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STATE OF FLORIDA



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FILED OCT 22, 2015
DOCUMENT NO. 06768-15
FPSC - COMMISSION CLERK

Public Service Commission

October 22, 2015

Jon C. Moyle, Esquire
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee FL 32301

**Re: Florida Industrial Power Users Group vs.
Florida Public Service Commission - FPSC Docket No. 150075-EI**

Dear Mr. Moyle:

Enclosed please find a copy of the Notice of Administrative Appeal, which your office filed with the Florida Public Service Commission on October 21, 2015, along with its attachment, Order No. PSC-15-0401-AS-EI. A certified copy of the Notice of Administrative Appeal, with attachment, is being electronically filed on this date with the Florida First District Court of Appeal.

Please do not hesitate to contact me should you have any questions concerning this matter.

Sincerely,

Handwritten signature of Carlotta S. Stauffer in blue ink.

Carlotta S. Stauffer
Commission Clerk

CSS: amc
Enclosure

cc: Karen A. Putnal, Esquire
Samantha Cibula, General Counsel
Adria E. Harper, General Counsel
Diana Csank, Associate Attorney
Tyson Slocum
John J. Truitt, Associate Public Counsel
J.R. Kelly, Public Counsel
John T. Butler, Asst. General Counsel
Maria Moncada, Principal Attorney
Kevin Donaldson, Esquire

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CLERK

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October 22, 2015 Letter

Kenneth A. Hoffman
Anna H. Upton, Esquire
Todd F. Bohrmann

**FLORIDA INDUSTRIAL POWER
USERS GROUP,**

Appellant,

v.

**FLORIDA PUBLIC SERVICE
COMMISSION,**

Appellee.

**IN THE FLORIDA PUBLIC
SERVICE COMMISSION**

DOCKET NO. 150075-EI

**NOTICE OF
ADMINISTRATIVE
APPEAL**

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
NOTICE OF ADMINISTRATIVE APPEAL**

NOTICE IS GIVEN, pursuant to Florida Rules of Appellate Procedure 9.900 and 9.110, that the Florida Industrial Power Users Group (FIPUG), appeals to the Florida First District Court of Appeals the order of the Florida Public Service Commission, Order No. PSC-15-0401-AS-EI, rendered on September 23, 2015, entitled Final Order Approving Settlement between FPL and the Office of Public Counsel. A copy of the order being appealed, which the Florida Public Service Commission has designated as "final action", is attached as Exhibit "A" to this Notice of Administrative Appeal.



**I CERTIFY THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL
DOCUMENT THAT WAS FILED WITH THE
FLORIDA PUBLIC SERVICE COMMISSION
BY: Carlotta S. Stauffer
CARLOTTA S. STAUFFER, COMMISSION CLERK
(or Office of Commission Clerk designee)**

/s/ Jon C. Moyle

Jon C. Moyle, Jr.
Karen A. Putnal
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118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850)681-3828
Facsimile: (850)681-8788
jmoyle@moylelaw.com

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of FIPUG's Notice of Administrative Appeal, was furnished to the following by Electronic Mail, on this 21st day of October, 2015:

Martha F. Barrera
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/s/ Jon C. Moyle
Jon C. Moyle
Florida Bar No. 727016

**INDUSTRIAL POWER
USERS GROUP,**

Appellant,

v.

**FLORIDA PUBLIC SERVICE
COMMISSION,**

Appellee.
_____ /

**IN THE FLORIDA PUBLIC
SERVICE COMMISSION**

DOCKET NO. 150075-EI

**NOTICE OF
ADMINISTRATIVE
APPEAL**

EXHIBIT A

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
ORDER NO. PSC-15-0401-AS-EI
ISSUED: September 23, 2015

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR
RONALD A. BRISÉ
JIMMY PATRONIS

FINAL ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN FLORIDA
POWER & LIGHT COMPANY AND THE OFFICE OF PUBLIC COUNSEL

BY THE COMMISSION:

On March 6, 2015, pursuant to Section 366.06, Florida Statutes (F.S.), Florida Power & Light Company (FPL) filed its Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation. Specifically, FPL seeks approval of a Purchase and Sale Agreement with CBAS Power Holdings, LLC, to assume ownership of the Cedar Bay generating facility through a stock purchase and terminate its existing Power Purchase Agreement (PPA) with Cedar Bay Generating Company, Limited Partnership.

On July 24, 2015, FPL and the Office of Public Counsel (OPC) filed a joint motion for approval of a settlement agreement (motion). The Settlement Agreement was attached and filed with the motion. A duly noticed administrative hearing on the issues in this docket was held on July 28 and 29, 2015. At the hearing, the testimony of witnesses was heard and evidence was introduced into the record. The Florida Industrial Power Users Group (FIPUG) did not sign the settlement agreement and objected to the motion being considered during the July 28 and 29 hearing. A special Commission agenda conference was scheduled for oral argument on the motion on August 27, 2015. On July 31, 2015, FIPUG filed its objections to the motion. FIPUG and staff were authorized to request information from FPL on the provisions of the Settlement Agreement through data requests. The parties filed post hearing briefs on the motion on August 13, 2015. We heard argument of counsel on the Settlement Agreement at the special agenda conference on August 27, 2015.

We have jurisdiction pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.041, 366.05, 366.06, 366.07, and 120.57, F.S., and Rules 28-106.301 and 28-106.302, Florida Administrative Code.

A review of the testimony and exhibits shows that the terms of the Settlement Agreement are supported by the record of the hearing in this proceeding. We find there is convincing, credible evidence that the \$520.5 million purchase price, plus \$326.9 million for income tax gross up, serves to mitigate the impact on customers of the Cedar Bay power purchase obligation, and is reasonable, cost-effective, and prudent. The Settlement Agreement shifts part of the recovery of the Cedar Bay purchase price to base rates, specifically, \$85 million of the regulatory asset will be recovered through existing base rates until the next test year for a general rate proceeding. At that time, the unamortized amount will be recovered through the capacity cost recovery clause which will result in customer savings in 2015 and 2016. The Settlement Agreement puts limits on FPL's recovery of railcar lease and ground lease payments. This will provide additional protection for customers against unanticipated costs under those leases after the Cedar Bay facility is retired.

We also find that there is an environmental benefit to the transaction in that air emissions as a result of the facility's reduced operation and early retirement will be reduced. Further, to ensure additional protections for customers, the Settlement Agreement requires FPL to double the amount of additional coverage limits in a longer term for the environmental liability insurance. This will serve to mitigate customer risk in the event of environmental liability costs that FPL may be assessed.

Based upon the Petition, our review of the Settlement Agreement, the evidence on the record, briefs of the parties, and oral argument at the special agenda conference, and for the reasons stated above, we find that the Settlement Agreement is reasonable for all parties, creates customer savings, includes additional protections for customers, and avoids the long-term costs of the PPA. Thus, our approval of the Settlement Agreement is in the public interest. The Settlement Agreement resolves all the issues in this docket. Accordingly, we approve the Settlement Agreement which is attached to this Order as Exhibit A and made a part hereof.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the attached Settlement Agreement is approved. It is further

ORDERED that this docket shall be closed if no appeal is timely filed.

By ORDER of the Florida Public Service Commission this 23rd day of September, 2015.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MFB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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.

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408

By: 
Eric E. Silagy

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

By: 
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