

FLORIDA PUBLIC SERVICE COMMISSION

Item 1

VOTE SHEET

August 27, 2015

FILED AUG 27, 2015
DOCUMENT NO. 05354-15
FPSC - COMMISSION CLERK

Docket No. 150075-EI – Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company.

Issue: Consideration and decision regarding the Joint Motion for Approval of Settlement Agreement.

The Settlement agreement, assigned DN 04663-15, was approved.

COMMISSIONERS ASSIGNED: Edgar, Brisé, Patronis

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

[Handwritten signatures in blue ink over horizontal lines]

[Empty horizontal lines for dissenting signatures]

REMARKS/DISSENTING COMMENTS:

Joint Motion for Approval of Settlement Agreement, DN 04663-15, is attached.

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

Date: July 24, 2015

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

Florida Power & Light Company ("FPL") and the Office of Public Counsel ("OPC") (collectively referred to as the "Signatories") jointly move the Florida Public Service Commission ("Commission") for approval of the Settlement and Stipulation ("Settlement Agreement") reached by the Signatories. In support of this Joint Motion, the Signatories state:

1. The Signatories have been engaged in negotiations for the purpose of reaching a comprehensive stipulation and settlement of all issues in the above-referenced docket, thereby minimizing the need for further expensive, time consuming litigation of these issues. These negotiations have culminated in the Settlement Agreement attached hereto as Exhibit 1.

2. The Settlement Agreement provides, among other things, as follows:

a. FPL's entering into the Purchase and Sale Agreement ("PSA") with CBAS Power Holdings, LLC in order to mitigate the impact on customers of an unfavorable Cedar Bay power purchase obligation (the "Cedar Bay Transaction") is reasonable, cost-effective and prudent.

b. The proposed accounting and cost recovery for the Cedar Bay Transaction set forth in FPL's March 6, 2015 petition for approval of the Cedar Bay Transaction (the "Cedar Bay Petition") should be approved with the exceptions set forth below.

- c. FPL may recover the \$520.5 million purchase price under its Purchase and Sale Agreement (“PSA”) with CBAS Power Holdings, LLC as a regulatory asset (the “Purchase Price Regulatory Asset”), but will apportion recovery between the Capacity Cost Recovery (“CCR”) Clause and base rates as follows:
 - i. \$85 million of the regulatory asset will be recovered through base rates until the next test year for a general base rate proceeding, at which point the unamortized balance will be transferred to the CCR Clause for continued recovery until fully amortized.
 - ii. The remaining \$435.5 million of the regulatory asset will be recovered through the CCR Clause as proposed in the Cedar Bay Petition.
 - iii. The Reserve Amount that FPL is permitted to amortize under the stipulation and settlement that was approved in Order No. PSC-13-0023-S-EI (the “2012 Settlement Agreement”) is reduced from \$400 million to \$370 million (the \$30-million reduction reflecting an agreed upon approximation of the base revenue requirement of the \$85 million transferred from CCR to base-rates rate base), unless FPL needs to use up to the full \$400 million to maintain a return on equity (“ROE”) at the bottom of its allowed ROE range as is required under the 2012 Settlement Agreement.
 - iv. FPL will increase the limit of the existing environmental liability insurance policy purchased in connection with the Cedar Bay Transaction from \$20 million to \$40 million and will continue that

policy in effect until January 2020, with the additional premium cost recovered in base rates. No later than July 1, 2019, a Signatory would be entitled to initiate a proceeding before the Commission to demonstrate that a substantial and significant change of circumstances exists that require the term of the policy to be extended beyond January 2020, with the premium cost for any such extended term to be recovered in the CCR Clause.

- v. FPL will recover payments under the rail car lease for the Cedar Bay Facility through the CCR Clause and that recovery will be limited to the lesser of actual net payments (after crediting sublease revenues) or 50% of the face amount of the lease payments at the existing or renegotiated rail car lease rate.
- vi. FPL will recover payments under the ground lease for the Cedar Bay Facility through base rates and that recovery will be limited to the lesser of actual net lease payments (after crediting sublease revenues) or 50% of the face amount of the lease payments at the existing or renegotiated ground lease rate.

3. Each of the Signatories agrees that it has entered into the Settlement Agreement voluntarily, that it fairly and reasonably balances the various positions of the parties on issues in these proceedings, and that it serves the best interests of the customers they represent and the public interest in general.

4. The Signatories believe that the Settlement Agreement is reasonable and in the public interest for the following reasons:

- a. The Settlement Agreement provides a fair and reasonable basis for FPL to recover the costs of the Cedar Bay Transaction. FPL has estimated that the Cedar Bay Transaction will save customers \$70 million on a net present value basis, will provide FPL fuel diversity and reliability benefits from having the Cedar Bay Facility available for operation as needed, and will reduce air emissions from the Facility's reduced operation and early retirement.
- b. Because of the partial recovery of the Purchase Price Regulatory Asset in base rates while those rates are frozen under the 2012 Settlement Agreement, the amount recovered from customers under the CCR Clause for 2015 and 2016 will be reduced by approximately \$30 million as a result of this Settlement Agreement.
- c. The additional environmental liability insurance coverage limits and term will provide further protection for customers against the possibility of exposure to environmental liability arising out of FPL's ownership and operation of the Cedar Bay Facility.
- d. The limits on FPL's recovery of rail car lease and ground lease payments will provide additional protection for customers against unanticipated costs under those leases after the Cedar Bay Facility is retired.
- e. To the extent that the Settlement Agreement is approved sooner than the schedule in this docket currently calls for a Commission decision, FPL may be able to close on the Cedar Bay Transaction sooner than provided for under the Cedar Bay Petition and thereby provide additional customer

savings in the form of avoided unfavorable power-purchase capacity payments.

5. The Signatories respectfully request that the Commission proceed as follows:
 - a. Commence the evidentiary hearing on July 28, 2015 as currently scheduled. The Signatories agree to waive cross examination of all witnesses at that hearing but will present their witnesses to the extent that the Commissioners, Commission Staff and/or the Florida Industrial Power Users Group ("FIPUG," the sole non-signatory party) wish to examine them and are so authorized.
 - b. Schedule a special agenda conference to consider the proposed Settlement Agreement, with not less than 14 days' notice of same to all parties in this proceeding. All parties should be permitted to present argument for or against the proposed Settlement Agreement at that special agenda conference, and the Signatories respectfully request that the Commission make a bench decision concerning the proposed Settlement Agreement at its conclusion.

6. Each of the Signatories agrees with and supports this Joint Motion for approval of the Settlement Agreement. The Signatories request that, following the Commission's review of this Joint Motion and the Settlement Agreement as described above, the Commission grant the Joint Motion and approve the Settlement Agreement in order to allow for orderly implementation of the Settlement Agreement and provide certainty to the parties and their respective constituents and customers with respect to the outcome of this proceeding.

7. The Signatories have contacted FIPUG and determined that it opposes this Joint Motion.

WHEREFORE, FPL and OPC respectfully request that the Commission approve the Stipulation and Settlement attached hereto as Exhibit 1.

Respectfully submitted,

R. Wade Litchfield, Vice President and General Counsel
John T. Butler, Assistant General Counsel-Regulatory
700 Universe Boulevard
Juno Beach, Florida 33408-0420
Attorneys for Florida Power & Light Company

By: /s/ R. Wade Litchfield
R. Wade Litchfield

The Office of Public Counsel
J.R. Kelly, Esquire
The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399

By: /s/ J.R. Kelly
J.R. Kelly

**CERTIFICATE OF SERVICE
DOCKET NO. 150075-EI**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically this 24th day of July, 2015, to the following:

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By: s/ John T. Butler
John T. Butler
Fla. Bar No. 283479

EXHIBIT 1

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

Date: July 24, 2015

STIPULATION AND SETTLEMENT

WHEREAS, Florida Power & Light Company ("FPL" or the "Company") and the Office of Public Counsel ("OPC") have signed this Stipulation and Settlement (the "Agreement"; unless the context clearly requires otherwise, the term "Party" or "Parties" means a signatory to this Agreement); and

WHEREAS, on March 6, 2015, FPL petitioned the Florida Public Service Commission ("FPSC" or "Commission") for approval of an arrangement by which FPL would be able to mitigate the impact on its customers of an unfavorable Cedar Bay power purchase obligation (the "Cedar Bay Petition"). FPL entered into a Purchase and Sale Agreement ("PSA") with CBAS Power Holdings, LLC ("CBAS Power Holdings") under which FPL, contingent on FPSC approval, would pay CBAS Power Holdings \$520.5 million and in exchange would assume ownership of the Cedar Bay generating facility ("Cedar Bay Facility" or the "Facility") through a stock purchase of CBAS Power, Inc. ("CBAS"; this transaction will be referred to as the "Cedar Bay Transaction"); and

WHEREAS, the Cedar Bay Facility is a 250 megawatt coal-fired qualifying co-generation plant located in Jacksonville, Florida that sells electricity to FPL under a Power Purchase Agreement ("PPA") between FPL and Cedar Bay Generating Company ("Cedar Bay Genco"). The Facility also sells steam to an adjacent linerboard facility. The Cedar Bay

Transaction will allow FPL to terminate the existing unfavorable PPA, which is projected to produce \$70 million in savings for FPL customers on a cumulative present value revenue requirements ("CPVRR") basis (\$156 million nominal savings); and

WHEREAS, the Cedar Bay Petition and accompanying testimony and exhibits describe FPL's proposed accounting for the acquisition of CBAS and recovery of costs associated with the Cedar Bay Transaction; and

WHEREAS, the Cedar Bay Petition asks the Commission to determine that entering the PSA was prudent and to approve two principal elements of the proposed accounting treatment for the PSA: (a) establishment of regulatory assets for the purchase price of \$520.5 million and an associated income tax gross up of \$326.9 million, and (b) recovery through the Capacity Cost Recovery Clause ("CCR Clause") of (i) amortization of the regulatory assets over the remaining PPA period, until December 2024, and (ii) a return of the unamortized balance of the purchase price regulatory asset calculated at FPL's weighted average cost of capital "(WACC)" that is used for adjustment clause proceedings; and

WHEREAS, the Parties have filed voluminous prepared testimony with accompanying exhibits and conducted extensive discovery through interrogatories, requests for productions of documents, and depositions; and

WHEREAS, the Parties have undertaken to resolve the issues in this proceeding expeditiously in order to allow FPL to begin realizing benefits for its customers by terminating the unfavorable PPA as quickly as possible;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. FPL's entering into the PSA is reasonable, cost-effective, and prudent.
2. Except as set forth in Paragraph 3 below, FPL's proposed accounting for the Cedar Bay Transaction and recovery of costs associated with the Cedar Bay Transaction should be approved.
3. The Parties agree to the following changes to FPL's proposed accounting and cost recovery for the Cedar Bay Transaction:
 - (a) FPL may recover the \$520.5 million PSA purchase price as a regulatory asset (the "Purchase Price Regulatory Asset"), but will apportion recovery between the CCR Clause and base rates as follows:
 - (i) \$85 million of the Purchase Price Regulatory Asset (the "Base Regulatory Asset") will be initially recovered through base rates. Until the next test year for a general base rate proceeding (or the equivalent), the Base Regulatory Asset will remain in the base-rate rate base and be amortized under FPL's proposed nine-year amortization schedule, with the unamortized amounts afforded rate setting treatment based on applicable Commission law or policy as determined on the facts and circumstances of the future base rate case(s), if any. At the time of the next test year, the unamortized balance of the Base Regulatory Asset will be moved from the base-rate rate base to the CCR Clause for recovery beginning January 1 of that test year and continue to be recovered there until fully amortized.
 - (ii) The remaining \$435.5 million of the Purchase Price Regulatory Asset will be recovered through the CCR Clause as proposed in the Cedar Bay Petition.

(b) FPL may continue to use amortization of the Reserve Amount as defined and permitted under the stipulation and settlement that was approved in Order No. PSC-13-0023-S-EI (the "2012 Settlement Agreement"); provided, however, that FPL will reduce the Reserve Amount available for amortization by the base revenue requirement of the \$85 million transferred from CCR to base-rates rate base. This base revenue requirement for the fifteen months remaining before the 2012 Settlement Agreement terminates (i.e., October 2015 through December 2016) is estimated to be \$30 million. Accordingly, FPL will limit its amortization of the Reserve Amount through the term of the 2012 Settlement Agreement to \$370 million, unless it otherwise needs to use up to the full \$400 million to maintain a return on equity ("ROE") at the bottom of its allowed ROE range as established under the 2012 Settlement Agreement.

(c) In order to provide additional protection for FPL customers concerning potential environmental liabilities arising from the Cedar Bay Transaction, FPL agrees to the following:

(i) FPL will double the existing environmental liability insurance policy coverage limit purchased in connection with the Cedar Bay Transaction from \$20 million to \$40 million and will recover the additional premium for the increased limit in base rates.

(ii) FPL will maintain the environmental liability insurance coverage limit at the \$40 million level until January 2020; provided, that a Party may petition the Commission no later than July 1, 2019 for the sole and exclusive purpose of demonstrating that a substantial and significant change in circumstances exists that requires environmental liability insurance coverage to remain in effect for the

Cedar Bay Transaction (at no more than the \$40 million level) for an additional term to be proposed by the petitioning party, with the premium for any additional coverage that the Commission directs FPL to obtain to be recoverable in full through the CCR Clause. The issue(s) in any such proceeding shall be limited to whether a substantial and significant change in circumstances exists to justify an extension of the current term of the environmental liability coverage beyond January 2020, and, if so, the appropriate term for an extension of the coverage. FPL will have the right to oppose any such proposal, and the Commission shall enter a final order in any such proceeding by December 31, 2019.

(iii) FPL will hold customers harmless for any environmental cleanup liabilities not ultimately covered by insurance or indemnification provisions that might arise from FPL actions that the Commission determines to be imprudent in connection with FPL's ownership of the Facility and/or occupancy of the Facility site and the accompanying assumption of the Facility ground lease.

(d) The payments under the rail car lease for the Facility will be recovered through the Fuel and Purchased Power Cost Recovery Clause (the "Fuel Clause"), as proposed by FPL; provided, however, that recovery after closure of the Facility will be limited to the lesser of the actual net payments (after crediting sublease revenues) or 50% of the face amount of the lease payments at the existing or renegotiated rail car lease rate.

(e) The payments under the ground lease for the Facility will be recovered in base rates as proposed by FPL; provided, however, that recovery after closure of the Facility will be at the lesser of actual net lease payments (after crediting sublease revenues) or

50% of the face amount of the lease payments at the existing or renegotiated ground lease rate.

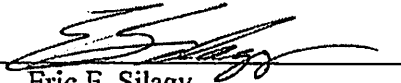
4. No Party will assert in any proceeding before the Commission that this Agreement or any of the terms in the Agreement shall have any precedential value because all Parties agree that the terms of the Agreement are specific to the facts and circumstances of this case. The Parties' agreement to the terms in the Agreement shall be without prejudice to any Party's ability to advocate a different position in future proceedings not involving the Agreement. The Parties further expressly agree that no individual provision, by itself, necessarily represents a position of any party in a future proceeding nor shall any Party represent in any future forum that another Party endorses a specific provision of this Agreement because of that Party's signature herein. It is the intent of the Parties to this Agreement that the Commission's approval of all the terms and provisions of this Agreement is an express recognition that no individual term or provision, by itself, necessarily represents a position, in isolation, of any Party or that a party to this Agreement endorses a specific provision, in isolation, of this Agreement because of that Party's signature herein. Without limiting the generality of this disclaimer, OPC states that for purposes of this settlement only, it takes no position on, and thus will not object to, the application of a WACC rate to the unamortized purchase price investment to be recovered through the CCR Clause or recovery of the costs of a long-term rail car lease in the Fuel Clause.
5. Approval of this Agreement in its entirety will resolve all matters in Docket No. 150075-EI pursuant to and in accordance with Section 120.57(4), Florida Statutes. This docket will be closed effective on the date the Commission Order approving this Agreement is

final, and no Party shall seek appellate review of any order issued in this Docket.

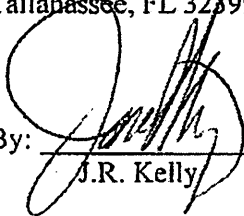
6. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof.
7. This Agreement may be executed in counterpart originals, and a facsimile of an original signature shall be deemed an original. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.
8. This Agreement will become effective on the date the Commission Order approving this Agreement is final.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

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