accounts permits FPL to account for the Florida EnergySecure Pipeline investment on its electric utility books, it could direct FPL to seek a declaratory order or letter opinion from FERC, and defer decision on FPL's petition for determination of need pending the FERC's opinion.<sup>14</sup> Staff would note that some time would be necessary for the FERC to process such a request, but as discussed in the alternative staff analysis in Issue 10, the upstream pipeline (Company E) will not be filing its application with the FERC until the Fall of 2011 to meet the January 2014 in-service date. Staff believes that this time line would accommodate the time needed to receive a letter opinion or declaratory order from the FERC.

Staff is not uncertain, however, about the application of Chapter 368, F.S., regulation if an electric utility provides or intends to provide capacity on the transmission pipeline for compensation. That activity would necessarily trigger the operation of Chapter 368, F.S. Unlike electric generating units and electric transmission lines in electric plant that may have capacity available to electric utilities for off system sales, the Legislature has enacted Chapter 368, F.S., specifically to regulate such a sale of natural gas transmission capacity, and that statute cannot simply be ignored. Adherence to its prescriptions is not voluntary, and staff believes that the Commission would exceed its statutory authority to ignore the legislative will by ignoring the operation of Chapter 368, F.S.

### **PRIMARY STAFF CONCLUSION**

For the reasons described above, staff recommends that since FPL has repeatedly indicated that it intends to offer capacity on the Florida EnergySecure Pipeline to third parties for compensation, it will be subject to regulation as a natural gas transmission company under Chapter 368, F.S. Compliance with the provisions of that statute would be mandatory, not voluntary. If FPL does not offer capacity to third parties for compensation, staff recommends that FPL would not be subject to the requirements of that statute. Staff further recommends that if FPL is not subject to the requirements of Chapter 368, F.S., FPL would still be a proper applicant for a determination of need for a natural gas transmission pipeline as defined in Part VIII of Chapter 403, F.S. Finally, although such an arrangement has never been approved, as far as staff can determine, there does not appear to be any legal impediment to the operation of the Hinshaw Amendment where an intrastate natural gas transmission pipeline is owned by an electric utility subject to electric rate regulation by the state regulator. As noted above the law is completely silent on this point, and if the Commission chooses, it could direct FPL to seek further guidance on the question from the FERC. However the Commission resolves the question regarding the Hinshaw Amendment, in staff's view offering capacity on the Florida EnergySecure Pipeline transmission line for compensation would trigger the regulation of Chapter 368, F.S., as the Legislature intended.

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<sup>14</sup> See FERC's Rules of Practice and Procedure, 18 C.F.R. 385.207; and FERC's rules regarding Information and Requests, 18 C.F.R. 388.104.

### **ALTERNATIVE STAFF ANALYSIS**

The primary purpose of the Florida EnergySecure Pipeline will be to provide natural gas to FPL's electric generating units. FPL is not holding itself out as an open-access natural gas transportation provider. Rather, FPL seeks to construct the Florida EnergySecure Pipeline to provide additional cost-effective gas supplies to fuel its electric power plants for the benefit of FPL's electric ratepayers. As long as the primary purpose of the Florida EnergySecure Pipeline is for the use of FPL's electric customers, staff believes that it is appropriate to regulate the Florida EnergySecure Pipeline pursuant to the provisions of Chapter 366, F.S.

#### **Natural Gas Transmission Pipeline Siting Act**

During the hearing, FGT took the position that an applicant under the Natural Gas Transmission Pipeline Siting Act (Sections 403.9401-403.9425, F.S.) was required to submit to rate regulation under the provisions of the Natural Gas Transmission Pipeline Intrastate Regulatory Act (Sections 368.101-368.112, F.S.). Staff does not believe that such a linkage exists. The use of the term "natural gas transmission pipeline company" has different definitions in the statutes that should not be used interchangeably.

Section 403.9403 (3), F.S., defines an applicant as:

"any natural gas transmission pipeline company that applies for certification pursuant to ss. 403.9401-403.9425."

Section 403.9403(17), F.S., states:

"natural gas transmission pipeline company means a person engaged in the transportation, by natural gas transmission pipeline, of natural gas."

Section 403.9405(2)(c), F.S. states that:

"403.9401-403.9425, F.S. do not apply to "a natural gas transmission pipeline certified as an associated facility to an electrical power plant pursuant to the Florida Electrical Power Plant Siting Act, unless the applicant elects to apply for certification under Sections 403.9401-403.9425, F.S."

Based on the above, it is clear that the Natural Gas Transmission Pipeline Siting Act contemplated that all intrastate natural gas transmission pipeline, are required to be certified, regardless of whether sales to third parties are made from the line. This includes electric utilities, such as FPL who are also proper applicants under the Florida Electrical Power Plant Siting Act but whose pipeline facilities are not included as associated facilities in an electric power plant certification proceeding.

**Natural Gas Transmission Pipeline Intrastate Regulatory Act**

In contrast to Section 403, F.S., discussed above, Part II of Chapter 368, F.S., uses a different definition of a “Natural Gas Transmission Company.” Section 368.103(4), F.S. states:

“Natural gas transmission company” means any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas, but shall not include any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof or a special district created by special act to distribute natural gas.

Part II of Chapter 368, F.S., was enacted to allow for the entry of additional open-access natural gas transportation pipeline companies that operated solely as intrastate pipelines within Florida selling the transmission and delivery of natural gas for compensation. The Florida Legislature desired that such intrastate pipelines competing for transportation and delivery services to the public to be rate regulated by the State rather than by FERC. The Legislature further specified that the rates charged by intrastate natural gas transmission companies be negotiated rates subject only to Commission review to ensure that such negotiated rates were not unreasonably preferential, prejudicial, or unduly discriminatory.

The primary purpose of the Florida EnergySecure Pipeline will be to provide natural gas to FPL’s electric generating units. While FPL does seek authority to release or sell temporary surplus from the line, the primary purpose of the Florida EnergySecure Pipeline is not for the sale of transportation services. FPL is not holding itself out as an open-access natural gas transportation provider. The full capacity of the line will be dedicated to providing natural gas to the company’s Cape Canaveral and Riviera Beach electric generating plants. The remaining capacity will be delivered to FPL’s Martin Plant for reliability purposes and will provide for cost-effective short-term capacity releases of existing gas transportation agreements. As FPL’s customer load grows and additional natural gas fired generating units are needed, the capacity of the Florida EnergySecure Pipeline can be expanded and will be used to supply natural gas to FPL’s electric generating plant.

With regard to rate making under Chapter 368, Section 368.105(3), F.S., states that:

“Rates ... are deemed to be just and reasonable and approved by the commission, if both the natural gas transmission company and the customer file an affidavit with the Commission affirming that:

- (a) Neither the natural gas transmission company nor the customer had an unfair advantage during the negotiations;
- (b) The rates are substantially the same rates between the natural gas transmission company and two or more of those customers under the same or similar conditions; or

(c) Competition does or did exist either with another natural gas transmission company, another supplier of natural gas, or with a supplier of an alternative form of energy.”

The statute (Part II, Chapter 368, F.S.) clearly envisions that the buyer and seller of natural gas transportation would be separate and different entities; that the rates charged for transportation service would be established through arms-length negotiations; and, as long as the buyer and seller agree, the negotiated rates would be deemed to be just reasonable and approved by the Commission.

In contrast, Attachment 1 provides a comparison of the rate making provisions contained in Chapter 366, F.S., to those contained in Chapter 368, F.S. As is shown, Chapter 366, F.S., is a more mature statute with a comprehensive legislative, administrative, and judicial history. Rate making under Chapter 366, F.S., embraces the following principles:

- Efficiency, sufficiency, and adequacy of the facilities provided and services rendered;
- Cost of providing service;
- Prudence of investments made to serve the public;
- Used and usefulness of investments made to serve the public;
- Ability of the utility to maintain, improve, and replace facilities used to serve the public;
- Energy conservation and the efficient use of alternative energy source;
- Just, reasonable, and compensatory rates and charges.

Since FPL will be both the supplier and the recipient of natural gas transportation over the Florida EnergySecure Pipeline, it is difficult to understand how FPL would negotiate just and reasonable rates with itself under the provisions of Chapter 368, F.S. The answer to this conundrum, however, is actually addressed in the final sentence of Section 368.105(3), F.S., which states:

However, the provisions of this subsection shall not preclude the commission from determining the reasonableness and prudent costs to be recovered through rates from an electric utility’s ratepayers, pursuant to the provisions of Chapter 366.

In other words, in a circumstance such as the instant case, where the pipeline owner and the transportation customer are an electric utility, the provisions of Chapter 366, F.S., control the rate making treatment of costs passed onto electric ratepayers.

#### **ALTERNATIVE STAFF CONCLUSION**

Since the primary purpose of the Florida EnergySecure Pipeline is for the use of FPL’s electric customers to provide natural gas as a fuel to FPL’s electric generating facilities, alternative staff recommends that the rates charged FPL’s electric ratepayers for the use of the

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Florida EnergySecure Pipeline be determined pursuant to the provisions of Chapter 366, F.S. The prudently incurred costs of the Florida EnergySecure Pipeline should be included in FPL's electric rates. Whether the costs of the Florida EnergySecure Pipeline are included in FPL's electric rate base is addressed in Issue 11. Whether a separate regulated subsidiary should be established to own and operate the Florida EnergySecure Pipeline is addressed in Issue 13.

**Issue 15:** If FPL owns and operates the Florida EnergySecure Pipeline as proposed, will it “provide transmission access, subject to available capacity, on a basis that is not unreasonably preferential, prejudicial, or unduly discriminatory,” as Section 368.105(6) requires?

**Primary Recommendation:** Yes. FPL has indicated that when it provides transmission capacity for compensation to third parties, it will file tariffs with the Commission, post its available capacity on an open access bulletin board, and sell the capacity at rates that: ‘would be regulated by the Commission pursuant to Section 368.105(2), F.S. which requires the Commission ‘to ensure that all rates and services made, demanded, or received by any natural gas transmission company are just and reasonable and are not unreasonable preferential, prejudicial, or unduly discriminatory.’” The Commission will have jurisdiction under to ensure compliance with this provision. (Brown, Bulecza-Banks)

**Alternative Recommendation:** Yes. The Florida EnergySecure Pipeline will primarily be used to supply natural gas to FPL’s electric generating plant. To the extent that FPL derives revenues from the release or short term sale of gas transportation, such sales will be made pursuant to established FERC regulated non-discriminatory markets and the revenues derived from such sales will be credited to FPL’s ratepayers in the Fuel and Purchased Power Cost Recovery Clause. (Graves, Matthews)

**Positions of Parties (Taken Directly from Briefs):**

**FPL:** Yes. FPL will follow FERC requirements for capacity releases on interstate pipelines. If FPL sells capacity off the Florida EnergySecure Pipeline, FPL will post available capacity on an electronic bulletin board and make awards in a non-discriminatory manner to parties offering the highest net present value bids consistent with posted criteria.

**FGT:** No. By including the proposed pipeline in its rate base, FPL will force ratepayers to pay unnecessary expenses for excess capacity, which would be unreasonably preferential, prejudicial, and discriminatory. The only way for FPL to meet these objectives is to place the pipeline in a separate subsidiary, subject to Chapter 368, F.S.

**Primary Analysis :** See discussion in prior issues.

**Alternative Analysis:** See Issues 3, 10, 11, and 14. If FPL derives revenues from the release of existing gas transportation capacity, such sales will be made pursuant to established FERC regulated non-discriminatory markets.

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**Issue 16:** Based on the resolution of the previous issues, should FPL's petition for determination of need for the Florida EnergySecure Pipeline, a natural gas transmission pipeline as defined in Section 403.9403(16), F.S., be approved?

**Primary Recommendation:** Yes. (Graves, Matthews, Ballinger, Trapp)

**Alternative Recommendation:** No. (Bulecza-Banks, Chase)

**Positions of Parties:**

**FPL:** Yes. The Commission should grant FPL's petition based on the applicable statutory criteria, including: the need for natural gas delivery, reliability, safety and integrity; the need for abundant, clean-burning natural gas to assure the economic well-being of the public; and the appropriate commencement and terminus of the line.

**FGT:** No. The proposed pipeline is not in the best interests of ratepayers or the State of Florida. FPL has failed to demonstrate: (a) need for the pipeline; (b) demand to support its construction and expense; and (c) that the pipeline, coupled with the cost of the upstream pipeline, is the best economic alternative.

**Staff Analysis:**

**Primary Staff Analysis:** Based on the resolution of the previous issues, FPL's petition for determination of need for the Energy Secure Pipeline should be approved.

**Alternative Staff Analysis:** For the reasons discussed in the alternate staff analysis contained in Issues 3, 5, and 10, staff believes the petition for determination of need for the Florida EnergySecure Pipeline should be denied at this time.

**Issue 17:** Should this docket be closed?

**Recommendation:** Yes. Whatever decisions the Commission makes on the substantive issues and alternatives presented in this recommendation, this docket should be closed upon the expiration of the time for appeal. (Brown)

**Staff Analysis:** In this recommendation, staff has described several alternatives for the resolution of the issues in this docket, including:

- granting the need determination and permitting inclusion of the costs of the EnergySecure Pipeline in electric ratebase;
- granting the need determination and requiring creation of a separate affiliate to own and operate the EnergySecure Pipeline;
- denying the need determination with direction to rebid the project; and
- denying the need determination with direction to seek the FERC's opinion on the appropriate rate regulation and accounting treatment of the EnergySecure Pipeline.

Whatever decisions the Commission makes on the substantive issues and alternatives presented in this recommendation, this docket should be closed upon the expiration of the time for appeal.

Comparison of the Regulatory Requirements of  
 Chapter 366 and Chapter 368, Florida Statutes

Chapter 366	Chapter 368
<p>Each public utility shall furnish to each person applying therefore reasonably sufficient, adequate, and efficient service upon terms as required by the commission.                      [366.03, F.S.]</p>	<p>A natural gas transmission company shall provide transmission access, subject to available capacity, on a basis that is not unreasonably preferential, prejudicial, or unduly discriminatory.                      [368.105(6), F.S.]</p>
<p>All rates and charges for service shall be just, reasonable, and compensatory.                      [366.03; 366.041(1); 366.05(1); 366.06(2); 366.07, F.S.]</p>	<p>Just and reasonable rates.                      [368.105(2), F.S.]</p>
<p>No undue or unreasonable preference or advantage to any person or locality; no undue or unreasonable prejudice or disadvantage in any respect.                      [366.03; 366.06(2); 366.07, F.S.]</p>	<p>No unreasonably preferential, prejudicial, or unduly discriminatory rates.                      [368.104; 368.105(2)F.S.]</p>
<p>Rates based on consideration of the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the <u>cost of providing such service</u> and the value of such service; the ability of the utility to improve such services and facilities; and energy conservation and the efficient use of alternative energy resources.                      [366.041(1), F.S.]</p>	<p><u>Non-affiliated sales:</u>                      Minimum and maximum rates may be filed.                       Rates are deemed to be just and reasonable and approved by the commission if both the natural gas transmission company and the customer file an affidavit with the commission affirming that:                      (a) neither party had an unfair advantage during the negotiations;                      (b) the rates are substantially the same as rates charged two or more customers under the same or similar conditions of service; or                      (c) competition does exist between either another supplier natural gas or with a supplier of an alternative form of energy.                       The provisions of this subsection shall not preclude the commission from determining the reasonable and prudent costs to be recovered through rates from and electric utility's ratepayers, pursuant to the provisions</p>

	<p>of chapter 366.</p> <p><u>Affiliated sales:</u>                  The standard contained in (a) above shall not apply.                  If a complaint is filed, non of the provisions above apply (i.e., (a), (b), or (c)).</p> <p>[368.105, F.S.]</p>
<p>The commission shall have power over electric utilities to prescribe uniform systems and classifications of accounts.                  [366.04(2)(a)]</p>	<p>Not specifically addressed.</p>
<p>Ability to require repairs, improvements, additions, replacements, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate services or facilities for those reasonably entitled thereto.                  [366.04(2)(f)366.05(1), F.S.]</p>	<p>A natural gas transmission company shall construct any necessary pipeline lateral facilities and related facilities required for interconnection with a customer if that customer agrees to fully compensate the natural gas transmission company for reasonable costs incurred. The commission shall resolve any controversy between the natural gas transmission company and a person desiring transmission access, including access availability, type of service, applicable rates, or interconnection costs.                  [368.105(6), F.S.]</p>
<p>Authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of Chapter 366.                  [366.05(1), F.S.]</p>	<p>Authority to prescribe rules and regulations reasonably necessary and appropriate for the administration and enforcement of ss.368.101-368.112.                  [368.104, F.S.]</p>
<p>The power and authority herein conferred upon the commission shall not cancel or amend any existing punitive powers of the commission but shall be supplementary thereto and shall be construed liberally to further the legislative intent that adequate service be rendered.                  [366.041(2), F.S.]</p>	<p>Not specifically addressed.</p>
<p>The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.                  [366.05(7), F.S.]</p>	<p>Not specifically addressed.</p>
<p>Authority to require the installation or repair of necessary facilities, including generating plants</p>	<p>Not specifically addressed.</p>

<p>and transmission facilities, where the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, including inadequacies in fuel diversity or fuel supply reliability.          [366.05(8), F.S.]</p>	
<p>The commission may require the filing of reports and other data by a public utility or its affiliated companies, including its parent company, regarding transactions, or allocations of common costs, among the utility and such affiliated companies.          [366.05(9), F.S.]</p>	<p>Not specifically addressed.</p>
<p>The Legislature finds that violations of commission orders or rules, in connection with the impairment of a public utility's operation or service, constitute irreparable harm for which there is no adequate remedy at law. The commission is authorized to seek relief in circuit court including temporary and permanent injunctions, restraining orders, or any other appropriate order. Such remedies shall be in addition to and supplementary to any other remedies available for enforcement of agency action under s. 120.69 or the provisions of this chapter.          [366.05(10), F.S.]</p>	<p>Section 368.1115, F.S., is identical to s. 366.05(10), F.S.</p>
<p>The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefore.          [366.06(1), F.S.]</p>	<p>Not specifically addressed.</p>
<p>The commission may conduct a limited proceeding to consider and act upon any matter within its jurisdiction, including any matter the</p>	<p>Not specifically addressed.</p>

<p>resolution of which requires a public utility to adjust its rates.[366.076, F.S.]</p>	
<p>The commission may enter upon any premises occupied by any public utility and may set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations and tests and exercising any power conferred by this chapter.          [366.08, F.S.]</p>	<p>Not specifically addressed.</p>
<p>The commission shall continue to have reasonable access to all public utility records and records of the utility's affiliated companies, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities.          [366.093, F.S.]</p>	<p>Section 368.108, F.S., is identical to s. 366.093, F.S.</p>
<p>The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter that is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission. Each day that such refusal or violation continues shall constitute a separate offense.          [366.095, F.S.]</p>	<p>Section 368.111, F.S., is identical to s. 366.095, F.S.</p>