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Subject: FEA's Post Hearing Statement and Brief (120009-EI)
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Attachments: FEA Post Hearing Issues and Positions Docket 120009.pdf

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b. Docket 120009-EI

In re: Nuclear Cost Recovery Clause

c. Document being filed on behalf of FEA

d. There are 12 pages to FEA's Post-Hearing Statement and Brief

e. The document attached for electronic filing is FEA's Post-Hearing Statement and Brief

//Signed//

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DOCUMENT NUMBER-DATE

06594 OCT-1 2012

FPSC-COMMISSION CLERK

10/1/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

Docket No: 120009-EI

Filed: October 1, 2012

POST-HEARING STATEMENT OF ISSUES AND POSITIONS

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PRELIMINARY STATEMENT

The Federal Executive Agencies, through its undersigned counsel and pursuant to the Prehearing Order establishing post-hearing procedures in this docket, Order No. PSC-12-0455-PHO-EI, issued August 31, 2012, hereby files its Post-Hearing Brief and Post-Hearing Statement of Issues and Positions.

Throughout this brief, references to participants in this docket will be abbreviated as follows: Federal Executive Agencies (FEA), Florida Power & Light Company (FPL); Progress Energy Florida, Inc. (PEF); The Office of Public Counsel (OPC); Florida Retail Federation (FRF); and the Florida Industrial Power Users Group (FIPUG). References to the transcript are designated (Tr. __).

The Commission should not approve FPL's long-term feasibility study of completing FPL's Extended Power Uprate (EPU) Project. The \$555 million year over year increase of the Turkey Point portion of the uprate project dwarfs the St. Lucie portion to such a degree that warrants the Commission to require a separate study of the Turkey Point project.

Additionally, FP&L unreasonably disregarded an independent engineering study which concluded that the Turkey Point EPU costs would reach the high levels FPL is now projecting for the project (\$555 million year-over-year cost increase). The evidence also revealed a fatal flaw in the underlying approach FPL used to conduct a \$300,000 independent consulting study which assessed FPL's management of EPU activities. As a result, the Commission should hold FPL to the current estimate of the costs to complete the Turkey Point EPU.

FEDERAL EXECUTIVE AGENCIES' POST-HEARING STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Does Section 366.93, Florida Statutes, authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes?

POSITION Agree with OPC.

ISSUE 1A: Does the term "certain costs" in Section 403.519(4)(e), Florida Statutes, include costs caused by an imprudent decision or action that are incurred in years subsequent to the year of the imprudent decision or action?

POSITION No Position

ISSUE 2: Should the Commission disallow recovery of any AFUDC on the Crystal River Unit 3 Uprate project in 2012 and 2013 due to the lack of a final decision to repair or retire Crystal River Unit 3? If yes, what amount should the Commission disallow, if any?

POSITION Agree with OPC.

ISSUE 3: Does the Commission have the authority to defer the determination of prudence for the Crystal River Unit 3 Uprate project for 2011 (and, thus, defer cost recovery in 2013) until a final decision to repair or retire has been implemented? If yes, should the Commission exercise this authority?

POSITION Agree with FIPUG.

ISSUE 4: Do PEF's activities since January 2011 related to Levy Units 1 & 2 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

POSITION Agree with FIPUG.

ISSUE 5: Should the Commission approve what PEF has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

POSITION Agree with FIPUG.

ISSUE 6: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?

POSITION Agree with FIPUG.

ISSUE 7: What is the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?

POSITION Agree with FIPUG.

ISSUE 8: Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project? If not, what action, if any, should the Commission take?

POSITION Agree with FIPUG.

ISSUE 9: What system and jurisdictional amounts should the Commission approve as PEF's final 2011 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

POSITION Agree with FIPUG.

ISSUE 10: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?

POSITION Agree with FIPUG.

ISSUE 11: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Levy Units 1 & 2 project?

POSITION Agree with OPC.

ISSUE 12: Should the Commission approve what PEF has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

POSITION Agree with FIPUG.

ISSUE 13: Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?

POSITION Agree with FIPUG.

ISSUE 14: Were all of the actual Crystal River Unit 3 Uprate project expenditures prudently incurred or expended in 2011 in the absence of a final decision to repair or retire Crystal River Unit 3 in 2011?

POSITION Agree with FIPUG.

ISSUE 15: What system and jurisdictional amounts should the Commission approve as PEF's 2011 prudently incurred costs and final true-up amounts for the Crystal River Unit

3 Uprate project?

POSITION Agree with FIPUG.

ISSUE 16: Is it reasonable for PEF to incur or expend all of the estimated and projected Crystal River Unit 3 Uprate project expenditures in 2012 and 2013 in the absence of a final decision to repair or retire CR3?

POSITION Agree with FIPUG.

ISSUE 17: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Crystal River Unit 3 Uprate project?

POSITION Agree with OPC.

ISSUE 18: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Crystal River Unit 3 Uprate project?

POSITION Agree with OPC.

ISSUE 19: What is the total jurisdictional amount to be included in establishing PEF's 2013 Capacity Cost Recovery Clause factor?

POSITION Agree with FRF.

ISSUE 20: Do FPL's activities since January 2011 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.?

POSITION No position.

ISSUE 21: Should the Commission approve what FPL has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

POSITION No position.

ISSUE 22: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

POSITION Agree with FIPUG.

ISSUE 23: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

POSITION Agree with FIPUG.

ISSUE 24: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

POSITION No position.

ISSUE 25: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

POSITION Agree with FIPUG.

ISSUE 26: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

POSITION Agree with FIPUG.

ISSUE 27: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Turkey Point Units 6 & 7 project?

POSITION Agree with FIPUG.

ISSUE 28: Should the Commission approve what FPL has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing FPL's 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?

POSITION No. The Commission should not approve FPL's long-term feasibility study of completing FPL's Extended Power Uprate (EPU) Project. The \$555 million year over year increase of the Turkey Point portion of the uprate project dwarfs the St. Lucie portion to such a degree that warrants the Commission to require a separate study of the Turkey Point project.

DISCUSSION

FEA agrees with OPC on this issue. FEA fully appreciates FPL's position that they have proposed and managed the EPU project as a comprehensive project encompassing both the Turkey Point and St. Lucie sites since its inception. However whatever costs savings and efficiencies that might have been achieved from proceeding with one, comprehensive project in

the beginning, now must now be reevaluated by the Commission in light of the huge cost overrun at Turkey Point relative to the project as a whole. As indicated by OPC witness Jacobs of the more than \$682 million increase to the EPU projects “the portion attributable to the Turkey Point EPU activities amounts to \$555 million.”

The testimony provided by OPC witness Smith is compelling on this issue. His conservative (and favorable to FPL) analysis indicates that “the Turkey Point uprate shows a substantial net *cost* to customers.”¹ In the base case scenario, the costs exceed savings by approximately \$200 million (net present value).² OPC witness Smith concluded “that in six of the seven scenarios which are defined by FPL the Turkey Point EPU project shows a net cost to customers ranging from approximately \$12 million to approximately \$389 million.”³ Therefore FEA supports OPC’s position that the commission should reject FPLs feasibility study and accept the feasibility study sponsored by OPC witness Smith.

ISSUE 29: Should the Commission find that FPL’s 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL’s Extended Power Uprate project?

POSITION See FEAs position for 29A.

ISSUE 29A: Should the Commission find that in the previous year (2011) and the current year to date (2012), FPL managed the Extended Power Uprate activities in a reasonable and prudent manner? If not, what action should the Commission take?

POSITION No. FP&L unreasonably disregarded an independent engineering study which concluded that the Turkey Point EPU costs would reach the high levels FPL is now projecting for the project (\$555 million year-over-year cost increase). Additionally, the evidence revealed a fatal flaw in the underlying approach FPL used to conduct a \$300,000 independent consulting study which assessed FPL’s management of EPU activities. As a result, the Commission should hold FPL to the current estimate of the costs to complete the Turkey Point EPU.

¹ Tr. 1266:2.

² Tr 1266:2-3.

³ Tr. 1271:16-19.

DISCUSSION

FEA agrees with the position advanced by OPC. It is troubling that FPL's management failed to incorporate high cost projection estimates for the Turkey Point EPU provided by independent consultants in 2010 before proceeding with the project. In 2010, High Bridge Associates was hired by FPL to conduct an independent evaluation of the Turkey Point EPU costs.⁴ High Bridge's final report estimated the Turkey Point EPU costs to be \$1,428,541,326.⁵ However in December 2010, FPL was stating \$1,148,900,000 as their expected cost and in December, 2011, FPL was estimating \$1,252,500,000.⁶ As OPC witness Jacobs testified,

It was not until February, 2012, that FPL acknowledged that the Turkey Point project cost would be as much as the amount that High Bridge reported to them one and a half years earlier. Had FPL incorporated the estimate for Turkey Point that was consistent with High Bridge's 2010 estimate during the 2011 proceeding, the magnitude of the increase would have led to a materially different feasibility calculation.⁷

In partial support for its position that FPL acted in a reasonable and prudent manner, FPL offers a fatally flawed independent consulting study which should be given little or no weight by the Commission. FPL hired Burns and Roe Enterprises, Inc. (BREI) and paid them approximately \$300,000⁸ to conduct an independent review of FPL's execution of the EPU projects at St. Lucie and Turkey Point in 2011.⁹ This study concluded that FPL acted prudently with respect to the EPU,¹⁰ however upon cross examination the consultant's team chief admitted that it was his understanding from his initial discussions with FPL management that if his study had concluded that FP&L was not prudent in its activities that he would not have testified before the Commission.

⁴ Tr. 1293:20-21

⁵ Tr. 1293:22.

⁶ Tr. 1293:7-9.

⁷ Tr. 1294:9-14.

⁸ Tr. 1180:18.

⁹ Tr. 1146:15-18.

¹⁰ Tr. 1147:5-7.

Q. ... So I am clear, was it your understanding that if your study concluded that FP&L was not prudent, that you would not need to testify today?

A. I would not have testified, that's correct.¹¹

The team chief's response gives the appearance that if the study's results found that FPL was imprudent that the information might never have been seen by the Commission. This calls into question the legitimacy of the study itself. It also raises concerns about the managerial practices of FPL and the process it uses in hiring independent consultants. As a result the Commission should give the study little or no weight in determining whether FPL acted in a reasonable and prudent manner.

In summary, if FPL would have heeded the advice of its consultant High Bridge Associates in 2010, a proper economic feasibility analysis could have been conducted which could have curtailed the Turkey Point project before incurring the \$555 million cost overrun between 2011 and 2012. The ratepayers should not bear the costs for FPL's mismanagement and the Commission should find that FPL did not act in a reasonable and prudent manner in regards to this \$555 million cost overrun.

ISSUE 30: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for FPL's Extended Power Uprate project?

POSITION Agree with FIPUG.

ISSUE 31: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Extended Power Uprate project?

POSITION Agree with FIPUG.

ISSUE 32: What system and jurisdictional amounts should the Commission approve as

¹¹ Tr. 1180:8-11. See also Tr. 1165:14-17 "[FPL] asked me, is it possible you could do an independent review of activities, and if you were to conclude that it was prudent, would you mind giving testimony..." See also Tr. 1181:7-11 "...we issue an oral report and as a result of that we were asked whether we were willing to testify, and I said yes, I would testify for my staff and then we started preparing testimony, which we were paid to do.

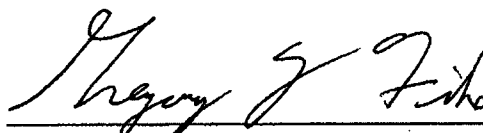
reasonably projected 2013 costs for FPL's Extended Power Uprate project?

POSITION Agree with FIPUG.

ISSUE 33: What is the total jurisdictional amount to be included in establishing FPL's 2013 Capacity Cost Recovery Clause factor?

POSITION Agree with FIPUG.

Respectfully submitted this 1st day of October, 2012.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

Docket No: 120009-EI

Filed: October 1, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that FEA's PREHEARING STATEMENT has been filed with Office of Commission Clerk and one copy has been furnished to the following by electronic mail, on this 1st day of October, 2012:

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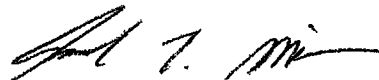
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