

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Cost)
Recovery Clause)

Docket No. 150009-EI
Filed: September 4, 2015

**POST-HEARING BRIEF OF
FLORIDA POWER & LIGHT COMPANY**

Florida Power & Light Company (“FPL” or the “Company”) hereby files with the Florida Public Service Commission (the “FPSC” or “Commission”) its Post-Hearing Brief in the above-referenced Nuclear Cost Recovery (“NCR”) docket, pursuant to Order No. PSC-15-0317-PHO-EI.¹

I. INTRODUCTION

In 2006, the Florida State Legislature enacted new law to encourage investment by electric utilities in additional nuclear generation. *See* §§ 403.519(4), 366.93, Fla. Stat. In 2007, in response to this state policy, FPL applied for a determination of need from the Commission for the Turkey Point 6 & 7 new nuclear project. In 2008, after thorough review, the Commission approved the Turkey Point 6 & 7 project. *See In Re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant by Florida Power & Light Co.*, Docket No. 070650-EI, Order No. PSC-08-0237-FOF-EI (issued April 11, 2008). In 2014, the Power Plant Siting Board approved FPL’s Site Certification Application (“SCA”), certifying the project and all associated transmission lines and facilities. Tr. 166 (Scroggs). In 2017, FPL anticipates it will receive its Combined License (“COL”) for the construction and operation of Turkey Point 6 & 7 from the Nuclear Regulatory Commission (“NRC”). *See* Tr. 217; Ex. 13.

¹ At hearing, Chairman Graham granted the Office of Public Counsel’s request to move the post-hearing brief due date from September 1, 2015 to September 4, 2015. Tr. 132; Tr. 975.

Section 403.519(4), Florida Statutes, Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code (“the NCR Rule”) establish the legal and regulatory framework for the recovery of costs incurred in the development of nuclear generation in Florida.² Section 403.519(4)(e) makes clear that a utility is entitled to recover all its prudently incurred costs. Specifically, it states:

the right of a utility to recover any costs incurred prior to commercial operation, including but not limited to costs associated with the siting, design, licensing, or construction of the plant . . . **shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence** adduced at a hearing before the commission under s. 120.57, **that certain costs were imprudently incurred.**

§ 403.519(4)(e), Fla. Stat. (emphasis added).³

Section 366.93, Florida Statutes, establishes specific parameters for nuclear cost recovery, and requires the Commission to establish by rule a cost recovery mechanism that promotes utility investment in nuclear power plants and “allow[s] for the recovery in rates of all prudently incurred costs.” § 366.93(2), Fla. Stat. In response to the direction provided in Section 366.93, the Commission promulgated the NCR Rule. This rule states, among other things, that its purpose is to promote utility investment in nuclear generation and to allow for the recovery in rates of all such prudently incurred costs. *See* Rule 25-6.0423(1), Fla. Admin. Code.

In 2013, the Florida State Legislature amended Section 366.93, Florida Statutes. As amended, Section 366.93 states in pertinent part that a utility cannot begin “preconstruction work beyond those activities necessary to obtain or maintain a license” absent Commission approval to

² All statutory references are to the 2015 Florida Statutes.

³ The prudence standard is discussed further in response to Issue 4, the only issue presented to consider the prudence of FPL’s actions. FPL notes that OPC and FRF took “no position” on Issue 4 in their prehearing statements, and thus have waived any arguments related to that issue.

begin such work. *See* § 366.93(3)(c), Fla. Stat. Additionally, a utility cannot begin the “construction phase” absent Commission approval. *See* § 366.93(3)(e), Fla. Stat.

Pursuant to Section 403.519(4), Section 366.93, and the NCR Rule, FPL is requesting to recover the preconstruction costs it is incurring for activities currently underway for the Turkey Point 6 and 7 project. Those activities are related to obtaining and maintaining the necessary licenses, permits and approvals for the project. *See* Tr. 218 (Scroggs). FPL’s cost recovery request for 2016 – which includes a final true-up of its 2014 costs, an actual/estimated true-up of its 2015 costs, and a projection of its 2016 costs only – totals approximately \$34 million, or 34 cents on a typical 1,000 kilowatt-hour monthly residential bill. Tr. 559 (Grant-Keene).

The results of FPL’s 2015 feasibility analysis present a strong case for continuing the Turkey Point 6 & 7 project. Tr. 799 (Sim). In more than half of the scenarios evaluated, Turkey Point 6 & 7 is projected to be the clear economic choice for FPL’s customers. Tr. 816 (Sim). And in all scenarios, the proposed new units greatly reduce fuel costs and reduce emissions. Tr. 799 (Sim). For example, using the medium fuel forecast/environmental compliance cost scenario and a conservative 40-year operating life of the plant, Turkey Point 6 & 7 is projected to save customers \$47 billion (nominal) in fuel cost savings over the life of the plant, reduce carbon dioxide emissions by about 290 million tons over the life of the plant, and reduce reliance on natural gas by about 13% in the first full year of operation. Ex. 11; Ex. 21. Clearly, the Turkey Point 6 & 7 project represents an important opportunity to reduce greenhouse gas emissions and improve fuel diversity.

II. SUMMARY OF ARGUMENT

FPL's management decisions and project costs in 2014 are subject to a prudence review in this proceeding. *See* Rule 25-6.0423(6)(c)1.a and (6)(c)2, Fla. Admin. Code. A management decision is prudent if it is within the range of reasonable decisions that a utility manager could make based upon information known or reasonably available to management at the time the decision was made. *See, e.g., In re: Nuclear Cost Recovery Clause*, Docket No. 090009-EI, Order No. PSC-09-0783-FOF-EI, p. 13 (issued Nov. 19, 2009) (citing *In re: Petition on Behalf of Citizens of the State of Fla. to Require Progress Energy Florida to Refund Customers \$143 Million*, Docket No. 060658-EI, Order No. PSC-07-0816-FOF-EI, p. 4 (issued Oct. 10, 2007)); *see also, Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013); *see also*, Tr. 386 (Reed). Hindsight review is prohibited. Tr. 386 (Reed); *see also* Order No. PSC-07-0816-FOF-EI at pp. 13-14. The rebuttable presumption of prudence has been codified in Florida for NCR purposes. Pursuant to Section 403.519(4)(e), Florida Statutes, parties arguing for a disallowance have the burden of demonstrating that certain costs were imprudently incurred by a preponderance of the evidence.

The record shows that FPL's 2014 Turkey Point 6 & 7 project management was prudent and that FPL's 2014 project costs were prudently incurred. The record contains extensive, unrebutted testimony demonstrating the prudence of FPL's project management, including the review by Concentric Energy Advisors, Inc. ("Concentric"), and the review by the FPSC Division of Economic Regulation, Office of Auditing and Performance Analysis ("Audit Staff"). *See* Tr. 411 (Reed); Ex. 29 (Audit Staff's Review of Project management Internal Controls). Similarly, FPL's 2015 actual/estimated and 2016 projected costs were shown to be reasonable. *See* Tr. 225-32 (Scroggs). And, consistent with Section 366.93(3), all costs FPL is seeking for

recovery are related to obtaining its COL from the NRC. Accordingly, FPL's recovery request should be approved.

FPL's 2015 feasibility analysis also should be approved. As it does each year, FPL utilized updated assumptions to ensure FPL was reflecting the best information that was available at the time. *See* Tr. 814 (Sim). For example, FPL's carbon dioxide ("CO2") emissions compliance cost was updated to reflect the draft Clean Power Plan ("CPP") target start date. Tr. 809-10 (Sim). FPL also reviewed its project cost estimate, and based on FPL's monitoring of other AP1000 new nuclear projects in the U.S. determined that its overnight cost estimate remained reasonable in light of that information. Tr. 219-20 (Scroggs).

Additionally, FPL is seeking a Commission determination that it is reasonable to perform studies to evaluate schedule assumptions and resulting cost information to ensure its next annual feasibility analysis – the one anticipated to support a request to begin "preconstruction work" – reflects the best information that FPL presently can develop. Tr. 217-18 (Scroggs). These studies are known as "Initial Assessments." Despite the fact that the Initial Assessments are related to FPL's efforts to obtain and maintain its COL, FPL is not seeking recovery of those costs at this time. FPL is deferring its Initial Assessment cost recovery request to align the timing of that request with the presentation of the feasibility analysis that those Initial Assessments support. Tr. 218 (Scroggs). Not only is this approach logical, but it ensures compliance with the NCR statute as well: To the extent a party disagrees that the Initial Assessments are related to obtaining FPL's COL, FPL's approach ensures compliance with Section 366.93(3)(b) by not seeking cost recovery for Initial Assessments "during the time [FPL] seeks to obtain a combined license from the Nuclear Regulatory Commission."

The Commission should reject the Office of Public Counsel's ("OPC's") recommendation to establish a cost "cap" for Turkey Point 6 & 7 – which is OPC's fifth attempt to radically change the fundamental principles of the NCR framework in a manner contrary to clear statutory and rule language. Previously, for FPL's Extended Power Uprate ("EPU") project, OPC urged the imposition of a "risk sharing" mechanism in 2010, a cost recovery cap based on a "breakeven analysis" in 2011, a cost recovery cap based on FPL's non-binding cost estimate in 2012, and a disallowance based on an economic "analysis" in 2013. The Commission rejected each one on legal grounds and should reject it again in this docket. *See* Docket No. 100009-EI, Order No. PSC-11-0095-FOF-EI, p. 9 (reconsideration denied, Order No. PSC-11-0224-FOF-EI); Docket No. 110009-EI, Order No. PSC-11-0547-FOF-EI, p. 57; Docket No. 120009-EI, Order No. PSC-12-0650-FOF-EI, pp. 72-73; Docket No. 130009-EI, Order No. PSC-13-0493-FOF-EI, p. 35-36.

III. ISSUES AND POSITIONS

A. Feasibility Analysis⁴

Issue 1: **Should the Commission approve as reasonable what FPL has submitted as its 2015 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?**

FPL: *Yes. FPL examined fourteen combinations of fuel/environmental compliance cost and plant life scenarios and utilized an updated set of project and resource planning assumptions, including (i) an updated project cost estimate, (ii) a reasonable CO2 compliance cost forecast based on information from a reputable, independent firm, and (iii) a reasonable estimate for transmission investments that would be needed to bring power into the Southeastern Florida area if Turkey Point 6 & 7 were not added. The results of the analysis support the feasibility of continuing the Turkey Point 6 & 7 project and completing the licensing phase currently underway.*

⁴ Issues 1, 1A, and 1B are briefed together, below.

Issue 1A: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

FPL: *The overnight capital cost estimate range is \$3,844/kW to \$5,589/kW. When time-related costs such as inflation and carrying costs are included, and the earliest practicable in-service dates of 2027 and 2028 are assumed, the total project non-binding cost estimate range is \$13.7 to \$20.0 billion for the 2,200 MW project.*

Issue 1B: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

FPL: *FPL's current estimated in-service dates for Turkey Point Units 6 & 7 are June 2027 and June 2028, respectively. These dates reflect the earliest practicable in-service dates resulting from FPL's comprehensive project schedule review that followed receipt of the revised safety and environmental review schedules from the NRC in late 2014. These dates also reflect the effect of the 2013 amendments to the NCR statute and review of construction lessons learned from other U.S. AP1000 projects.*

a. Summary of Feasibility Analysis

The 2015 Turkey Point 6 & 7 feasibility analysis was presented to satisfy the requirement of subsection 5(c)5 of the NCR Rule, which states: "By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant."

The analytical approach that was used in the 2015 feasibility analysis for Turkey Point 6 & 7 is similar to the approach used in the 2007 Determination of Need filing and the 2008-2014 NCR feasibility analyses. Tr. 806 (Sim). This approach compares two resource plans to ensure FPL accounts for all relevant impacts to the FPL system and its customers.⁵ Tr. 803 (Sim). For each resource plan, annual projections of system fuel costs and emission profiles are developed for various scenarios of fuel cost and environmental compliance cost forecasts using a sophisticated production costing model. Tr. 804 (Sim). This model, the UPLAN model,

⁵ This approach can be contrasted with an incomplete levelized cost of electricity calculation, which does not account for all system impacts and therefore is meaningless. See Tr. 913(Sim).

simulates the FPL system and dispatches all of the generating units on an annual, monthly, and hour-by-hour basis. *Id.* The resulting fuel cost and emission profile information is then combined with projected annual capital costs, plus other fixed and variable costs for each resource plan. In this way, a comprehensive set of projected annual costs for each year of the analysis is developed for each resource plan. *Id.*

Using this approach, FPL calculated the “breakeven” overnight capital costs for the new nuclear units in each fuel cost and environmental compliance cost scenario, assuming both a 40-year and a 60-year operating life of the new nuclear plant. *See* Tr. 816 (Sim); Ex. 25, 84. The “breakeven” cost is the amount FPL could spend on Turkey Point 6 & 7 that would result in the same lifecycle costs (or cumulative present value of revenue requirements) as an alternative plan that relies on adding natural gas combined cycle (“NGCC”) units. Tr. 222 (Scroggs). Accordingly, if the breakeven cost for a particular scenario is higher than FPL’s non-binding project cost estimate range (indicating FPL could spend *more* on the project than it currently expects to spend and still “breakeven” with a resource plan containing the alternate NGCC units), then the results are favorable for Turkey Point 6 & 7. *See* Tr. 279 (Scroggs).

In compliance with Order No. PSC-08-0237-FOF-EI, FPL utilized current assumptions for fuel forecasts, environmental compliance cost forecasts, capital costs, and project sunk costs. Tr. 807 (Sim). FPL also utilized all other current assumptions that had been updated for its resource planning work in late 2014 and early 2015, including FPL’s load forecast and cost and performance assumptions for new NGCC capacity. Tr. 808 (Sim).

FPL’s feasibility analysis also accounted for the current Turkey Point 6 & 7 project schedule, which was revised in late 2014. FPL’s project schedule review and the resulting estimated in-service dates reflect (i) the revised NRC COL Application Review schedule

received by FPL in 2014, which provided a better estimate of when key milestones in the COL process could be expected; (ii) the 2013 amendments to the NCR statute, which now includes limitations on FPL's actions and inserts additional approval steps that affect the timing and sequencing of events for the project; and (iii) actual construction experience at other U.S. AP1000 project sites, which provides information for FPL to better estimate durations for critical path activities in the early construction period and mitigate against the potential to experience the same delays. Tr. 175-77 (Scroggs). As a result, FPL now estimates that the earliest practicable in-service dates for Turkey Point 6 & 7 are June 2027 and June 2028, respectively. *Id.*; *see also*, Ex. 4.

The results of FPL's 2015 feasibility analysis continue to support moving forward with the Turkey Point 6 & 7 project. In eight of fourteen scenarios examined, the breakeven capital cost was above FPL's non-binding cost estimate range for Turkey Point 6 & 7 (i.e., the results were favorable), and in the remaining six scenarios the breakeven capital cost was within FPL's non-binding cost estimate range. Tr. 816 (Sim); Ex. 25; Ex. 84. In no scenario was the breakeven cost below FPL's non-binding cost estimate range.⁶

While it is appropriate to review the economics of the project on a cumulative present value of revenue requirements ("CPVRR") basis, as FPL does, nominal values can also be informative. Nominal net benefits reflect what customers will actually experience in their electric bills. The results of FPL's bill projection analysis indicate that in the medium fuel/ENV II scenario, FPL's customers are projected to begin seeing lower bills nine years after the first of the two new nuclear units goes into service. Tr. 846 (Sim); Ex. 31 (Bates Stamp No. 00034-00036).

⁶ FPL also demonstrated the feasibility of financing the project and of obtaining all necessary approvals. Tr. 223-224 (Scroggs).

Witness Jacobs, on behalf of OPC, presented a calculation in an attempt to impugn either the results of FPL's feasibility analysis or the cost estimate for the Turkey Point 6 & 7 project. His calculation backs into the amount by which the project cost would have to increase in order for it to become uneconomic, in his opinion, and declares a result of "no cases of feasibility." *See* Tr. 849 (Sim). However, this approach is fundamentally flawed in that it assumes that those inputs are perfectly known and remain frozen through the year 2087 in an attempt to predict an outcome. *See* Tr. 850 (Sim). No one, including Dr. Jacobs, can know the future over the next 72 years and make such a conclusion at this time. *See* Tr. 851 (Sim).

b. FPL's Non-Binding Project Cost Estimate Range is Reasonable

The overnight capital cost estimate range for Turkey Point 6 & 7 is \$3,844/kW to \$5,589/kW. Tr. 218 (Scroggs). An overnight cost provides an estimate of the total project costs assuming all costs occur at one point in time. Tr. 219 (Scroggs). When time-related costs such as inflation and carrying costs are included, and the current earliest practicable commercial operation dates of 2027 and 2028 are assumed, the total project cost ranges from \$13.7 billion to \$20.0 billion for the 2,200 MW project. *Id.*

i. FPL's Non-Binding Cost Estimate Range is Reasonable

FPL's cost estimate range was developed at the time of the need determination using an independent government and industry study of costs for a two unit project at TVA's Bellefonte site, combined with cost estimates specific to the Turkey Point site for civil work and supporting infrastructure. Tr. 638 (Scroggs). In 2010, a check of this cost estimate range was conducted using a price estimate provided by Westinghouse. Tr. 639 (Scroggs). The check confirmed that the non-binding cost estimate range was inclusive of the Westinghouse price estimate. *Id.* FPL's cost estimate has been reviewed and then updated each year by escalating the overnight

capital cost to the current year, and calculating time-related costs (e.g., interest during construction and escalation) based on the then-current project schedule.⁷ Tr. 638-39 (Scroggs).

When FPL's cost estimate was created, an analysis was conducted on each component of the overnight cost to explore how much it was estimated to vary. FPL's cost estimate incorporated assumptions for potential changes within a number of project cost categories such as transmission costs, owner's costs, and power island costs. Tr. 254-56 (Scroggs); *see also* Ex. 38 (Bates Stamp No. 00123). The varying of the project cost components resulted in three cost scenarios, creating a range of costs. *Id.* Then, FPL applied a 15% "cost risk" contingency to each scenario. *Id.* This process of varying individual line-item cost components to create a range plus applying an adjustment for cost risk results in a total project cost contingency far greater than 15%. *Id.*

During hearing, the OPC focused on the vintage of this cost estimation data, and the vintage of the 2010 "check" against Westinghouse pricing information, implying that FPL's cost estimate is stale. *See* Tr. 251-53 (Scroggs). However, that focus ignores Mr. Scroggs's testimony that this year (as with all prior years), a review was conducted to capture any potential project changes and estimate the potential cost impact. Tr. 220, 638 (Scroggs). No significant changes or developments have occurred in the past year indicating any revisions are necessary to the project cost estimate range.⁸ *Id.* The Final Order resulting from the SCA preserved the

⁷ The extensive and inclusive nature of FPL's cost estimate range was made clear during cross examination by the attorney for the City of Miami. As discussed by Mr. Scroggs in response to questioning, the design of the project and the project cost estimate accounts for a wide variety of factors such as sea level rise, seismic activity, storm surges, water consumption, and all costs of complying with the NRC's requirements for spent fuel storage. Tr. 266, 324-28 (Scroggs).

⁸ Not every change or development in other new nuclear projects necessarily requires a revision to FPL's project cost estimate range. This seemed to be a fundamental misunderstanding on the part of several intervenors. For example, recent delays in the Summer project do not require a revision to FPL's current project schedule or cost estimate range. Tr. 247 (Scroggs). In working with CBI, the constructor on the Summer project, FPL is incorporating lessons learned to help FPL avoid delays experienced at other projects. Tr. 644 (Scroggs).

project and ancillary features as proposed by FPL, and is therefore consistent with the project as envisioned in the current cost estimate range. *Id.* Of course, FPL fully acknowledges that there remains the potential for future project schedule and cost changes. *See, e.g.,* Tr. 309 (Scroggs); *see also,* Tr. 401 (Reed). Such project changes and their cost impacts would be incorporated into the project cost and feasibility analysis at the appropriate time, when they become estimable.

ii. Obtaining “Binding” EPC Bids is Not Possible in the Near Term

OPC and its witness Dr. Jacobs took the position that obtaining bids from potential EPC contractors at this time would provide better project cost estimate information. However, Witness Jacobs’s call for a more definitive cost estimate through “actual, binding bids” relies upon an incorrect assumption that such bids can be developed at this stage of the project. Tr. 641 (Scroggs). An actionable bid requires a detailed scope of work, firm schedule milestones, and contractual terms and conditions. In the absence of any of these essential components, there is an incomplete basis upon which bids can be developed. Given the impacts of recent NCR statutory amendments, FPL is unable to provide the requisite level of schedule and funding commitment that would be necessary to solicit meaningful and realistic bids from potential participants at this stage of the project. *Id.* It is simply not commercially reasonable for Mr. Jacobs to suggest that vendors would be willing to provide a competitive, binding bid at this time. Tr. 642 (Scroggs). In fact, Witness Jacobs acknowledged that obtaining binding bids at this point in the project could be “difficult.” Tr. 529 (Jacobs). And in Mr. Reed’s opinion, it would be “impossible” to obtain firm bids to construct Turkey Point 6 & 7 at this time. Tr. 430 (Reed).

Nor would it be possible to solicit such bids prior to beginning “preconstruction work.” FPL must first conduct the preconstruction work necessary to develop an executable schedule

and a well-understood scope of construction work. A “firm bid” would be meaningless without those project details. *See* Tr. 242 (Scroggs). If the Commission authorizes FPL to begin “preconstruction work” (currently anticipated for 2017), the Company will be in a position to proceed with work that will ultimately include obtaining realistic and actionable bids to support a decision to move from “preconstruction work” to actual plant construction. Tr. 643 (Scroggs). Consistent with this approach, Witness Reed opined that the best time to execute an EPC or EP/C contract would be “the last possible moment that you can sign it without endangering the commercial operation date you have in mind for the project or the project cost estimates.” Tr. 472-73 (Reed). OPC and Witness Jacobs are putting the cart before the horse by recommending that FPL seek contractual commitments earlier than appropriate or necessary.

iii. Comparison to Vogtle and Summer Project Costs Further Supports the Reasonableness of FPL’s Cost Estimate Range

As described above, FPL’s cost estimate was not based on the costs for Vogtle Units 3 and 4 and Summer Units 2 and 3 as Witness Jacobs presumed in his prefiled testimony. *See* Tr. 503 (Jacobs). FPL does, however, compare its project cost range to the costs experienced at those projects as a benchmark. Tr. 244 (Scroggs); Tr. 453 (Reed). The high end of FPL’s cost estimate range exceeds the reported costs of those other projects. *See* Tr. 742 (Reed); Ex. 73.

Witness Jacobs recommended that in the absence of binding EPC bids, FPL should simply adopt the “owners” costs and an estimate for “contractor’s” costs experienced at those projects. Tr. 511 (Jacobs). As an initial matter, it is worth noting that FPL’s high end capital cost estimate is 16%, or about \$1.7 billion, above the publicly reported Vogtle project cost. Tr. 254 (Scroggs); Ex. 73. This is more than sufficient to accommodate the approximately \$900 million that is the subject of litigation between the owner and the contractor on that project, that Witness Jacobs assumes should be added to the owner’s cost. *See* Ex. 73 (Bates Stamp No.

000020). Accordingly, if FPL were to accept Witness Jacobs's recommendation of adopting the "total" Vogtle project cost experienced by the owner and the contractor, FPL's cost estimate would be reduced.

Despite this cost comparison, the evidence shows that it would be incorrect to adopt Witness Jacobs's recommendation and simply assume a new nuclear project's contractor's costs are additive to the owner's costs that would be reflected in customer rates. Profit or loss to a contractor (for example, due to cost increases) is not something that would be factored into the owner's project cost. Tr. 424-26 (Reed). As explained by Mr. Reed, "I don't think the losses or profits derived by the contractors enter into the equation." Tr. 429 (Reed). Accordingly, FPL's process of benchmarking its project cost against the reported owners' costs for other new nuclear projects is appropriate.

Additionally, Witness Jacobs's approach of assuming FPL will incur 100% of the costs incurred for other new nuclear projects fails to acknowledge the very real impact that lessons learned from the first wave of new nuclear projects are expected to have on the execution of the Turkey Point 6 & 7 project. Tr. 644 (Scroggs). Cost and schedule improvements are generally considered in the construction industry to occur between first-of-a-kind and subsequent projects using similar technology (also known as "nth-of-a-kind"). Tr. 719, 721-22 (Reed). As Mr. Scroggs explained:

As the second wave of AP1000 construction, we expect to learn a lot about how to do the contracting, how to do the construction of the modules, how to logistically manage that. There's – there's already in the Vogtle and Summer experience economies of learning that have been exhibited on the second unit [at each site] in construction. So labor costs and rates are lower on the second unit than they have been on the first unit, so we would expect to see that benefit.

Tr. 300 (Scroggs). Lessons learned will be retained by the nuclear industry, regardless of which particular contractors work on the construction of Turkey Point 6 & 7. Tr. 748 (Reed). A

blanket adoption of the first wave experience also would not reflect differences in construction of supporting infrastructure or changes in contracting or execution support. *Id.* Surely OPC is not suggesting that FPL should thoughtlessly retrace the steps of first-wave new nuclear projects, yet that is exactly what adoption of those projects' costs would reflect.

In conclusion, FPL has presented a reasonable non-binding cost estimate range that reflects a thorough contingency approach and currently known information that could be anticipated to actually impact the Turkey Point 6 & 7 cost. The high end of FPL's overnight cost estimate range remains reasonable when compared to the reported costs experienced at the Vogtle and Summer new nuclear projects and even remains reasonable when taking into account the Vogtle contractor costs as suggested by Witness Jacobs. OPC's recommendation that FPL can or should obtain "binding" EPC bids was shown to be commercially unreasonable and its alternative recommendation to adopt costs of other new nuclear projects ignores specific project differences as well as the potential for "nth-of-a-kind" project improvements generally. As a result, those recommendations would not provide a better cost estimate for feasibility analysis purposes and should be rejected.

c. OPC's Request for a Cost or Feasibility "Cap" is Contrary to Law

In the last sentence of his prefiled testimony, and with no explanation or support, Witness Jacobs recommended that FPL submit an "updated analysis as a not-to-exceed cost or cap above which FPL would not seek cost recovery from ratepayers for the Turkey Point 6 & 7 project". Tr. 513-14 (Jacobs). It is not clear whether Witness Jacobs is suggesting that a revised total project cost estimate would serve as a cap, or the results of an analysis utilizing a revised total project cost estimate would serve as the cap. Nonetheless, both variations have already been presented, considered, and rejected by the Commission in prior NCR dockets as being

inconsistent with the legal framework that governs cost recovery for Turkey Point 6 & 7. Stated simply, such a mechanism cannot coexist with a utility's statutory entitlement to recover *all* prudently incurred costs. This aspect of the NCR law has not changed, and therefore, the same conclusion must follow.

Section 366.93, Florida Statutes, requires that the Commission “promote utility investment in nuclear . . . power plants *and allow for the recovery in rates of all prudently incurred costs*” § 366.93(2), Florida Statutes (emphasis added). OPC's recommendation that FPL not be permitted to recover any Turkey Point 6 & 7 costs in excess of a hard, pre-determined cap could result in the disallowance of costs that are nonetheless prudently incurred in the future. Accordingly, the implementation of such a cap would violate Section 366.93(2).

OPC's request also violates Section 403.519(4)(e), Florida Statutes. Pursuant to that statute, a disallowance is only permissible if “the commission finds, based on a preponderance of the evidence adduced at a hearing . . . that certain costs were imprudently incurred.” § 403.519(4)(e), Fla. Stat. By establishing that all project costs above a particular dollar threshold should be disallowed, the mechanism would fail to meet the statute's requirement of demonstrating that “certain costs were imprudently incurred.” Instead, the cap would establish a pre-determined disallowance of amounts not yet spent or subject to prudence review. Witness Jacobs's claim for a future disallowance to be based on exceeding a cap, rather than on a demonstration of prudence or imprudence at hearing of costs incurred, clearly violates Section 403.519(4)(e).

Similarly, the relief OPC seeks is not permitted by the NCR Rule. Rule 25-6.0423(6)(c) provides, in part:

2. The Commission shall conduct an annual hearing to determine the reasonableness of projected pre-construction expenditures and prudence of actual pre-construction expenditures expended by the utility . . . In making its determination of reasonableness and prudence the Commission shall apply the standard provided pursuant to Section 403.519(4)(e), F.S.

3. Upon a determination of prudence, prior year actual costs associated with power plant construction subject to the annual proceeding shall not be subject to disallowance or further prudence review

The Commission's NCR Rule governing this proceeding clearly limits prudence reviews to the prior year's actual decisions and costs. In this year's docket, 2014 decisions and costs are subject to prudence review. Yet OPC is seeking an order that would disallow amounts expended in the future which are not yet subject to prudence review, based on a future total that would include costs found prudent in prior years' cases. Similar to FPL's points concerning Section 403.519(4)(e) above, OPC's request does not bear any relation to the NCR prudence review process established by rule.

OPC also would have this Commission turn a project cost estimate into a "hard cap" in violation of the NCR statute and Rule. Section 403.519(4)(a)3, Florida Statutes, requires FPL to include a "nonbinding estimate" of the cost of the nuclear plant in its need determination petition. Section 366.93(5) requires FPL to annually report to the Commission the budgeted and actual costs of developing the nuclear power plant as compared to the estimated nonbinding cost estimate provided during the need determination, "with the understanding that some costs may be higher than estimated and other costs may be lower." The annual reporting requirement, along with the express recognition that some costs may be higher and some costs may be lower, was adopted by the Commission in Rule 25-6.0423(9)(f), Fla. Admin. Code. OPC is asking for the opposite of the non-binding cost estimate process provided for in the NCR statute and Rule.

The current request for a cost cap is contrary to four prior Commission orders rejecting similar OPC requests. Upon considering the 2010 NCR case, the Commission determined it did not have the authority to establish a risk sharing mechanism for FPL's EPU project that set a cost "threshold" that would preclude the utility from recovering prudently incurred costs. Order No. PSC 11-0095-FOF-E, p. 9. On reconsideration, this decision was affirmed. *Order Denying Motion for Reconsideration*, Docket No. 100009-EI, Order No. PSC-11-0224-FOF-EI, pp. 9-10 (issued May 16, 2011). In 2011, the Commission rejected a similar OPC request for a disallowance threshold. That time, the threshold was to be based on a "breakeven analysis" applied to the EPU project. Order No. PSC-11-0547-FOF-EI, pp. 56-57. In 2012, the Commission rejected OPC's attempt to impose a hard cap of FPL's then-current non-binding EPU cost estimate as its threshold for cost recovery for that project. Order No. PSC-12-0650-FOF-EI, p. 73. In that order, the Commission specifically noted "we do not find the year-to-year increases in cost estimates demonstrate that FPL was imprudent." *Id.* And most recently, in 2013, Witness Jacobs recommended a disallowance of some of the EPU project costs based on his conclusion that a portion of the project was "uneconomic" – not based on any particular alleged imprudent act of FPL during the year subject to prudence review. In rejecting that recommendation, the Commission order states:

We observe that witness Jacobs' premise for a stand-alone analysis was to assess the level of unreasonable costs using near-final cost information. We find the analysis, by using final project cost information, relies on hindsight and does not distinguish between prudent and imprudent utility management actions in calculation of a dollar amount. Use of hindsight and an inability to distinguish between prudent and imprudent actions were the basis of our rejection of witness Jacobs' recommendations in a prior NCRC case . . . Consequently, we find OPC witness Jacobs' premise was offered without addressing our prior concerns regarding the application of hindsight analysis and an inability to distinguish between prudent and imprudent actions.

Order No. PSC-13-0493-FOF-EI, p. 35-36 (internal citation omitted). Witness Jacobs's current recommended cost cap, while lacking in detail, obviously suffers from the same legal flaws as the prior four attempts.

d. FPL's CO2 Emission Compliance Cost Forecast is Reasonable

As stated above, in compliance with Order No. PSC-08-PSC-08-0237-FOF-EI, FPL annually reviews and updates a variety of forecasts, project assumptions, and other resource planning assumptions for use in its feasibility analysis. In 2015, FPL reviewed and updated its CO2 emission compliance cost forecast. Tr. 809 (Sim). FPL's forecast continues to be based on inputs and guidance from the respected, independent firm ICF International ("ICF") and continues to reflect the same forecasting methodology that has been used, presented, and approved in all prior NCR dockets. See Tr. 832 (Sim). No party presented an alternative forecast demonstrating that lower CO2 emission compliance cost assumptions would be reasonable. Accordingly, the record supports approval of FPL's CO2 emission compliance cost forecast as a reasonable input for FPL's feasibility analysis.

FPL has used a CO2 cost forecast since 2007 in its resource planning work considering all types of resource options, not just Turkey Point 6 & 7. Tr. 832 (Sim). All of FPL's CO2 cost forecasts have been based on projections made by ICF International. Tr. 832-33 (Sim). ICF serves both private and governmental clients, including the EPA. In its work for the EPA, ICF is providing analyses of various potential CO2-related regulatory initiatives including the CPP. *Id.*

ICF's CO2 cost forecasts are based on a probability-weighted projection of likely CO2 compliance costs. Tr. 833 (Sim). ICF assigned probabilities for each year in the projection to a wide range of potential CO2 costs. The probability-weighted outcomes for a given year were

summed to derive a CO2 cost value for that year. As legislative initiatives ended or changed over time, ICF's projections also changed. Based on ICF's changes in projected CO2 costs, FPL's forecasts of CO2 costs that have been used in its resource planning work have also periodically changed. *Id.*

ICF's cost projections were typically released in terms of real dollars through the year 2030. Based on guidance from ICF, FPL converted these values to nominal dollars for use in FPL's resource planning work. And with the knowledge that if CO2 regulation was issued in the near-term it was likely that additional regulation would further restrict CO2 emissions in future years, FPL also received guidance from ICF regarding extrapolation of the \$/ton cost projections into the future, beyond 2030. Tr. 833-34, 903-05 (Sim). FPL used these values as inputs to its production costing model. Because the model outputs end at the year 2044, the CO2 cost outputs of that model had to be extended through the duration of the analysis. Accordingly, FPL used an 8% escalation factor, reflecting relevant years from the extrapolation developed with ICF for the CO2 cost inputs. Tr. 903-05 (Sim); Ex. 34 (Bates Stamp No. 00101-02).

When discussion of CO2-related legislation at the federal level stalled in 2013, ICF advised FPL that the 2012 CO2 cost forecast remained the best projection regarding future CO2 costs. Tr. 834 (Sim). Consequently, FPL used that projection in its 2013 and 2014 resource planning work including the nuclear feasibility analyses in those years. In 2015, after further discussions with ICF that highlighted the uncertainty surrounding the mid-2014 CPP draft rules, FPL utilized these values again, but adjusted the start year so that CO2 emission compliance

costs were projected to begin in 2020. *Id.* This had the impact of advancing, and increasing, the forecasted costs as compared to the 2014 forecast.⁹ *See* Ex. 22 (p. 2).

FPL agrees with Mr. Meehan that there is uncertainty regarding CO2 compliance costs. Tr. 834 (Sim). However, much of that uncertainty will not be cleared up until: (i) the CPP final rules are issued this Summer or soon thereafter; (ii) litigation addressing the final rules and the EPA's authority to issue such rules is resolved; and (iii) each state, including Florida, develops its state implementation plan for meeting the final rules. As a result, FPL's CO2 cost forecast is based on the best information and guidance available at this point in time. *See* Tr. 834-35 (Sim).

The CO2 emission-reduction benefits play a more significant role in the economic feasibility of the project this year than in past years, in part because other cost forecasts are lower. Tr. 830 (Sim). It should be obvious that as natural gas prices have declined, other forecasts and assumptions play an increasing role in the analysis. Tr. 830-31 (Sim). However, the fact that the CO2 emission-reduction benefits are significant does not mean that the forecasts themselves are unreasonable. Tr. 831 (Sim).

There is simply no basis to assume, as Witness Meehan did for the City of Miami, that 50% or 100% of the CO2 emission compliance cost benefits will disappear. *See* Tr. 835 (Sim). No support was provided by Witness Meehan for these arbitrary values. And with respect to the elimination of 100% of the benefits, such an assumption would be inconsistent with Witness Meehan's own testimony that it is reasonable to attach a monetary value to carbon over the 2027 to 2088 period. *See* Tr. 607 (Meehan).

At hearing, SACE presented a CO2 compliance cost forecast developed by Synapse Energy Economics in an attempt to demonstrate that one existed that was lower than FPL's. But,

⁹ This does not indicate that the 2015 forecasted costs are higher than all prior years' forecasted costs. For example, FPL's 2015 CO2 emission compliance cost forecast is much lower than the 2011 CO2 emission compliance cost forecast. Tr. 966 (Sim).

in fact, the Synapse forecast actually was demonstrated to be *higher* than FPL's. Tr. 910 (Sim); Ex. 86. Similarly, prior to the hearing, FPL became aware of a CO2 compliance cost forecast by JD Energy that was significantly higher than the one utilized by FPL. Tr. 900 (Sim). Therefore, any argument that FPL's CO2 compliance cost forecast is unreasonably high is simply unsupported by the record.

e. FPL's Transmission Planning Assumptions are Reasonable

The addition of 2,200 MW of capacity from Turkey Point 6 & 7 in Miami-Dade County is projected to achieve significant transmission cost savings by avoiding the construction of transmission facilities that would otherwise be needed to import power into the Southeastern Florida region. Tr. 822 (Sim). This transmission need, absent the Turkey Point 6 & 7 project, is accounted for in FPL's 2015 feasibility analysis as an additional cost in the competing (i.e., "Without Turkey Point 6 & 7") resource plan. Tr. 822 (Sim).

FPL has incorporated such a transmission planning assumption in its NCR feasibility analyses since 2013. *See* Tr. 838 (Sim). Currently, the transmission investment savings are projected to be approximately \$1.7 billion CPVRR, which is lower than the savings assumed in last year's analysis. Tr. 967 (Sim). While the transmission-related benefits are meaningful, that does not mean that the assumptions themselves are unreasonable. Tr. 837 (Sim).

From a transmission standpoint, FPL needs to maintain a balance between electrical load and generation in Southeastern Florida, i.e., in Miami-Dade and Broward Counties. Tr. 838 (Sim). The electrical load in Southeastern Florida has continued to increase and is projected to increase further in the future. In order to maintain a balance between this increasing load and generation in this area, one of two things must occur: FPL can either build generation in the two

county area or FPL can build regional transmission lines from north of Broward County into the area that will allow additional power to be imported into Southeastern Florida. *Id.*

The methodology for determining the transmission investments that would be avoided (or needed, in the case of the competing resource plan) is straightforward, and was presented by Witness Sim. *See* Tr. 839 (Sim). Witness Sim also explained in detail the basis for the current assumption that an alternative NGCC project likely would not be built at the Turkey Point site or elsewhere in the Southeastern Florida area. *See* Tr. 886-87, 954 (Sim); *see also* Tr. 927-29 (Sim) (explaining why existing natural gas pipelines could not provide additional natural gas to the Turkey Point site to fuel additional NGCC units at that location, and that a new pipeline estimated to cost approximately \$1 billion would be needed). Accordingly, FPL's assumptions related to transmission investments that would be needed in the feasibility analysis are well supported and reasonable. There simply is no basis for the arbitrary 50% or 100% reductions to anticipated transmission investment benefits suggested by the City of Miami's witness, Mr. Meehan. Tr. 840-41 (Sim).

B. 2014 Project Management

Issue 2: **Should the Commission find that FPL's 2014 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?**

FPL: *Yes. FPL relied on its comprehensive corporate and overlapping business unit controls. These controls included FPL's Accounting Policies and Procedures; financial systems and related controls; FPL's annual budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. These controls include regular financial audits. FPL's management decisions with respect to the Turkey Point 6 & 7 project were the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls.*

As described in detail by FPL's witnesses, FPL employs extensive accounting and cost oversight controls for the Turkey Point 6 & 7 project. FPL relies on its comprehensive corporate

and overlapping business unit controls for recording and reporting transactions associated with any of its capital projects, including the Turkey Point 6 & 7 project. Tr. 548 (Grant-Keene). These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures, financial systems, and Business Unit specific controls and processes. Tr. 548-52 (Grant-Keene). These controls are regularly assessed and audited. Tr. 550 (Grant-Keene).

At the project level, FPL routinely and methodically evaluates project risks, costs, and issues using a system of internal controls, routine project meetings and communications tools, management reports and reviews, and internal and external audits. Tr. 179, 183 (Scroggs). This includes an annual, financial project audit that is performed by a third party auditor at the request of FPL's Internal Auditing department. *See* Tr. 189, 288 (Scroggs); Tr. 552 (Grant-Keene). The project-level internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices providing governance and oversight of project cost and schedule processes. Tr. 179-80 (Scroggs); Ex. 5, 7. The project also generates a series of weekly or monthly reports and has standing meetings to discuss forward looking analyses with project managers. Tr. 181-83 (Scroggs); Ex. 6. The project team engages in routine executive briefings, which help maintain tight controls over project progress, expenditures, and key decisions. Tr. 181-83 (Scroggs).

The record shows that FPL's Turkey Point 6 & 7 contracting controls also are reasonable. The preferred approach for the procurement of materials or services is to use competitive bidding. Tr. 187 (Scroggs). However, in certain situations the use of single or sole source procurement is in the best interests of the Company and its customers. *Id.* When single or sole source procurement is used, a specific procedure requires the proper documentation and authorization. It also requires a review of the justification for reasonableness. Tr. 188 (Scroggs).

The contracting activities in 2014 were subject to these contracting controls as well as the project management controls and oversight described above.

FPL's Turkey Point 6 & 7 internal controls were audited by the Commission's Audit Staff. Audit Staff concluded in 2015 that the "[p]roject internal controls, risk evaluation, and management oversight are adequate and responsive to current project requirements." Ex. 29, p. 6. FPL also engaged Concentric to perform an independent review of the internal controls utilized by the Company for the Turkey Point 6 & 7 project. After this review, Witness Reed concluded that "FPL's management of the PTN 6 & 7 Project over the course of 2014 has resulted in prudently incurred costs." Tr. 393 (Reed).

The evidence shows that FPL's project management, contracting, accounting, and cost oversight controls for Turkey Point 6 & 7 are reasonable and prudent. FPL's controls consist of corporate-level and project-level processes, and are routinely tested and audited. No party has presented evidence disputing the adequacy of FPL's project management and internal controls for Turkey Point 6 & 7.

C. Initial Assessments

Issue 3A: Pursuant to Section 366.93, Florida Statutes, can costs, which are not related to or necessary for, obtaining or maintaining a combined license from the Nuclear Regulatory Commission for a nuclear power plant be incurred prior to the issuance of the COL and deferred for later recovery? (Legal)

FPL: *Yes, so long as the costs are not for "preconstruction work" or the "construction phase." For example, Section 366.93 is silent with respect to the incurrence and recovery of costs related to supporting the feasibility analysis necessary to obtain Commission approval to begin "preconstruction work." A more restrictive interpretation of Sections 366.93(3) could not be read consistently with Section 366.93(2), which states that the NCR mechanism "must be designed to promote utility investment in nuclear...power plants and allow for the recovery in rates of all prudently incurred costs".*

In 2013, the Florida State Legislature amended Section 366.93, Florida Statutes, inserting additional Commission approval criteria and milestones in the NCR process. *See, e.g.,* §

366.93(3)(c), (d), Fla. Stat. As explained by Witness Scroggs, these amendments have the effect of postponing certain activities until FPL receives Commission approval. *See, e.g.*, Tr. 176 (Scroggs). Specifically, FPL cannot begin “preconstruction work beyond those activities necessary to obtain or maintain a license” absent Commission approval to begin such work. *See* § 366.93(3)(c), Fla. Stat. (Elsewhere in the statute, this same work is described as “postlicensure or postcertification preconstruction work.” *See* § 366.93(3)(d), Fla. Stat.) Similarly, FPL cannot begin the “construction phase” absent Commission approval. *See* § 366.93(3)(e), Fla. Stat. These statutory limitations account for approximately two and a half years of the five-year project schedule revision. Tr. 176-77 (Scroggs); Ex. 4.

However, Section 366.93 is silent about other types of project activities that occur during the broadly defined “preconstruction” period. For example, to the extent someone took the position that costs associated with the annual NCR process or costs required to comply with the added Commission approval steps were not related to obtaining a combined license, those costs would fall into this unnamed, unaddressed category. Logically, one cannot take the position that the NCR statute prohibits FPL from meeting its obligations to this Commission, including providing well-supported data and analyses and meeting filing requirements. Moreover, as a matter of law, review of the express language of each applicable subsection of Section 366.93 reveals that the 2013 amendments do not prohibit FPL from incurring and later recovering such costs.¹⁰

¹⁰ When a statute is clear, there is no need to look behind the statute’s plain language for legislative intent or resort to rules of statutory construction to ascertain intent. *See State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004); *see also, Lee County Elec. Co-op., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002). FPL notes, however, that allowing utilities to incur and later recover costs for activities designed to support the feasibility analysis is consistent with the clear intent of the 2013 statutory amendments, which is to ensure a careful, well-informed review by the Commission prior to approving a utility’s request to begin “preconstruction work beyond those activities necessary to obtain or maintain a license.” *See* § 366.93(3)(c), Fla. Stat.

The Nuclear Cost Recovery statute and Rule define “preconstruction” as a period of time, not as a type of activity. Section 366.93(1)(f) defines the term as follows: “that period of time after a site, including related electrical transmission lines or facilities, has been selected through and including the date the utility completes site clearing work.” Rule 25-6.0423(1)(g) defines “preconstruction costs” as “costs that are expended after a site has been selected in preparation for the construction of a nuclear or integrated gasification combined cycle power plant, incurred up to and including the date the utility completes site clearing work.” Accordingly, and consistent with subsection (1)(f) of Section 366.93, FPL is currently incurring preconstruction costs for the Turkey Point 6 & 7 project. *See, e.g.*, Tr. 189 (Scroggs). And under the NCR Rule, FPL is “entitled to recover, through the Capacity Cost Recovery Clause, its actual and projected pre-construction costs.” Rule 25-6.0423(6)(a), Fla. Admin. Code; *see also*, § 366.93(2) and (2)(a), Fla. Stat. The 2013 amendments did not alter these elements of the NCR statute and Rule.

Subsection (3)(b) of the NCR statute reflects a new cost recovery limitation introduced by the 2013 amendments. It states:

During the time that a utility seeks to obtain a combined license from the Nuclear Regulatory Commission for a nuclear power plant or a certification for an integrated gasification combined cycle power plant, the utility may recover only costs related to, or necessary for, obtaining such licensing or certification.

§ 366.93(3), Fla. Stat. As discussed below in response to Issue 3B, FPL’s position is that the Initial Assessments are related to obtaining the license. But even if one disputed that relationship, the plain language of this subsection addresses only the *recovery* of costs during a particular period of time (i.e., during the time a utility is seeking to obtain its COL) – not the incurrence of costs or the potential for future clause recovery after the COL has been issued. The question presented in this Issue 3A asks “can costs, which are not related to or necessary for, obtaining or maintaining a combined license from the Nuclear Regulatory Commission for a

nuclear power plant be *incurred* prior to the issuance of the COL and *deferred* for later recovery?” Based on the plain language of subsection (3)(b), which imposes no limitation on the clause-recoverable preconstruction costs a utility may *incur* consistent with subsection (1)(f), the answer is yes.

Subsection (3)(c) of the NCR statute added a Commission approval step to the NCR process, and like subsection (3)(b), imposes a limitation on cost recovery during a particular period of time. Subsections (3)(c) and (3)(c)1, each of which is discussed separately below, state as follows:

(c) After a utility obtains a license or certification, it must petition the commission for approval before proceeding with preconstruction work beyond those activities necessary to obtain or maintain a license or certificate.

1. The only costs that a utility that has obtained a license or certification may recover before obtaining commission approval are those that are previously approved or necessary to maintain the license or certification.

Subsection (3)(c) is one of the recently-added approval steps that has impacted FPL’s project schedule as discussed above. FPL acknowledges that it cannot begin the referenced “preconstruction work” (and therefore cannot incur costs related to such work) prior to obtaining Commission approval. However, Issue 3A does not ask about “preconstruction work” – Issue 3A simply asks whether there are other costs, such as FPL’s Initial Assessment costs, that may be incurred if they are unrelated to “obtaining or maintaining a combined license.” Subsection (3)(c) is silent with respect to the consideration of such costs, and does not answer the question presented in Issue 3A.

Subsection (3)(c)1 – much like subsection (3)(b) – establishes a limitation on nuclear cost recovery during a particular period of time. Specifically, it limits a utility’s current recovery to costs “previously approved or necessary to maintain the license or certification” before a utility

obtains the Commission approval specified in (3)(c). There is no limitation on the incurrence or future clause recoverability of costs such as those related to a utility's statutorily-mandated feasibility filing, with or without regard to whether those costs are related to "obtaining or maintaining a combined license." Accordingly, based upon the plain language of subsection (3)(c) and (3)(c)1, such costs that are not related to or necessary for obtaining or maintaining the COL *can* be incurred and *can* be deferred for future clause recovery.

Finally, to the extent a party takes the position that FPL may incur costs not related to "obtaining or maintaining a license" prior to issuance of the COL, but may not seek recovery through the NCR process, such an interpretation would be inconsistent with Section 366.93(2), which states that the NCR mechanism "must be designed to promote utility investment in nuclear...power plants and allow for the recovery in rates of *all* prudently incurred costs" (emphasis added).

In sum, the NCR statute imposes limits on certain new nuclear project activities but does not extend as far and wide as OPC and other intervenors contend. Put simply, not *all* costs unrelated to obtaining or maintaining a COL are prohibited from being incurred at this time – only certain costs such as those associated with "preconstruction work" or the "construction phase." The NCR statute does not preclude FPL from engaging in activities designed to support its feasibility analysis required by the statute in support of its anticipated 2016 request to begin "preconstruction work," nor does it preclude the future recovery of those costs through the NCR mechanism. At it certainly does not require the inefficiencies and delay, and the resulting additional costs, which would arise from the interpretation advanced by OPC.¹¹

¹¹ Consistent with OPC's interpretation, FPL would first have to obtain Commission approval to begin "preconstruction work" before performing the Initial Assessment studies. Doing so would provide a less-informed basis upon which to consider initiating "preconstruction work" and would affect the project schedule. *See* Ex. 31 (Bates Stamp No. 00013).

Issue 3B: Are the Initial Assessment costs incurred as set forth in FPL’s Petition and Testimony for which FPL is seeking deferred recovery, costs that are related to or necessary for obtaining or maintaining a combined license?

FPL: *Yes. Initial Assessments are related to the COL process in two ways. First, Initial Assessments are necessary to the NCR process that enables FPL to obtain and maintain a COL. Second, the Initial Assessments better inform the technical work necessary to maintain compliance with the COL. However, even if the Commission were to determine that FPL’s Initial Assessment costs were not related to or necessary for obtaining or maintaining a COL, Section 366.93 does not prohibit FPL from incurring or deferring these costs for future recovery (see Issue 3A).*

As described by FPL Witness Scroggs, Initial Assessments are an achievable and reasonable collection of studies intended to provide the best schedule and cost estimate information available for the Turkey Point 6 & 7 feasibility analysis. Tr. 647 (Scroggs). The feasibility analysis is a necessary part of the NCR process that enables FPL to obtain a COL. *Id.* Absent the NCR statute and rule, FPL would not be able to pursue its new nuclear power plant investments. *Id.* The NCR process provide the requisite regulatory certainty necessary for FPL to undertake the complex and challenging task of adding new nuclear capacity to its system. Tr. 202 (Scroggs). In order to obtain the cost recovery that allows FPL to obtain and then maintain the COL, the NCR filing requirements must be satisfied. Tr. 647 (Scroggs). In other words, because the feasibility analysis is necessary to cost recovery, and because cost recovery is necessary to obtaining and later maintaining the COL, the feasibility analysis and supporting Initial Assessments are also related to obtaining or maintaining the COL.

Additionally, performance of the Initial Assessments better informs the technical work necessary to maintain compliance with the COL. Tr. 647, 704 (Scroggs). The NRC will not issue a COL until it makes a finding that there is reasonable assurance that Turkey Point 6 & 7 will be constructed and operated in conformity with the license. Tr. 705 (Scroggs). The Initial Assessment activities allow FPL to confirm that the planned work, and therefore the project

schedule, reflect that construction will be in conformity with the license. Tr. 705-06 (Scroggs). Clearly an activity does not have to be filed in report format with the NRC to be related to compliance with the COL. *See* Tr. 658-60 (Scroggs).

During the hearing, intervenors focused on whether Initial Assessments are “required” to obtain the COL. *See, e.g.*, Tr. 655-56; Tr. 664-65. Intervenors’ contention depends on replacing the words “related to” with “required” in the statute. Intervenors cannot rewrite the statute. The pertinent issue is whether cost recovery is allowable at this time pursuant to Section 366.93(3)(b), Florida Statutes. That section permits recovery of costs “related to” – not required for – obtaining the COL. Despite the fact that FPL is not seeking recovery of Initial Assessment costs at this time, as summarized above, they are in fact related to obtaining or maintaining the COL.

Issue 3C: Should the Commission approve FPL’s proposal to incur and defer for later recovery its Initial Assessment costs, as set forth in FPL’s petition and supporting testimony?

FPL: *Yes. The Initial Assessments will improve the project schedule certainty and resulting project cost information for use in the feasibility analysis required by the NCR statute to support authorization to begin preconstruction work. FPL and other parties desire more schedule and cost certainty before FPL begins the next phase of the project, and that is exactly what the Initial Assessments are intended to provide. Accordingly, FPL’s incurrence of \$1,842,105 in actual/estimated 2015 costs and \$3,157,895 in projected 2016 costs for Initial Assessments, and FPL’s request to defer recovery, is reasonable and should be approved.*

FPL is conducting Initial Assessments to inform a decision to begin “preconstruction work,” as that term is used in Section 366.93(3)(c), Florida Statutes, and to support the related regulatory approval of such a decision. Tr. 217 (Scroggs); *see also* Tr. 647 (Scroggs). These Initial Assessments are a collection of studies that are necessary to compile a coordinated recommendation to move forward. These include engineering analyses that will help better define the project schedule and construction scope, enhancing the accuracy of the cost and

schedule estimate to be used for the feasibility analysis that would be presented in support of a decision to proceed to “preconstruction work.” Tr. 217-218 (Scroggs).

It is reasonable and appropriate for FPL to perform the Initial Assessments in 2015 and 2016. Due to the nature of these Initial Assessments, some are required to be initiated up to many months in advance of the decision to begin preconstruction work. Witness Jacobs, on behalf of OPC, agreed that FPL need not wait until after FPL receives its COL from the NRC to perform Initial Assessments. Tr. 524 (Jacobs). He also agreed that “they can take place whenever it’s appropriate in the schedule.” Tr. 524 (Jacobs). If FPL were to delay Initial Assessments until after receipt of its COL, there would be a two-year impact to the overall schedule. Ex. 31 (Bates Stamp No. 00013). The impact could be reduced by conducting some analyses in parallel or expediting analyses, however that approach would negatively impact the execution risk profile of the project, introduction more uncertainty in the cost or schedule bases for the feasibility analysis used to make the decision to proceed to “preconstruction work.” *Id.*

The purpose of these studies, in part, is what Witness Jacobs suggests would be served by engaging in the time and cost intensive effort to obtain binding bids from contractors. Tr. 647 (Scroggs). In fact, Witness Jacobs’ recommendation and FPL’s decision to perform Initial Assessment studies are somewhat aligned in terms of purpose and timing: Witness Jacobs testified that he is recommending that FPL “gather additional information to better inform [the] estimated cost” and that such work should be done before the Commission considers a request to begin preconstruction work. Tr. 529-29 (Jacobs); *see also* Tr. 625 (Meehan) (agreeing that before significant investments are made, a further study of schedule and costs is needed). When asked whether the Initial Assessment studies would be consistent with the updated feasibility analysis he proposed, Witness Jacobs answered “Yes.” Tr. 534 (Jacobs). As discussed above in

Issue 1, however, Witness Jacobs's proposal is not a commercially practicable or viable option at this time. However, FPL can and will obtain a more refined schedule and cost data through the Initial Assessment studies. This will facilitate the review process at the next major step in this project, *i.e.*, a Commission determination of whether FPL should proceed to "preconstruction work." *See* Tr. 647-48 (Scroggs).

The Initial Assessment studies themselves are not "preconstruction work." This is inherent to FPL's project planning and evident in both testimony and project documentation that was created well before OPC raised the related legal issues. For example, FPL's Turkey Point 6 & 7 "Level 1 Baseline Project Schedule," dated January 2015, presents project activities broken down into 35 categories. The category titled "Perform Pre-Construction Activities" is scheduled to begin in 2017 – not before. Ex. 35 (Bates Stamp No. 00107). Although not defined by statute, FPL interprets "preconstruction work" to include the Front End Engineering and Design studies, bid specification development and project implementation planning necessary to begin physical construction. Ex. 38 (Bates Stamp No. 00119). Accordingly, Section 366.93(3)(c), Florida Statutes, does not prohibit FPL from performing Initial Assessments at this time.

FPL is recording costs for Initial Assessments in its Turkey Point 6 & 7 Construction Work in Progress Account. This approach is consistent with how FPL has recorded all other Turkey Point 6 & 7 preconstruction costs (as defined by Section 366.93(1)(f) and Rule 25-6.0423(1)(g)) since FPL's need determination. Ex. 35 (Bates Stamp No. 00126). FPL has chosen to defer requesting contemporaneous recovery of the costs expended for these Initial Assessments until it files its request for approval to proceed with pre-construction work. Tr. 217-218 (Scroggs). Recovery, then, would occur in 2017 when FPL expects to receive its COL. *See* Tr. 217-18 (Scroggs). At hearing, Witness Jacobs seemed to agree with this approach,

testifying that in his opinion, Initial Assessment costs would be recoverable after the COL is received. Tr. 524-25.

As described above, it is reasonable for FPL to incur \$1,842,105 in actual/estimated 2015 Initial Assessment costs and \$3,157,895 in projected 2016 Initial Assessment costs in order to provide FPL, the Commission, and other parties with the best information for a feasibility analysis that would support a Company decision to propose – and a Commission decision to approve – beginning “preconstruction work” on the Turkey Point 6 & 7 project. Further, FPL’s request to defer recovery until the feasibility analysis that the Initial Assessments support is before the Commission is reasonable. Neither the incurrence of the Initial Assessment costs nor the proposed deferral of cost recovery is prohibited, or otherwise inconsistent, with the current NCR statute or Rule. Accordingly, FPL’s request for a determination that its Initial Assessment costs are reasonable should be approved.

C. 2014-2016 Project Costs and Requested Recovery Amounts

Issue 4: What jurisdictional amounts should the Commission approve as FPL’s final 2014 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

FPL: *The Commission should approve FPL’s final 2014 prudently incurred Turkey Point 6 & 7 Preconstruction expenditures of \$18,448,666 (jurisdictional), and the final 2014 true-up over-recovery amount of \$821,804. The Commission also should approve actual 2014 Preconstruction carrying charges of \$4,970,056 and the resulting true-up under-recovery amount of \$130,292; and actual 2014 Site Selection carrying charges of \$158,482 and the resulting true-up under-recovery amount of \$79. FPL’s 2014 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were prudently incurred. The net 2014 jurisdictional true-up amount of (\$691,433) should be included in FPL’s 2016 NCR amount.*

During 2014, FPL continued to make progress on the licensing and permitting activities required for the Turkey Point 6 & 7 project, and maintained costs within the annual budget. Tr. 166 (Scroggs); *see also*, Tr. 189-193, Ex. 2, and Ex. 8 (providing 2014 project cost details). All

costs were incurred as a result of a deliberately managed process at the direction of a well-informed, properly qualified management team. Tr. 192 (Scroggs). Dr. Diaz, former Chairman of the NRC, testified that the decisions and management approaches used by FPL during 2014 were prudent and consistent with a reasonable strategy for pursuing the licensing of the proposed project. Tr. 368 (Diaz). FPL witness Reed opined that FPL's decisions and management approaches during 2014 were prudent and consistent with a reasonable strategy for pursuing the licensing of the Turkey Point 6 & 7 project. Tr. 368 (Reed). Additionally, FPL's project management decisions and costs were subject to the robust system of internal controls found to be adequate by Commission Audit Staff and Witness Reed, as described above in Issue 2.

Sections 403.519(4) and 366.93, Florida Statutes, establish the legal framework for the recovery of costs in the development of nuclear generation in Florida.¹² With respect to cost recovery, Section 403.519(4)(e) states that the "right of a utility to recovery any costs incurred prior to commercial operation...shall not be subject to challenge unless and only to the extent the Commission finds based on a preponderance of the evidence . . . that certain costs were imprudently incurred." This statute aligns well with the ordinarily applicable presumption of prudence discussed by Witness Reed. Tr. 386 (Reed). No intervenor presented any evidence that any particular cost was imprudently incurred. The only two intervenors who presented witnesses were OPC and the City of Miami, and neither Witness Jacobs (for OPC) nor Witness Meehan (for the City of Miami) claimed imprudence of any particular action, decision, or resulting cost FPL incurred in 2014. In fact, Witness Jacobs on behalf of OPC agreed that it was appropriate for FPL to continue to pursue its COL from the NRC. Tr. 500 (Jacobs).

¹² It has long been settled that when a general statute and a specific statute cover the same subject area, the specific statute controls. *See Sch. Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009), *citing Maggio v. Fla. Dep't of Labor & Empl. Sec.*, 899 So. 2d 1074, 1079 (Fla. 2005).

Accordingly, there is no evidence to support a finding of imprudence consistent with the standard set forth in Section 403.519(4)(e).

SACE argued that FPL did not present a reasonable feasibility analysis in 2014, and that therefore FPL is not entitled to recovery of its 2014 costs. This position ignores the fact that the Commission approved FPL's 2014 feasibility analysis and rejected the arguments SACE made in 2014. *See In re: Nuclear Cost Recovery Clause*, Docket No. 140009-EI, Order No. PSC-14-0617-FOF-EI, p. 17.

The record overwhelmingly supports a finding that FPL's 2014 costs were prudently incurred.¹³ Accordingly, the Commission should approve FPL's final 2014 Turkey Point 6 & 7 Preconstruction expenditures of \$18,448,666 (jurisdictional), and the final 2014 true-up over-recovery amount of \$821,804. Tr. 547 (Grant-Keene); Ex. 18. The Commission also should approve actual 2014 Preconstruction carrying charges of \$4,970,056 and the resulting true-up under-recovery amount of \$130,292; and actual 2014 Site Selection carrying charges of \$158,482 and the resulting true-up under-recovery amount of \$79. Tr. 547-48 (Grant-Keene); Ex. 18. The net 2014 jurisdictional true-up over-recovery amount of \$691,433 should be included in FPL's 2016 NCR amount. Tr. 547 (Grant-Keene); Ex. 18.

Issue 5: What jurisdictional amounts should the Commission approve as reasonably estimated 2015 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

FPL: *For current recovery purposes, the Commission should approve as reasonable FPL's 2015 actual/estimated Preconstruction expenditures of \$18,638,220 (jurisdictional, excluding Initial Assessment costs). This results in an actual/estimated 2015 true-up under-recovery amount of \$6,089,262 (jurisdictional). The Commission also should approve FPL's 2015 actual/estimated Preconstruction carrying charges of \$6,646,558 and resulting

¹³ FPL presented the testimony of Steven Scroggs, Jennifer Grant-Keene, John Reed, and Nils Diaz, each of whom supported the prudence of FPL's Turkey Point 6 & 7 project management, project decision, project controls, and the costs resulting therefrom. Additionally, FPL provided detailed cost information in its 2014 Nuclear Filing Requirement schedules. Ex. 2. Accordingly, it cannot reasonably be argued that FPL failed to meet its burden of proof as the petitioner seeking cost recovery.

under-recovery of \$11,769; and 2015 actual/estimated Site Selection carrying charges of \$159,744 and resulting under-recovery of \$598. The net under-recovery amount of \$6,101,628 should be included in FPL's 2016 NCR amount. FPL's 2015 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.*

In 2015, FPL continued to focus on obtaining the necessary licenses, authorizations, and approvals needed for Turkey Point 6 & 7. Tr. 196 (Scroggs). FPL's stepwise approach continues to provide FPL's customers with the best opportunity to make steady progress on the project. Tr. 197 (Scroggs). FPL's 2015 actual/estimated costs reflect this balanced approach. See Tr. 226-32, Ex. 9, and Ex. 10 (providing 2015 and 2016 project cost details). Further, as discussed above in Issue 1, the project remains feasible and cost-effective for customers.

FPL included actual costs for January and February of 2015 and developed estimates for the remainder of the year. FPL's estimates were developed in accordance with FPL's budget and accounting guidelines and policies. Tr. 225 (Scroggs). FPL also verified that rates for contracted services are consistent with FPL's experience in the broader industry and compared its estimates to other costs being incurred by the Company for similar activities, and found them to be reasonable. *Id.*

FPL's 2015 Turkey Point 6 & 7 actual/estimated costs are presented in detail in the NFRs filed in this docket. The relevant NFRs can be found in Exhibit 9. In sum, as supported by FPL witness Scroggs and calculated by FPL witness Grant-Keene, the Commission should approve as reasonable FPL's 2015 actual/estimated Preconstruction expenditures of \$18,638,220 (jurisdictional, excluding Initial Assessment costs), and the 2015 estimated true-up under-recovery amount of \$6,089,262. Tr. 560 (Grant-Keene). The Commission also should approve as reasonable FPL's 2015 actual/estimated Preconstruction carrying charges of \$6,646,558 and Site Selection carrying charges of \$159,744, as well as the 2015 Preconstruction carrying charge

estimated under-recovery of \$11,769 and Site Selection carrying charge estimated under-recovery of \$598. Tr. 560 (Grant-Keene). These amounts are also provided in Ex. 20. The net 2015 under-recovery true-up amount of \$6,101,628 should be included in FPL's 2016 NCR amount. Tr. 560 (Grant-Keene).¹⁴

Issue 6: What jurisdictional amounts should the Commission approve as reasonably projected 2016 costs for FPL's Turkey Point Units 6 & 7 project?

FPL: *For current recovery purposes, the Commission should approve as reasonable FPL's 2016 projected Preconstruction costs of \$21,057,310 (jurisdictional, excluding Initial Assessment Costs). The Commission also should approve for recovery projected Preconstruction carrying charges of \$7,622,521, and projected Site Selection carrying charges of \$159,588. The total jurisdictional amount of \$28,839,419 should be included in FPL's 2016 NCR amount. FPL's 2016 projected expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.*

In 2016, FPL expects to incur costs to support the licensing and permit application reviews underway and to support compliance with permits and approvals obtained. Tr. 226 (Scroggs). FPL developed its projection of 2016 costs in accordance with FPL's budget and accounting guidelines and policies. *Id.* FPL also verified that rates for contracted services are consistent with FPL's experience in the broader industry and compared its estimates to other costs being incurred by the Company for similar activities, and found them to be reasonable. *Id.* Further, as discussed above in Issue 1, the project remains feasible and cost-effective for customers. These facts support the reasonableness of FPL's 2016 projected costs.

FPL's projected 2016 Turkey Point 6 & 7 costs are presented in detail in the NFRs filed in this docket. The relevant NFRs can be found in Exhibit 9. In sum, as supported by FPL witness Scroggs and calculated by FPL witness Grant-Keene, the Commission should approve as reasonable FPL's 2016 projected Preconstruction expenditures of \$21,057,310 (jurisdictional,

¹⁴ Additionally, the Commission should approve as reasonable \$1,842,105 for Initial Assessment activities in 2015 to better refine project schedule and cost information for FPL's 2016 feasibility analysis, as discussed above in Issue 3C.

excluding Initial Assessment costs). Tr. 561 (Grant-Keene). The Commission also should approve as reasonable FPL's 2016 projected Preconstruction carrying charges of \$7,622,521 and Site Selection carrying charges of \$159,588. *Id.* The net amount of \$28,839,419, therefore, should be included in FPL's 2016 NCR amount.¹⁵

Issue 7: What is the total jurisdictional amount to be included in establishing FPL's 2016 Capacity Cost Recovery Clause factor?

FPL: *The total jurisdictional amount of \$34,249,614 should be included in establishing FPL's 2016 CCRC factor.*

As summarized above, the record shows that FPL's actual 2014 Turkey Point 6 & 7 costs were prudently incurred. Additionally, the record shows that FPL's actual/estimated 2015 costs and projected 2016 costs are reasonable. Accordingly, the Commission should approve a Nuclear Power Plant Cost Recovery amount of \$34,249,614 to be included in establishing FPL's 2016 Capacity Cost Recovery Clause factor. Tr. 562 (Grant-Keene); Ex. 20.

IV. CONCLUSION

For all of the foregoing reasons, based upon Florida law, the evidentiary record in this proceeding, and Commission precedent, FPL requests that the Commission (i) approve FPL's requested 2016 NCR amount; (ii) approve FPL's 2015 feasibility analysis; (iii) determine it is permissible and reasonable for FPL to perform Initial Assessment studies; and (iv) reject OPC's recommended project cost cap.

¹⁵ Additionally, the Commission should approve as reasonable \$3,157,895 for projected Initial Assessment activities in 2016 to better refine project schedule and cost information for FPL's 2016 feasibility analysis, as discussed above in Issue 3C.

Respectfully submitted this 4th day of September, 2015

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