

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of arrangement to
mitigate impact of unfavorable Cedar Bay
power purchase obligation, by Florida Power
& Light Company

DOCKET NO. 150075-EI

FILED: June 23, 2015

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, (“OPC” or “Citizens”), pursuant to the Order Establishing Procedure in this docket, Order No. 15-0143-PCO-EI, issued March 26, 2015, submit this Prehearing Statement.

APPEARANCES:

JOHN J TRUITT
Associate Public Counsel

CHARLES REHWINKEL
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida

1. **WITNESSES:**

The Citizens intend to call the following witnesses, who will address the issues indicated:

<u>NAME</u>	<u>ISSUES</u>
Gary D. Brunault	1-6
Dan J. Wittliff	5-6

Terry M. Myers

3, 6-9

Christopher C. Dawson

1-6, 8-9, OPC P1¹

2. EXHIBITS:

Through Christopher Dawson, Gary Brunault, Dan Wittliff, and Terry Myers, the Citizens intend to introduce the following exhibits, which can be identified on a composite basis for each witness:

<u>Witness</u>	<u>Exhibits</u>	<u>Title</u>
G. Brunault	Appendix A	Résumé of Gary D. Brunault
G. Brunault	GB-1	Proposed Bonus Capacity Revenue of PPA*
D. Wittliff	Appendix A	Résumé of Dan J. Wittliff
T. Myers	Appendix A	Résumé of Terry M. Myers
T. Myers	TMM-1	Proposed Journal Entries for Cedar Bay Transaction
C. Dawson	Appendix A	Résumé of Christopher C. Dawson
C. Dawson	CCD-1	Modified FPL Economic Evaluation 1*
C. Dawson	CCD-2	Modified FPL Economic Evaluation 2*
C. Dawson	CCD-3	Modified FPL Economic Evaluation 3*
C. Dawson	CCD-4	Modified FPL Economic Evaluation 4*
C. Dawson	CCD-5	Modified FPL Economic Evaluation 5*
C. Dawson	CCD-6	Modified FPL Economic Evaluation 6*
C. Dawson	CCD-7	Summary of FPL's Alternatives to PPA*

* Indicates the exhibit contains information designated as Confidential by FPL and/or Cedar Bay Generating Company/Cogentrix.

¹ As of the date of this filing, OPC's Proposed Issue--"Is continued recovery of future payments under the terms of the existing PPA in the public interest?"(referenced as OPC P1)-- has not been agreed upon by the parties and will be brought before the Prehearing Officer for resolution at the Prehearing on July 6, 2015. OPC will reference OPC P1 throughout this Prehearing Statement to ensure full compliance with the Order Establishing Procedure and to ensure all parties receive notice of both OPC's position on OPC P1 and the OPC witnesses that address OPC P1 in their testimony.

3. STATEMENT OF BASIC POSITION

The March 6, 2015 Petition (“Petition”) of Florida Power & Light Company’s (“FPL” or “Company”) can be summed up as an opportunistic proposal to escape an existing PPA that is (and has always been) uneconomic for ratepayers by purchasing a company, taking possession of a 20 year-old coal plant, and canceling the existing Purchase Power Agreement (“PPA”), by creating an innovative labyrinthine accounting scheme that creates guaranteed profits for FPL’s shareholders on a cost that was previously a pass-through to customers. Under FPL’s proposal, FPL will purchase the equity ownership of CBAS Power, Inc. Part and parcel with FPL’s proposed transaction, FPL will step in CBAS’ shoes with respect to existing contracts and take possession of the Cedar Bay generating facility and associated liabilities. FPL proposes creating a regulatory asset and recovering the \$520.5 million used to purchase CBAS through the Capacity Cost Recovery Clause (“CCR”) along with a return on the purchase price at FPL’s weighted average cost of capital.

Citizens does not dispute that the terms of the PPA are uneconomic for FPL’s customers. The record at hearing will show the costs incurred under the PPA far exceed the current avoided cost of generation; furthermore, the minimal contribution by Cedar Bay to FPL’s system (in terms of MW) hardly affects reliability for FPL’s customers. Citizens agree that the PPA should be cancelled; however, Citizens contend that the method of PPA elimination chosen by FPL is not the best option for FPL’s ratepayers.

Currently, costs incurred under the PPA are passed through the CCR Clause to FPL’s ratepayers. FPL earns no profit on these costs, and FPL’s customers do not assume any of the liabilities associated with owning and operating a coal-fired generating facility. Under FPL’s

proposal, FPL would purchase CBAS and then cancel the PPA that FPL has with its own (newly acquired) subsidiary. The proposed method would also include assumption of the existing contracts between CBAS and other entities as well as taking possession of the Cedar Bay generating facility itself and any and all liabilities associated with the acquisition of these items. FPL would then create a regulatory asset and recover that asset and a return on that asset, along with associated taxes, through FPL's proposed accounting scheme in the CCR Clause.

Although Citizens recognize the benefits of terminating the PPA, Citizens cannot agree with the proposed method chosen by FPL for several reasons. First, FPL's analysis of potential customer savings fails to account for any other methods of PPA cancellation. For example, FPL failed to present an analysis of an option where FPL simply buys itself out of the PPA without acquiring the assets and liabilities of CBAS. Second, FPL's proposed purchase price of \$520.5 million for CBAS Power, Inc., is not a fair and reasonable valuation of the existing PPA asset. FPL's proposed purchase price overstates the Fair Value of the Cedar Bay PPA by, at least, \$150 million. Third, FPL's proposed accounting treatment for the purchase of CBAS Power, Inc., fails to minimize impacts to FPL's customers. FPL's proposed accounting method attempts to reinvent the wheel by ignoring accounting methods set forth in federal regulations and by failing to seek favorable IRS tax treatments, which have occurred in prior similar transactions. Lastly, FPL failed to account for the full impact of all liabilities associated with taking possession of a coal-fired generating unit that sits on top of contaminated groundwater. FPL's assertions that it has sufficient mechanisms in place to avoid liability under environmental regulations are, quite simply, incorrect.

For the reasons set forth above, the Commission should deny FPL's Petition as it is currently presented. As stated above, Citizens agree that the current PPA is economically unfavorable for FPL's customers; therefore, the Commission should either: 1) deny FPL's

current Petition and direct FPL to negotiate a buyout of the exiting PPA; or 2) deny FPL's current Petition and allow FPL's proposed asset purchase of CBAS conditioned upon a fair and reasonable price with a favorable IRS private letter ruling regarding the deductibility of the PPA buyout cost with a debt-based carrying cost on the asset recovery.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: What is the fair value of the existing purchase power agreement with Cedar Bay Genco that FPL is acquiring?

OPC: The Fair Value of the Cedar Bay PPA is approximately \$370 million. (Brunault, Dawson)

ISSUE 2: Is FPL's purchase price for the equity ownership interest of CBAS Power, Inc. fair and reasonable?

OPC: No. As the Cedar Bay generating facility itself has a negligible Fair Value, the purchase price for the equity ownership interest of CBAS Power, Inc., is capped at the Fair Value of the Cedar Bay PPA, which is approximately \$370 million. (Brunault, Dawson)

ISSUE 3: Is FPL's purchase and sale agreement between FPL and CBAS Power Holdings, LLC., and termination of the existing purchase power agreement with Cedar Bay Genco cost-effective?

OPC: No, FPL's Petition does not present the most cost-effective method for terminating the uneconomic Cedar Bay PPA. FPL should consider either: 1) a buy out of the existing PPA; or 2) a restructured purchase and sale agreement with

a private letter ruling on tax deductibility from the IRS and a debt-based carrying cost on the asset recovery. (Brunault, Dawson, Myers)

ISSUE 3A: In its economic evaluation of and selection of the proposed transaction, did FPL take into account all reasonable measures to mitigate future PPA impacts to ratepayers?

OPC: No. FPL failed to account for the impacts of future environmental regulations, specifically the EPA's proposed Clean Power Plan, and how that will affect future operations at Cedar Bay. Although no one can predict how the Clean Power Plan will be implemented in Florida, it is generally acknowledged that coal-fired generating units will be affected. FPL failed to address or account for the potential impacts of the Clean Power Plan on Cedar Bay's availability, which would directly affect future capacity payments under the existing PPA. FPL also failed to account for the fact that, under the terms of the current PPA, the more the Cedar Bay plant is dispatched by FPL, the less profitable the plant becomes. (Brunault, Dawson)

ISSUE 4: If the Commission approves FPL's proposed Cedar Bay transaction, how will existing contracts between third party providers and CBAS Power, Inc. or subsidiaries be handled, and what are the projected costs of fulfilling or terminating such contracts, and how should those costs be recovered?

OPC: If the Commission approves FPL's proposed transaction as set forth in the Petition, FPL would assume all of CBAS' current contracts. FPL's proposed transaction also provides for an operating contract whereby FPL will pay

Cogentrix personnel to operate the Cedar Bay facility through 2016. The contracts in existence speak for themselves; however, several existing contracts contain 2015 reopeners, which will cause the contracts to reset to market prices. If FPL's petition is approved, the contracts, which all support Cedar Bay generating facility operations, should be recovered in the same manner as all other contracts supporting the operation of a generating facility. (Brunault, Dawson)

Issue 5: What are the operational and regulatory risks associated with FPL's proposed Cedar Bay transaction and has FPL appropriately accounted for these risks under the transaction?

OPC: A multitude of operational and regulatory risks exist with acquiring a 20 year-old coal-fired generating facility given the impending Clean Power Plan that is situated on top of contaminated groundwater and next to a navigable water body. In terms of operational risk, FPL's analysis of future costs under the existing PPA assumed the Cedar Bay facility will have an increasing availability factor, thereby increasing the capacity payments, which is simply illogical for an aging generating unit, especially given the EPA's proposed carbon emission regulations on the near horizon.

FPL's analysis of the liabilities it will assume should the proposed transaction be approved are cursory at best. FPL assumes that the mechanisms it has in place will protect it from liability for existing, as well as any potentially undiscovered, site contamination. Such mechanisms cannot remove environmental liability, they can only attempt to mitigate liability. (Wittliff, Brunault, Dawson)

Issue 6: Should the Commission approve as prudent FPL's request to approve the purchase and sale agreement between FPL and CBAS Power Holdings, LLC, and terminate the existing purchase power agreement with Cedar Bay Genco?

OPC: No. The purchase and sale agreement proposed by FPL is not prudent, because, the proposal set forth in FPL's Petition provides earnings for FPL's shareholders, while only providing minimal economic benefits (roughly 6.7% savings) to customers under the optimistic assumptions utilized by FPL. Furthermore, FPL's proposed purchase of CBAS Power, Inc., causes FPL's customers to assume liabilities, some of which are unknowable at this time and cannot be quantified. (Brunault, Wittliff, Myers, Dawson)

ISSUE 7: If the Commission approves FPL's proposed Cedar Bay transaction, what is the proper accounting treatment for the transaction?

OPC: Should the Commission allow FPL to purchase CBAS Power, Inc., as proposed in FPL's Petition, FPL should follow the FERC USOA Electric Plant Instruction 5, Electric Plant Purchased or Sold, in 18 C.F.R. Part 101 requiring entry of plant at equipment at net book value. The gross original cost for the Cedar Bay Facility and the accumulated depreciation balance should be recorded in FERC Account 102 with a negative acquisition adjustment recorded in FERC Account 114 to reflect Cedar Bay Facility's net value of \$0. And, based on prior cases, FPL should obtain a private letter ruling from the IRS regarding the deductibility of the PPA Loss Regulatory Asset. (Myers)

ISSUE 8: If the Commission approves FPL’s proposed Cedar Bay transaction, what is the proper rate of return?

OPC: Should the Commission allow FPL to purchase CBAS Power, Inc., as proposed in FPL’s Petition, the proper rate of return on the asset should be either the debt component of the weighted average cost of capital or the actual interest cost of any debt that FPL may issue to consummate the transaction. (Myers, Dawson)

ISSUE 9: If FPL’s petition is approved, how should the Cedar Bay Generating Facility acquisition costs be recovered?

OPC: If FPL’s petition is approved, then the acquisition cost for the asset, which will consist of a generating unit, should be recovered in base rates once the base rate freeze under the existing settlement agreement ends. If FPL bought out the existing PPA, instead of purchasing CBAS, then recovery of the cost of the buyout should be recovered through the CCR with a rate of return consistent with our position in Issue 8. (Myers, Dawson)

OPC’s PROPOSED ISSUE (OPC P1): Is continued recovery of payments under the terms of the existing PPA in the public interest?

OPC: No. FPL acknowledges in its Petition and direct testimony that the Cedar Bay PPA is economically unfavorable, and the costs under the PPA far exceed the current market prices and avoided costs. The PPA contains a regulatory out provision whereby the Commission can limit recovery of PPA associated charges if it deems them not in the public interest. Given the great disparity between the

PPA costs and the actual avoided costs, continued recovery of PPA payments under the PPA's existing terms are not in the public interest. (Dawson)

5. STIPULATED ISSUES:

None at this time.

6. PENDING MOTIONS:

OPC has none at this time.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

OPC has no pending request or claims for confidentiality.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

OPC has no objection to qualifications of witnesses.

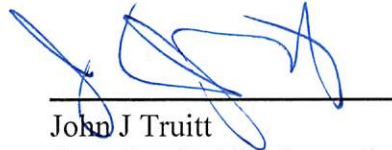
9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 23rd day of June, 2015

Respectfully submitted,

J.R. Kelly
Public Counsel



John J Truitt
Associate Public Counsel

Charles Rehwinkel
Deputy Public Counsel

c/o The Florida Legislature
Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
150075-EI

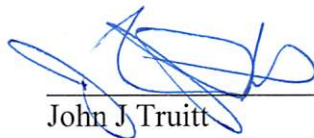
I HEREBY CERTIFY that a true and foregoing Prehearing Statement has been furnished by electronic mail on this 23rd day of June, 2015, to the following:

Martha Barrera
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
mbarrera@psc.state.fl.us

Ken Hoffman
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1858
ken.hoffman@fpl.com

John T. Butler/Maria J. Moncada
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
john.butler@fpl.com
maria.moncada@fpl.com

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com



John J. Truitt
Associate Public Counsel