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Via email [cbeck@psc.state.fl.us](mailto:cbeck@psc.state.fl.us)

Charlie Beck, General Counsel  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 150001-EI

Dear Mr. Beck:

This firm represents Florida Power & Light Company (“FPL”). Please accept this as FPL’s response to OPC’s February 6, 2015 letter, which incorrectly asserts that the Commission has been divested of jurisdiction to consider the Proposed Guidelines portion of FPL’s gas reserves petition.

OPC’s appeal of the Commission’s Order Denying OPC’s Motion To Dismiss (“Woodford Jurisdictional Order”), Order Approving the Woodford Project (“Woodford Approval Order”) and the Fuel Clause Order does not divest the Commission of jurisdiction to consider and rule on the Proposed Guidelines. Contrary to OPC’s assertion, an appellate court does not have absolute jurisdiction over all matters arising in a docket that is the subject of an appeal. *Bailey v. Bailey*, 392 So. 2d 49, 52 (Fla. 3d DCA 1981). Rather, “the jurisdiction of the appellate court is exclusive only as to the subject matter of the appeal.” *Id.* The Commission retains jurisdiction over matters which do not interfere with the power and authority of the appellate court to decide the issues presented to it by the appeal, or the rights of a party to the appeal which are under consideration by the appellate court. *Id.*; *Schultz v. Schickedanz*, 884 So. 2d 422, 424 (Fla. 4th DCA 2004).

The Commission correctly concluded that it may consider the Woodford Project and the Proposed Guidelines separately. The Woodford Project decision concerned only whether FPL’s investment in that specific project was prudent and the attendant costs recoverable. The Commission’s evaluation of the Proposed Guidelines, by contrast, will involve a determination regarding parameters within which the Commission would deem FPL’s future gas reserves investment presumptively prudent. Thus, as Staff noted during the December 18 Agenda, the decisions are severable, and the Commission can issue two final orders on separate tracks. 12/18/2014 Agenda Tr. 72:14-20 (document no. 06823-14); *see also* 12/2/2014 Hearing Tr. Vol. 8 1087:12-1091:10 (document no. 06617-14) (Commission ordering separate briefs addressing

the Woodford Project and Guidelines). A decision on the Proposed Guidelines will not interfere with the Florida Supreme Court's ability to fully evaluate the correctness of the Woodford Jurisdictional Order or the Woodford Approval Order. Nor would it interfere with appellate consideration of the Fuel Clause Order, if any were warranted notwithstanding that OPC stipulated to all of FPL's positions in that order. Accordingly, there is no need for the Commission to be divested of its jurisdiction to decide on the Proposed Guidelines and no reason for the Commission to postpone its decision as OPC requests.

OPC's letter in no way intimates that it will be harmed, and it sought no stay of the Commission's order approving the Woodford Project. Nor would customers suffer any harm if the Commission moves forward on March 3 with a ruling on the Proposed Guidelines. To the contrary, customers could be harmed if the Commission does *not* rule on March 3. This is illustrated by comparing two possible outcomes:

- If the Court affirms the Commission on appeal (as FPL fully expects will be the case) but the Commission delays its decision on the Proposed Guidelines, then customers will have lost the opportunity to benefit from additional gas reserves projects that FPL would have pursued while the appeals are pending.
- On the other hand, if the Commission were to approve the Proposed Guidelines on March 3 but then the Court reverses the Woodford Jurisdictional Order, FPL fully expects that the Commission would review the charges to customers for the volume of natural gas produced from the gas reserves investments to ensure that they were reasonable and prudent in comparison to gas procured from other sources and could make any adjustments that might be required via the Fuel Clause true-up mechanism. In other words, customers would be protected by the exact same standard of recovery that would apply if FPL had never invested in gas reserves.

Clearly, the best outcome for customers is for the Commission to rule on the Proposed Guidelines at the March 3 agenda conference as scheduled. Ironically, OPC's proposed delay would be contrary to the interests of the very customers it is supposed to represent.

In sum, the Commission retains jurisdiction to consider and rule on FPL's Proposed Guidelines. Should the Commission, after deliberation, determine that it is appropriate to approve a set of gas reserves guidelines, OPC will have the right to appeal that order to the Florida Supreme Court and may request that it be consolidated with the related appeals.

Respectfully,



Raoul G. Cantero

cc: All parties of record