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COMMISSION
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September 7, 2010

VIA HAND DELIVERY

Ms. Ann Cole
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Boulevard, Room 110
Tallahassee, FL 32399-0850

Re: Docket No. 100009-EI

Dear Ms. Cole:

Please find enclosed for filing in the above docket the original and seven (7) copies of Florida Power & Light Company's ("FPL's") Revised Motion for Approval of Stipulation and Deferral of Issues.

If there are any questions regarding this transmittal, please feel free to contact me.

Sincerely,



Bryan S. Anderson
Fla. Auth. House Counsel No. 219511
(Admitted in IL, not admitted in FL)

Enclosures

cc: Counsel for Parties of record (w/ enc.)

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant)
Cost Recovery Clause _____)

Docket No. 100009-E1
Filed: September 7, 2010

**FLORIDA POWER & LIGHT COMPANY'S
REVISED MOTION FOR APPROVAL OF STIPULATION
AND DEFERRAL OF CONSIDERATION OF ISSUES**

Florida Power & Light Company ("FPL") hereby moves the Florida Public Service Commission (the "Commission") to approve the Stipulation dated August 17, 2010 attached hereto, which FPL, the Office of Public Counsel ("OPC"), and the Florida Industrial Power Users Group ("FIPUG") have entered into in order to afford all parties to this docket, as well as the Commission and Commission Staff, more time to conduct discovery on certain issues which have arisen since FPL's annual Nuclear Cost Recovery Clause ("NCRC") filings on March 1, 2010, and May 3, 2010. The proposed stipulation includes an implicit waiver of FPL's right to annual determinations of prudence and reasonableness, absent which the Commission must make its prudence and reasonableness determinations by October 1, 2010. FPL further moves the Commission to defer consideration of Issue 3b to the 2011 Nuclear Cost Recovery cycle, along with all the other issues included in the Stipulation, to facilitate the efficient resolution of all FPL issues and enhance administrative convenience. In support of this Motion, FPL states as follows:

1. The Parties have engaged in negotiations for the purpose of reaching a comprehensive stipulation to defer consideration of the issues pertaining to FPL in this docket until the 2011 Nuclear Cost Recovery cycle, and for approval of collection of FPL's requested NCRC amount with the agreement that such collection is preliminary in nature and that those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration. These negotiations culminated in the attached Stipulation, and as of this date, all

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parties thereto continue to support its approval.¹ With respect to Issue 3b, which is not included in the Stipulation, FPL requests that this issue also be deferred for consideration with all other FPL issues to the 2011 Nuclear Cost Recovery cycle. OPC and FIPUG, the other parties to the Stipulation, do not oppose the requested treatment of Issue 3b. The Federal Executive Agencies do not object to the Stipulation or the requested treatment of Issue 3b.

2. Approval of the stipulation and deferral of Issue 3b will ensure that all customer interests are preserved and, in fact, enhanced. OPC, FIPUG, and FPL all agree that additional time to conduct discovery on recent emerging issues, such as those discussed in the Concentric Report dated June 21, 2010, would be beneficial. The Commission's Audit Staff also indicated in its July 20, 2010 testimony that they desire more time to further investigate certain management changes that occurred in FPL's Extended Power Uprate ("EPU") organization in 2009, and whether there were any resulting imprudent 2009 costs. The August 13, 2010 withdrawal of the St. Lucie Unit 1 EPU License Amendment Request is another example of a recent event that supports the need for more time to conduct discovery, and supports approval of the Stipulation.

3. Absent approval of the attached Stipulation, the Commission will be required to conduct a hearing and enter its decision on the prudence of FPL's 2009 nuclear costs and the reasonableness of its 2010 and 2011 nuclear costs by October 1, 2010. *See* Rule 25-6.0423(c)2, Fla. Admin. Code. This rule has the practical effect of allowing for the final NCRC determination and authorized recovery amounts to be accounted for in the utility's Capacity Cost Recovery Clause factor, which is set in November of each year.

¹ The Southern Alliance for Clean Energy ("SACE") is not a party to the stipulation, and currently objects to the Stipulation. However, SACE's position does not preclude the Commission from approving the Stipulation, as discussed herein.

4. Furthermore, Rule 25-6.0423(c)2 is a key component to the NCRC framework that is intended to encourage investment in nuclear generation in Florida. One way in which this is achieved is by providing utilities with near-term prudence determinations, rather than waiting until substantial costs are incurred and then examining expenditures and making prudence determinations in hindsight. The rule mitigates against Commission decisions based on hindsight by calling for annual reviews and prudence determinations. As a result, the Commission does not have the authority, on its own motion, to defer a prudence or reasonableness determination until a later date. However, if the proposed Stipulation is approved, FPL will effectively waive its right to a 2009 prudence and 2010/2011 reasonableness decision this year.

5. While the Commission's Nuclear Cost Recovery Rule entitles a utility to an annual hearing, it does not preclude the resolution of issues by an approved Stipulation. The Administrative Procedure Act, Section 120.57(4), Florida Statutes, states that "[u]nless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order." No law precludes the stipulation of Nuclear Cost Recovery issues, nor does the plain reading of the Nuclear Cost Recovery Rule itself preclude such a stipulation.

6. The Commission regularly approves stipulations and settlements among parties in lieu of proceeding with a hearing. For example, in Docket No. 090002-EI, Order No. PSC-09-0794-FOF-EG (Dec. 1, 2009), the Commission approved FPL's recovery of energy conservation costs by approving a stipulation among the parties, despite the language of the Energy Conservation Cost Recovery Rule which states that the Commission "**shall** conduct annual energy conservation cost recovery (ECCR) proceedings during November of each calendar year." Rule 25-17.015(1), Fla. Admin. Code (emphasis added). Also, in Docket No. 080009-EI,

Order No. PSC-08-0749-FOF-EI, the Commission approved the recovery of FPL's historic-year nuclear costs subject to refund and deferred the requisite prudence determination² until the next year's Nuclear Cost Recovery cycle, despite the mandate that the Commission "*shall*, prior to October 1 of each year, conduct a hearing and determine the reasonableness of projected pre-construction expenditures and the prudence of actual pre-construction expenditures..." Rule 25-6.0423(c)2, Fla. Admin. Code (emphasis added).

7. The Commission's authority to provide the relief requested herein is also supported by Florida case law. The Florida Supreme Court has affirmed the Commission's authority to adjust an electric utility's rates subject to refund without a hearing. *See Citizens v. Wilson*, 568 So. 2d 904 (Fla. 1990). The Florida Supreme Court has also affirmed the Commission's authority to resolve issues by approving non-unanimous stipulations and settlements without conducting a hearing. *See South Florida Hospital and Healthcare Ass'n v. Jaber*, 887 So. 2d 1210 (Fla. 2004). In short, based upon all the foregoing, it is clear that the Commission has the authority under the Administrative Procedure Act to approve this Motion and the proposed Stipulation in this case.

8. Finally, approval of the Stipulation makes practical sense. FPL's case has the potential to extend through September 24, 2010, leaving effectively no time for briefing and a staff recommendation prior to an October 1, 2010 decision. In light of the proposed Stipulation, decision making by the Commission on such a compressed time frame is, quite simply, unnecessary.

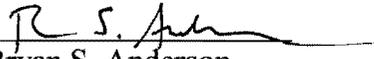
² Although the Commission did make a reasonableness determination on the deferred costs, the Rule calls for a prudence determination of historic costs – not a reasonableness determination. The reasonableness determination reached by the Commission on this amount appears superfluous, and regardless, does not alter the fact the no hearing was conducted on the deferred issues. The Commission could similarly determine that approval of the proposed Stipulation is "reasonable".

9. The positions of the parties with respect to the Stipulation are set forth above. FPL was unable to ascertain each party's position on this Revised Motion because it is being filed contemporaneously with the conduct of FPL's hearing in this docket. FPL notes that each party has appeared by counsel; thus, if parties' positions on this Motion – independent of their positions on the Stipulation – are necessary, parties should be available to state their positions on this Revised Motion on the record during the hearing.

WHEREFORE, FPL respectfully requests that the full Commission vote on and approve this Motion, the Stipulation and the deferral of Issue 3b. Approval of the Stipulation is permissible under Florida law and makes practical sense. The proposed Stipulation will afford the parties and the Commission with the ability to gather more information and conduct more discovery on the FPL issues presented in this case. Alternatively, proceeding with the hearing will unnecessarily limit the amount of time for parties and the Commission to gather more information, particularly with respect to FPL's 2009 activities and expenditures. Absent the stipulation FPL would be entitled to a final prudence determination on 2009 costs, as well as a reasonableness decision on its 2010 and 2011 costs, by October 1, 2010. Accordingly, the proposed Stipulation and deferral of Issue 3b should be approved.

Respectfully submitted this 7th day of September, 2010.

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By: 
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Fla. Auth. House Counsel No. 219511
(Admitted in IL, not admitted in FL)

**CERTIFICATE OF SERVICE
DOCKET NO. 100009-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's Revised Motion for Approval of Stipulation and Deferral of Consideration of Issues was served electronically this 7th day of September, 2010 to the following:

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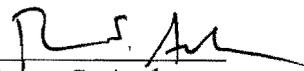
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By: 
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(Admitted in IL, not admitted in FL)

August 17, 2010

Docket No. 100009-EI
Proposed Stipulations of Issues

In order to facilitate efficient resolution of issues, and to enhance administrative convenience, Florida Power & Light Company ("FPL") offers the following proposed stipulations. Issue number references are made with respect those set forth in Staff's final issues list and pre-hearing statement, as amended at the August 11 prehearing conference. The proposed stipulations pertain only to FPL issues.

Confidentiality hearing continuance/deferral stipulation:

Proposed

Stipulation: FPL intends to file a motion not later than August 16, 2010 to defer or for continuance of the August 20 confidentiality hearing. OPC agrees that FPL can state in its motion that it is authorized to represent that OPC's position on the motion is that if the Commission defers the issues to which FPL and OPC have stipulated to the 2011 hearing cycle, then OPC agrees to a reasonable deferral or continuance of the hearing on FPL's requests for confidential classification now scheduled for August 20, and believes that deferring the hearing on confidentiality claims from August 20 to the next practicable hearing date would provide parties a more adequate ability to prepare. Southern Alliance for Clean Energy ("SACE") agrees that FPL can state in its motion that its position is the same as OPC's with respect to FPL's motion for deferral or continuance of the hearing on FPL's requests for confidential classification. The Florida Industrial Power Users Group ("FIPUG") does not object to continuance or deferral of the confidentiality hearing.

PROPOSED STIPULATIONS BY ISSUE

ISSUE 1: Do FPL's activities related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

Proposed
Stipulation:

FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 3B: Should any FPL rate case type expense associated with the 2010 NCRC hearing for FPL be removed?

Proposed
Stipulation:

FPL will request deferral of this issue until the 2011 nuclear cost recovery cycle, OPC authorizes FPL to represent in its request that OPC does not object to deferral of this issue, and SACE and FIPUG do not object.

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ISSUE 16: Should the Commission find that for the year 2009, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

Proposed
Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 17: Should the Commission find that for the year 2009, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

Proposed
Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 18: Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

Proposed
Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 19: Is FPL's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?

Proposed
Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 20: Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

Proposed
Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 21: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?

Proposed

Stipulation: Subject to the stipulation set forth below, the Commission should approve \$237,677,629 (system) in EPU expenditures and \$498,077 (system) in O&M expenses as FPL's 2009 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$227,680,201 for EPU expenditures, \$16,459,883 in carrying charges, and \$480,934 in O&M expenses. In addition, 2009 jurisdictional base rate revenue requirements are \$12,802.

For purposes of the Capacity Cost Recovery Clause ("CCRC"), the final 2009 true up amount is an over recovery of \$3,837,507 in carrying costs, an over recovery of \$63,533 in O&M expenses and an over recovery of \$70,658 in base rate revenue requirements. The net amount of (\$3,971,698) should be included in setting FPL's 2011 NCRC recovery factor.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's final 2009 prudently incurred costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to have been imprudently incurred such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 22: What system and jurisdictional amounts should the Commission approve as FPL's reasonable actual/estimated 2010 costs and estimated true-up amounts for the Extended Power Uprate project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve \$318,166,769 (system) in EPU expenditures and \$3,210,753 (system) in O&M expenses as FPL's actual/estimated 2010 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$302,009,710 for EPU expenditures, \$42,352,323 in carrying charges, and \$3,140,969 in O&M expenses. In addition, jurisdictional base rate revenue requirements are \$2,018,321, with carrying charges of (\$457,762).

The 2010 true up amount is an under recovery of \$757,736 in carrying costs, under recovery of \$992,986 in O&M expenses, and over recovery of \$14,317,118 in base rate revenue requirements. The net amount of (\$12,566,397) should be included in setting FPL's 2011 NCRC recovery factor.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's reasonable actual/estimated 2010 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable that such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 23: What system and jurisdictional amounts should the Commission approve as FPL's reasonably projected 2011 costs for the Extended Power Uprate project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve the amount of \$547,756,895 (system) in EPU expenditures and \$4,161,728 (system) in O&M expenses as FPL's projected 2011 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$521,701,593 in EPU expenditures, \$49,129,740 in carrying charges, and \$3,917,202 in O&M expenses. In addition, jurisdictional base rate revenue requirements are \$28,270,391.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's reasonably projected 2011 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 24: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve \$37,731,525 (system) and \$37,599,045 (jurisdictional) as FPL's final 2009 preconstruction costs, as well as \$857,693 in preconstruction carrying charges and \$373,162 in jurisdictional carrying charges on prior years' unrecovered site selection costs.

The final 2009 true up amount is an over recovery of \$7,845,423 in pre-construction expenditures and an over recovery of \$2,802,854 in preconstruction carrying charges on site selection unrecovered costs. The net amount of (\$10,648,277) should be included in FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's final 2009 prudently incurred preconstruction costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 25: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2010 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

Proposed

Stipulation:

Subject to the stipulation set forth in this issue below, the Commission should approve \$42,629,655 (system) and \$42,125,853 (jurisdictional) as FPL's 2010 actual/estimated preconstruction costs, as well as (\$4,734,785) in preconstruction carrying charges and \$145,965 in jurisdictional carrying charges on prior years' unrecovered site selection costs. FPL's 2010 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.

The 2010 true up amount is an over recovery of \$48,528,272 in pre-construction expenditures and an over recovery of \$5,795,691 in preconstruction carrying charges on site selection unrecovered costs. The net amount of (\$54,323,963) should be included in FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's 2010 actual/estimated preconstruction costs and estimated true-up amounts should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 26: What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for FPL's Turkey Point Units 6 & 7 project?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve \$29,469,475 (system) and \$29,121,201 (jurisdictional) as FPL's 2011 projected preconstruction costs, as well as \$2,189,194 in preconstruction carrying charges and \$171,052 in carrying charges on prior years' unrecovered site selection costs. The total amount of \$31,481,447 should be included in setting FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's 2011 projected preconstruction costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 27: What is the total jurisdictional amount to be included in establishing FPL's 2011 Capacity Cost Recovery Clause factor?

Proposed

Stipulation: Subject to the stipulation set forth in this issue below, the total jurisdictional amount of \$31,288,445 should be included in establishing FPL's 2011 Capacity Cost Recovery Clause factor. This amount consists of carrying charges on site selection costs, pre-construction costs and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, O&M costs and base rate revenue requirements, all as provided for in Section 366.93, Florida Statutes and Rule 25-6.0423, F.A.C.

FPL, OPC and FIPUG stipulate, and SACE does not object, with respect to the Turkey Point 6 & 7 and Extended Power Uprate projects that the determination of FPL's final 2009 prudently incurred costs, reasonable actual/estimated 2010 costs and reasonably projected 2011 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to have been imprudently incurred or unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.