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November 13, 2015

**E-PORTAL**

Ms. Carlotta Stauffer, Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 150001-EI: Fuel and Purchased Power Cost Recovery Clause with  
Generating Performance Incentive Factor**

Dear Ms. Stauffer:

Attached for electronic filing, please find Florida Public Utilities Company's Post Hearing Statement and Brief in the above-referenced matter.

Thank you for your assistance with this filing. As always, please don't hesitate to let me know if you have any questions whatsoever.

Sincerely,



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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.		DOCKET NO. 150001-EI DATED: November 13, 2015
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**FLORIDA PUBLIC UTILITIES COMPANY'S  
POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND  
POST HEARING BRIEF**

Consistent with Order No. PSC-15-0096-PCO-EI, issued February 10, 2015, as modified by Order No. PSC-15-0169-PCO-EI, issued May 4, 2015, and the further direction of the Florida Public Service Commission ("Commission") at the November 3, 2015 hearing in this proceeding, Florida Public Utilities Company ("FPUC" or "Company") files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

**I. FPUC's Position on the Issues –**

**COMPANY-SPECIFIC ISSUES – FLORIDA PUBLIC UTILITIES**

**ISSUE 4A:** Should FPUC be permitted to recover the cost (depreciation expense, taxes, and return on investment) of building an interconnection between FPL's substation and FPUC's Northeast Division through the fuel recovery clause?

FPUC's Position:       **\*Yes. The project costs constitute unanticipated fuel-related costs not included in the computation of base rates for the Company. The project itself is designed to lower the delivered price of purchased power to the Company, which will produce savings for FPUC's customers.\***

**ISSUE 4B:** Should FPUC's request to recover consulting and legal fees through the fuel clause be approved?

FPUC's Position:       **\*Yes. These costs are not being recovered in the Company's base rates, tend to fluctuate significantly from year to year, and are directly related to projects that will inure to the benefit of FPUC's ratepayers. Moreover, FPUC has historically recovered similar legal and consulting expenses through the fuel clause.\***

**GENERIC FUEL ADJUSTMENT ISSUES**

**ISSUE 7:** What are the appropriate actual benchmark levels for calendar year 2015 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

FPUC's Position: \* **No position.**\*

**ISSUE 8:** What are the appropriate estimated benchmark levels for calendar year 2016 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

FPUC's Position: \***No position.**\*

**ISSUE 9:** What are the appropriate final fuel adjustment true-up amounts for the period January 2014 through December 2014?

FPUC's Position: \***\$1,474,307 (Under-recovery)**\*

**ISSUE 10:** What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2015 through December 2015?

FPUC's Position: \***\$107,841 (Under-recovery)**\*

**ISSUE 11:** What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2016 to December 2016?

FPUC's Position: \* **\$1,582,148 (Under-recovery)**\*

**ISSUE 12:** What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2016 through December 2016?

FPUC's Position: \***The appropriate projected total fuel and purchased power cost recovery amounts for the period January 2016 through December 2016 is \$67,488,997.**\*

**FUEL FACTOR CALCULATION ISSUES**

**ISSUE 19:** What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2016 through December 2016?

**FPUC's Position:** **\*The appropriate projected amount to be included in the recovery factor for the period January 2016 through December 2016 is \$68,971,145, which includes prior period true-ups.\***

**ISSUE 20:** What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2016 through December 2016?

**FPUC's Position:** **\*The appropriate tax revenue factor is 1.00072.\***

**ISSUE 21:** What are the appropriate levelized fuel cost recovery factors for the period January 2016 through December 2016?

**FPUC's Position:** **\*The appropriate factor is 6.692¢ per kWh.\***

**ISSUE 22:** What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

**FPUC's Position:** **\*The appropriate line loss multiplier is 1.0000.\***

**ISSUE 23:** What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

**FPUC's Position:** **\*The appropriate levelized fuel adjustment and purchased power cost recovery factors for the period January 2016 through December 2016 are as follows:**

<i>Rate Schedule</i>	<i>Adjustment</i>
RS	\$0.10619
GS	\$0.10169
GSD	\$0.09709

GSLD	\$0.09407
LS	\$0.07211
Step rate for RS	
RS Sales	\$0.10619
RS with less than 1,000 kWh/month	\$0.10188
RS with more than 1,000 kWh/month	\$0.11438

**The appropriate adjusted Time of Use (TOU) and Interruptible rates for the Northwest Division are:**

*Time of Use/Interruptible*

<i>Rate Schedule</i>	<i>Adjustment On Peak</i>	<i>Adjustment Off Peak</i>
RS	\$0.18588	\$0.06288
GS	\$0.14169	\$0.05169
GSD	\$0.13709	\$0.06459
GSLD	\$0.15407	\$0.06407
Interruptible	\$0.07907	\$0.09404

\*

**EFFECTIVE DATE**

**ISSUE 35:** What should be the effective date of the fuel adjustment factors and capacity cost recovery factors for billing purposes?

**FPUC's Position:** \*The effective date for FPUC's cost recovery factors should be the first billing cycle for January 1, 2016, which could include some consumption from the prior month. Thereafter, customers should be billed the approved factors for a full 12 months, unless the factors are otherwise modified by the Commission. \*

## **TARIFF APPROVAL**

**ISSUE 36:** Should the Commission approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding?

**FPUC's Position:** **\*Yes. The Commission should approve revised tariffs reflecting the fuel adjustment factors and capacity cost recovery factors determined to be appropriate in this proceeding. The Commission should direct staff to verify that the revised tariffs are consistent with the Commission's decision.\***

**ISSUE 37:** Should this docket be closed?

**FPUC's Position:** **\*The docket is ongoing and should remain open.\***

## **IV. BRIEF ON DISPUTED ISSUES**

### Overview

Consistent with the Commission's long-standing policy regarding recovery of costs through the fuel adjustment clause, FPUC is seeking to recover in this proceeding prudently incurred fuel-related costs that have not been recovered in the Company's base rates, and which, if expended, are anticipated to produce savings for FPUC's customers. TR. 521-522, 529-530, 532-534 (Young) *See* Order No. 14546, issued in Docket No. 850001-EI-B, on July 8, 1985, at p. 5 (85 FPSC 7:71). Most significantly, as it relates to the costs at issue under Issues 4A and 4B for this proceeding, the record reflects that recovery of these costs is appropriate, because the costs are associated with activities or projects that are not only fuel-related, but which will ultimately produce fuel savings that will flow to FPUC's customers through the fuel adjustment clause. TR 566 (Young).

The record is clear that recovery through the fuel clause is valid and in fact, preferable in this case, due to the unique timing issues presented. Further, the record reflects that the consultants and attorneys hired by FPUC have worked on projects that have produced fuel savings for FPUC's customers. In fact, the Commission has already recognized the value and savings associated with certain of these projects, even going so far as to note the use of consultants in furthering the development of one of them.<sup>1</sup>

OPC launched a vague line of cross-examination targeting the Company's earnings. However, the record is clear that the expenses for which FPUC seeks recovery in this proceeding are not currently recovered through the Company's base rates. Thus, there would be no double recovery. In the event that the OPC, instead intended to suggest that the Company's earnings level should influence whether recovery is appropriate through the clause, this too should be rejected. The Commission has clearly stated that the purpose of the clause proceedings is to provide for recovery of volatile costs that tend to fluctuate between rate case proceedings, which if incorporated in base rates, would unduly penalize the utility or its customers.<sup>2</sup> The proceeding is designed to address recovery of fuel costs in a timely and ongoing manner, but not issues pertaining to base rates.<sup>3</sup> The Commission has never applied an earnings test when determining eligibility for recovery through any of the clauses. Thus, the Company's earnings should not be a factor for consideration in this proceeding.

In sum, no party filed testimony in this proceeding in opposition to FPUC's requests. The only evidence in the record is the prefiled testimony and exhibits of FPUC's witnesses Young and Cutshaw, the oral testimony of those same witnesses at hearing, certain staff

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<sup>1</sup> Order No. PSC-15-0025-PAA-EQ, issued January 7, 2015, in Docket No. 140180-EQ; and Order No. PSC-14-0711-PAA-EQ, issued December 30, 2014, in Docket No. 140185-EQ, at p. 2 (noting use of Sterling and other consultants in considering options for CHP unit on Amelia Island, which evolved as Eight Flags project).

<sup>2</sup> Order No. PSC-05-0748-FOF-EI, issued July 14, 2005, in Docket No. 041272-EI, at p. 37.

<sup>3</sup> Order No. 25773, issued February 24, 1992, in Docket No. 910794-EQ.

discovery exhibits admitted at hearing, FPUC's surveillance report, and the Company's 2014 FERC Form 1. The uncontroverted evidence supports FPUC's case as it relates to both recovery of the revenue requirement on the proposed interconnect with FPL and the subject legal and consulting fees. As such, FPUC has met its burden of proof and recovery must be allowed.

A. Issue 4A – Proposed Interconnect with FPL

In this proceeding, FPUC is seeking to recover depreciation expense, taxes other than income, and a return on investment associated with a proposed interconnect between FPL and FPUC's Northeast Division. TR 532 (Young). As explained by the Company's witness Curtis Young, the costs associated with the proposed interconnect were not anticipated in the Company's last rate case and therefore, would not be recovered through current base rates. TR 532 (Young). The investment is, however, of critical importance to the Company, because it will provide the Company with additional, competitive options for power purchases upon the termination of its current purchase power contracts. TR 533 (Young); TR 593, 604-605, 624, 626, 634 (Cutshaw); Exhibit 89. This is of critical importance, because the Company is relatively small and owns no generation assets, therefore it relies upon power purchases to serve its customers. TR 567, 615 (Cutshaw).

As explained by FPUC witness Mark Cutshaw, the Company's opportunities to successfully negotiate purchase power contracts with real savings for its customers, particularly for the Northeast Division, have been limited to some extent by its single transmission interconnection with JEA. TR 593-594 (Cutshaw). Currently, all large wholesale purchases for the Northeast Division must traverse JEA's 138 KV transmission network to get to FPUC's 138 KV transmission line, which then crosses a large marshy area before connecting with FPUC's



distribution system. TR 594 (Cutshaw). With the addition of a second interconnection option providing another route for off-island power supplies, FPUC anticipates it will have significantly better leverage as it embarks on the procurement process for its next power purchase agreement for the Northeast Division, which the Company contends will ultimately produce significant savings. TR 533 (Young); TR 596 (Cutshaw). Moreover, as witness Cutshaw testified, the additional interconnect should produce the added benefit of savings through reduced transmission costs. TR 595 (Cutshaw).

While the savings cannot be fully quantified until negotiations for future power purchase agreements are complete, the Company retained expert assistance from an economist to assess the projected savings associated with establishing the interconnect. TR 570 (Young); TR 596, 628 (Cutshaw). The expert determined that the savings on 10 MW of purchased power are projected to be in excess of \$2,000,000 for FPUC and its customers in 2018 alone with additional savings in future years. TR 533 (Young); TR 600, 605 (Cutshaw); Exhibit 34, page 10 of 10; Exhibit 90; Exhibit 91. Witness Cutshaw further testified that the lifetime fuel savings for the project will significantly exceed the costs of the project. TR 630, 633 (Cutshaw); Exhibit 90.

In addition to fuel savings, the new interconnection will provide added reliability. TR 595, 625, 628-629 (Cutshaw); Exhibit 91. As witness Cutshaw explained, FPUC's customers on Amelia Island have experienced significant outages due to transmission-related issues, but the Company anticipates that the additional interconnection to FPL will provide valuable network redundancy, which should reduce transmission-related outages. TR 625 (Cutshaw).

The FPL interconnect project is a good project with tangible benefits, but the value and realization of those benefits depends largely upon timing, as well advance planning. TR 605,

612-613, 622-623 (Cutshaw). Because a critical measure of the projected savings relates to FPUC's current power purchase agreement with JEA, the timing of the project is crucial. Exhibit 34; Exhibit 89. As Mr. Cutshaw testified, the project has a long lead time of two years. TR 622 (Cutshaw). At the same time, FPUC is preparing to take the initial steps necessary for defining its next power purchase agreement for the Northeast Division, which would become effective in January 2018. TR 624, 635 (Cutshaw). Thus, in order for the full benefits of the interconnection project to come to fruition, most notably the access to alternative wholesale power supplies and enhanced bargaining leverage, the activities necessary to complete the interconnect with FPL must begin now. TR 629 (Cutshaw).

Rejection in this proceeding could delay the project, because commitments to contractors for moving this project forward must be made in the near term in order for the project to go into service prior to January 2018. TR 614, 629 (Cutshaw); Exhibit 89. While the suggestion has been made that recovery of this project is more appropriate through base rates, the timeline for the Company's next rate proceeding is unclear, at best. TR 614, 616 (Cutshaw). Certainly, there is the potential that a rate case would result in further increases for FPUC's customers, while allowing recovery of the revenue requirement for the interconnect project through the fuel adjustment amounts to just 17 cents for 1,000 kilowatts on a typical residential bill. TR 564, 571-572 (Young); TR 637 (Cutshaw); Exhibit 89; Exhibit 91. Perhaps the most immediate concern is, however, that pursuing a rate case for purposes of recovery of the project could delay the in-service date of the project, which would then reduce the benefits of the project, including the benefit to the Company's negotiation posture as it works towards its next power purchase agreement. TR 612-614; 622-623; 624; 625-626; 628-629; 634-635 (Cutshaw); TR 534 (Young). Consequently, rejection of recovery in this proceeding and the associated regulatory

uncertainty would necessitate that the Company reassess the project, potentially placing this project at risk. TR 533, 563 (Young); TR 612, 629, 634 (Cutshaw).

In testimony, witness Young also offered that the Company would be willing to seek approval to transfer to rate base any costs associated with the FPL interconnect that remain at the time of the Company's next rate case, but he emphasized that recovery through the fuel adjustment clause is consistent with Commission policy. TR 533, 566, 573 (Young). In that regard, the Commission has consistently applied the policy set forth in Order No. 14546 regarding recovery through the Fuel Clause to FPUC, even though FPUC is not a generating utility and therefore does not directly incur fossil-fuel related costs. Exhibit 89. For instance, in Order No. PSC-05-1252-FOF-EI, issued in Docket No. 150001-EI, the Commission specifically referenced Order No. 14546 in determining that FPUC should be allowed to recover consultant fees associated with designing an RFP, but not additional consultant fees associated with designing a rate smoothing charge designed to make a price increase more palatable.<sup>4</sup> Therein, the Commission identified Order No. 14546 as defining its policy on recovery through both the "fuel and purchased power cost recovery clause." *Id.* [Emphasis added]. (Certainly, were this not the case, there would be very little guidance otherwise as to what is recoverable in terms of purchased power, as opposed to fossil fuel.) Thus, at least as it relates to FPUC, the Commission's fuel recovery policy set forth in Order No. 14546 has been applied to purchased power as well. Exhibit 89. In further interpreting its cost recovery policy in the context of a capital project to upgrade FPL's Scherer Unit 4, the Commission has also explained that:

When similar circumstances exist, the Commission should attempt to treat, for cost recovery purposes, specific types of fossil fuel-related expenses in a uniform

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<sup>4</sup> Order No. PSC-05-1252-FOF-EI, issued December 23, 2005, in Docket No. 150001-EI, at page 8.

manner among the various electric utilities. *At times, however, it may be appropriate to treat similar types of expenses in dissimilar ways.*<sup>5</sup>

[Emphasis added]. Certainly, as it relates to FPUC, there are a myriad of reasons that capital projects might be allowed for recovery through the clause, including FPUC's size and the relative value of a particular project to the Company and its customers.

But, in this case, the Commission also need not construct a distinction to support treatment of the FPL interconnect project in a "dissimilar" fashion. In the referenced Order regarding Scherer Unit 4, the Commission determined that only capital projects that produce fuel savings based on the delivered price of fuel [purchased power as it relates to FPUC] are eligible for cost recovery. *Id.* at p. 9. The Commission noted that, in Order No. 14546, the example had been given of an unanticipated short-term lease on a terminal, which resulted in a lower delivered price of oil. The Commission also referenced the example of FPL's purchase of rail cars, which lowered the delivered price of coal and was consequently approved in Docket No. 950001-EI. *Id.* As it relates to FPUC, the proposed interconnect with FPL is consistent with the Commission's approval of these past projects, because the interconnect will result in a reduction to the delivered price of purchased power for FPUC. TR 533 (Young); Exhibit 34; TR 596, 600 (Cutshaw). Similarly, by Order No. PSC-93-1331-FOF-EI, the Commission allowed FPL to recover costs associated with the Martin gas pipeline lateral through the fuel adjustment clause, reasoning that:

The weight of the evidence is that the Martin gas pipeline lateral has reduced costs, or at the very minimum has not resulted in any increased costs, and the decision was made with the ratepayers' interest in mind, which is to minimize cost. In accordance with Order No. 14546, recognizing the unique facts and circumstances regarding FPL's decision to construct the lateral, to alleviate

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<sup>5</sup> Order No. PSC -11-0080-PAA-EI, issued January 31, 2011, in Docket No. 100404-EI, at p. 7; *citing* Order No. 14546, at p. 2.

regulatory lag, and to encourage utilities to take actions to reduce fuel costs to customers, we find that it is appropriate in this case to recover the depreciation and return on investment in the Martin gas pipeline lateral through the fuel recovery clause until Florida Power and Light Company's next rate case. At that time, we can review whether these costs should be removed from the fuel cost recovery clause and treated as additions to utility plant-in-service recovered through base rates.

Order No. PSC-13-1331-FOF-EI, issued September 13, 1993, in Docket No. 930001-EI, at p. 5.<sup>6</sup>

Like the Martin lateral, FPUC's proposed project has been developed with the ratepayers' interest in mind and with an eye towards significantly reducing the delivered price of fuel for FPUC's customers. TR 533 (Young); TR 594 (Cutshaw). Like these other projects for which recovery was allowed, recovery through the fuel adjustment clause of the FPL interconnect project will enable the Company to take advantage of a time-sensitive, cost-effective transaction not reasonably anticipated or projected in the Company's last rate case.<sup>7</sup> As such, it should be deemed eligible for recovery through the clause.<sup>8</sup>

For all these reasons, the Commission should allow the Company to recover depreciation expense, taxes other than income, and a return on investment associated with a proposed interconnect between FPL and FPUC's Northeast Division. To do otherwise would clearly be contrary to past decisions and practice of the Commission.

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<sup>6</sup> See also, Order No. PSC-98-1715-FOF-EI, issued in Docket No. 980001-EI, on December 18, 1998 [approving recovery by Florida Power Corporation of the conversion costs, as well as a return, to convert Debary Unit 8 to natural gas]; and Order No. PSC-02-0655-AS-EI, issued in Docket No. 000824-EI and 020001-EI, at p. 5 [approving a settlement that including allowing recovery of Hines Unit 2 through the fuel clause up to the level of "fuel savings"].

<sup>7</sup> See, Order No. 14546, issued July 8, 1985, in Docket No. 850001-EI-B, at p. 3.

<sup>8</sup> FPUC notes that allowing recovery in this proceeding would also be consistent with past cases in which the Commission has recognized that the Company does recover certain transmission costs through the fuel adjustment clause. Order No. PSC-13-0665-FOF-EI, issued in Docket No. 130001-EI, on December 18, 2013; Order No. PSC-14-0701-FOF-EI, issued in Docket No. 140001-EI, on December 19, 2014. TR 615 (Cutshaw).

B. Issue 4B – Legal and Consulting Fees

As it relates to the legal and consulting fees, the Company testified in detail regarding the services and projects that coincide with the fees included in the true-up for 2014. TR 521 (Young). Each of the consultants and law firms referenced (Christensen, Gunster, Sterling, King & Spalding, Cantrell Advisors, and Stinson Leonard) provided services that directly related to efforts by the Company to either protect fuel savings for its customers or produce additional fuel savings. TR 521 (Young). These consultants worked on analyses of FPUC's current power purchase agreements to determine if there were mechanisms available to produce cost reductions. TR 521 (Young). They also assisted with the development and negotiation of a new power purchase contract with Eight Flags Energy, as well as the modification of the existing agreement with Rayonier Performance Fibers, both of which the Commission has already recognized will produce significant savings for FPUC's customers. TR 521 (Young); Order No. PSC-15-0025-PAA-EQ, issued January 7, 2015, in Docket No. 140180-EQ; Order No. PSC-14-0711-PAA-EQ, issued December 30, 2015.

The recovery of these types of legal and consulting fees is consistent with prior cases in which the Commission has allowed FPUC to recover similar expenses, recognizing that FPUC does not otherwise have the resources necessary to conduct this type of analysis and activity. *Eg.*, Order No. PSC-05-1252-FOF-EI, issued in Docket No. 050001-EI, on December 23, 2005 (specifically allowing recovery of consultant fees incurred for designing an RFP). As the Commission found:

. . . given FPUC's small size, it does not have the resources internally to put together an RFP and evaluate the responses, so the costs associated with this type of activity is not in base rates.<sup>9</sup>

Other similar such costs were included for recovery by the Company through the fuel adjustment clause in Dockets Nos. 060001-EI, 070001-EI, 080001-EI, 090001-EI, 100001-EI, 110001-EI, 120001-EI, 130001-EI, and 140001-EI. TR 522; 529-534 (Young); Exhibit 89. Those costs were consequently reviewed, analyzed, verified to the Company's general ledger and reconciled to the Company's true-up filings by way of the annual PSC audit process. Exhibit 89. And, again, the costs recovered in those proceedings were much the same as those included in the 2014 True-Up, including consultants' analysis of current power purchase arrangements, as well as the assistance with the negotiation and drafting of a power purchase agreement with Rayonier. TR 522-523 (Young).

For instance, in Docket No. 120001-EI, the Company was allowed to recover legal and consulting fees associated with an amendment to its Purchased Power Agreement ("PPA") for the Northwest Division. In that case, the Office of Public Counsel objected to the costs to the extent that they related to the time of use rates ("TOU"), but did not object to the recovery of costs associated with development of the PPA amendment. Ultimately, as reflected in Order No. PSC-12-0664-FOF-EI, a stipulation was reached whereby the TOU rate-related costs were removed from the fuel factor calculations. The legal and consulting fees associated with the PPA amendment were, however, included in the calculation of the factor. Exhibit 89.

The Company also offered detailed testimony regarding amounts included in 2015, as well as amounts projected to be incurred in 2016, for legal and consulting fees. TR 530-532

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<sup>9</sup> Order No. PSC-05-1252-FOF-EI, issued in Docket No. 050001-EI, on December 23, 2005, at p. 9.

(Young). Witness Young explained that the Gunster, Christensen, and Pierpont firms have been engaged in 2015 to work on ongoing and new projects that are designed to achieve additional fuel savings for FPUC's customers. TR 531 (Young). The projects include additional CHP opportunities, similar to the Rayonier and Eight Flags projects, which the Commission has previously recognized will produce significant savings. TR 531 (Young); Order No. PSC-15-0025-PAA-EQ, issued January 7, 2015, in Docket No. 140180-EQ, at p. 2; and Order No. PSC-14-0711-PAA-EQ, issued December 30, 2014, in Docket No. 140185-EQ, at pgs. 3-4. The consultants have also provided analysis regarding FPUC's current power supply contract with JEA, as well as the current agreement with Rayonier, in an effort to find avenues for additional cost reductions. In the case of Rayonier, the consultants also analyzed opportunities to increase FPUC's receipt of low cost power. TR 531-532, 539, 575 (Young). Attorneys, such as the Gunster, King & Spalding, and Baker Hostetler firms, are also working on various aspects of new power purchase agreements, while consultants such as Passero, Christensen and Associates, and Golder have been added to FPUC's team to facilitate other projects with the potential to reduce the Company's overall purchased power costs. Exhibit 89.

The identified consultants are not performing a regular administrative fuel procurement function for the Company. Instead, they have been hired to work on specific projects designed to produce fuel savings for FPUC's customers. TR 545 (Young); TR 635 (Cutshaw). Thus, these costs are distinguishable from the "fuel procurement administrative charges," as set forth at page 3 of Order 14546, which the Commission deemed more appropriate for recovery through base rates. In contrast, the fees for which FPUC seeks recovery are not associated with the Company's internal staff responsible for fuel procurement and do have a significant relationship to the future volume and price of FPUC's power purchases. As set forth the Company's



response to Commission Staff Interrogatory No. 3(b), the legal and consulting fees are truly fuel-related costs arising from external contracts with energy consultants and legal counsel. The consultants and attorneys are charged with negotiating and drafting new power purchase contracts, including contracts with non-typical providers, as well as analyses of alternative energy arrangements that could produce real savings for FPUC's customers. Specifically, the Company has retained attorneys with the experience necessary to ensure that any possible modifications of existing contracts are in accordance with regulatory requirements. These attorneys have experience in the regulatory requirements of the wholesale power markets, which is critical when working within the existing contracts to ensure all advantages are maximized and when reviewing alternative energy sources that may be beneficial while still complying with the contract language. Exhibit 89. FPUC has also retained consultants with experience in the market, which has proven equally valuable in terms of assessing the relative level of the Company's power costs as compared to other wholesale customers and using that information to help FPUC manage its own power costs. Exhibit 89. As such, consistent with the Commission's policy outlined in various Orders, including Order 14546, these costs are more appropriately recovered through the fuel adjustment clause. Exhibit 89.

At hearing, the Office of Public Counsel tried to make hay of the fact that there is no supporting schedule that directly links each consultant with a particular savings amount, but the reason for that is simple - that is not how the Company tracks savings. TR 576 (Young). Nor, for that matter, is that the way the Commission has traditionally reviewed savings.<sup>10</sup> Instead,

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<sup>10</sup> For instance, Order No. PSC-98-1715-FOF-EI, issued in Docket No. 980001-EI, on December 18, 1998, approving recovery by Florida Power Corporation of the conversion costs, as well as a return, to convert Debary Unit 8 to natural gas, the Commission found that if the fuel savings associated with the conversion were, at any point, less than the amortization and return cost, recovery through fuel would be limited to actual fuel savings.

consultants and legal counsel are hired by the Company based upon the project and expertise needed by the Company. TR 521, 530-531, 538 (Young); TR 598-599; 635 (Cutshaw). The benefits and savings are then viewed in the context of the particular project for which the consultant or legal counsel was engaged to work. As it relates to the fees already incurred in 2014 and 2015, the projects that the consultants have worked on have either already produced savings or are reasonably projected to do so. TR 589-593 (Cutshaw) As for projected legal and consulting fees for 2016, the continuation of current projects, as well as planned projects, are likewise anticipated to produce measurable savings for the Company and its customers. TR 532, 539, 576 (Young); TR 602-603, 635 (Cutshaw). On this point, FPUC emphasizes that the fees included in the true-up for 2014, as well as the schedules for 2015, have already been incurred, while the amount of \$397,000 included in the projections for 2016 is simply that – a projection based upon the Company’s planned projects. TR 520-522, 529, 531, 555-556 (Young); Exhibit 32; Exhibit 33. Consistent with the clause true-up process, actual expenditures will be audited by Commission staff and included in the revised fuel factor calculations during subsequent fuel adjustment proceedings.

Ultimately, recovery of the legal and consulting fees as requested by FPUC in this proceeding is consistent with Commission fuel policy, as well as Commission precedent regarding recovery of similar types of expenses by FPUC. The Commission has also allowed other utilities to recover similar legal and consulting fees through other cost recovery clauses.<sup>11</sup> As such, the Company asks that the Commission continue to allow the FPUC to recover such costs through fuel and approve inclusion of the subject expenses in the calculation of the

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<sup>11</sup> *E.g.*, Order No. PSC-15-0521-FOF-EI, issued November 3, 2015 [allowing recovery of legal and consulting fees associated with the Turkey Point Project and investigation of an underground injection exploratory well through the nuclear cost recovery clause].

Company's 2016 cost recovery factors. To do otherwise would be contrary to past Commission practice and decisions.

C. Rate Case Settlement

By Order No. PSC-14-0517-S-EI, issued September 29, 2014, in Docket No. 140025-EI, ("Rate Case Settlement Order") the Commission approved the Company's settlement with the Office of Public Counsel ("OPC"), which resolved all issues in the rate case ("Settlement Agreement"). The Rate Case Settlement Order, which incorporated by reference that settlement document filed in the docket on August 29, 2014, includes numerous good and beneficial terms for both FPUC and its ratepayers; thus, the Commission deemed approval of the Settlement Agreement to be in the public interest. Rate Case Settlement Order at p. 2. However, in this proceeding, OPC and another intervenor apparently misconstrue the Settlement Agreement to preclude FPUC from requesting the recovery of the costs at issue in this proceeding, as reflected in OPC's Prehearing Statement in this proceeding<sup>12</sup>, as well as that of the Florida Retail Federation ("FRF")(jointly herein "Intervenors"). While the specific provision in question has not been identified by the Intervenors, it appears clear that it is Section VI, which provides as follows:

Nothing in this agreement shall preclude the Company from requesting the Commission to approve the recovery of costs that are: (a) of a type which traditionally and historically would be, have been, or are presently recovered through cost recovery clauses or surcharges, or (b) incremental

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<sup>12</sup> It is perhaps worth noting that Section XVII of the Settlement Agreement provides that, in the event that a disagreement arises with regard to the interpretation of the settlement agreement, the Parties would meet and confer in good faith to resolve the dispute. In apparent contrast to this provision, FPUC first became aware that OPC believed the Company's request to be in conflict with the Settlement Agreement when OPC filed its Prehearing Statement on October 9, 2015, more than a month after FPUC's projection testimony filing in this proceeding. While OPC had previously suggested that it was reviewing the Settlement Agreement with some concern that the FPL interconnect might, in OPC's opinion, run afoul of the settlement agreement, no similar such suggestion was made with regard to the recovery of legal and consulting fees, prior to the filing of the Prehearing Statement.

costs not currently recovered in base rates which the Legislature or Commission determines are clause recoverable subsequent to the approval of this settlement. Except as provided in this Agreement, it is the intent of the Parties in this Paragraph VI that FPUC not be allowed to recover through cost recovery clauses increases in the magnitude of costs, incurred after implementation of the new base rates, of types or categories (including but not limited to, for example, investment in and maintenance of transmission assets) that have been traditionally and historically recovered through FPUC's base rates.

As it relates to both the proposed FPL interconnect and the recovery of legal and consulting fees, it is, however, clear that Section VI does not preclude recovery as requested by FPUC, albeit for different reasons.

1. FPL Interconnect

With regard to the proposed interconnect with FPL, recovery of this proposed project is consistent with VI (b), because the project represents “incremental costs not currently recovered in base rates.” As such, in accordance with the plain language of the Settlement Agreement, the Company is authorized to seek a Commission determination that these costs are recoverable through the clause. Furthermore, this project is by no means merely an “increase in the magnitude of costs” of an item traditionally recovered through base rates, nor can it simply be construed as a project that contemplates only the “investment in and maintenance of transmission assets.” To the contrary, this is a stand-alone project not contemplated in the Company’s last rate case, which is perhaps best exemplified by the fact that this project was not included on Exhibit A to the Settlement Agreement, which set forth a demonstrative list of capital projects that the Company planned to undertake between 2016 and 2019.

The project also contemplates more than a mere investment in, or maintenance of, existing transmission. Instead, this is a project that contemplates an entirely new interconnection

with a utility with whom FPUC is not currently connected. TR 594 (Cutshaw). While the project will include a transmission line and might generally be described as a “transmission project,” it will also include other components, including a substation expansion. TR 595 (Cutshaw); Exhibit 91. But, most critically, the project is not treated by FPUC as a “traditional” transmission project, because it represents much more than simply improved facilities, increased reliability, and reduced line losses. Instead, as Mr. Cutshaw testified, the project provides much needed access to alternative power generation suppliers, which is critical as FPUC’s current power contracts come up for renewal. TR 594-595 (Cutshaw).

Moreover, as previously noted herein, the Company provided testimony that it is currently recovering costs associated with transmission through fuel; thus, transmission costs for FPUC have “historically” been recovered through the fuel adjustment clause. TR 577 (Young); TR 616 (Cutshaw). Consequently, for all these reasons, the Settlement Agreement should not be read to preclude recovery of depreciation expense, taxes other than income, and a return on investment associated with a proposed interconnect between FPL and FPUC’s Northeast Division.

## 2. Legal and Consulting Fees

As it relates to the legal and consulting fees at issue in this case, recovery of these fees is entirely consistent with Section VI(a) of the Settlement Agreement. Specifically, these fees have been historically recovered, and are currently being recovered, through the fuel adjustment clause. TR 520-523, 529 – 530, 532 (Young); Exhibit 89. The amounts in question do not represent an increase in the order of magnitude of costs currently being recovered through base rates. TR 530-531 (Young). Instead, the activities that correlate with these expenses constitute

extraordinary functions, which are not contemplated in base rates and yet are designed to produce fuel savings for customers. Exhibit 89. As witnesses Young and Cutshaw described in detail, the projects with which these legal and consulting fees are associated are all directly related to efforts to achieve fuel savings for FPUC and its customers. TR 532, 539 (Young); 589-590, 592, 598-599 (Cutshaw); Exhibit 89. Mr. Cutshaw further emphasized that the Company does not have the necessary industry and legal expertise in-house to pursue these types of projects, and thus must obtain these outside services in order to do so. TR 598 (Cutshaw).

The Company did not include amounts to address these costs in the Company's last rate case, because these costs tend to be quite volatile depending upon the year and the issue. TR 530, 539 (Young). Thus, these costs are not at all the "fuel procurement administrative functions" that the Commission has contemplated would be recovered in base rates; rather, consistent with Order 14546, these are the types of expenses most appropriately recoverable in the fuel clause. Exhibit 89. Most importantly, however, as it relates to the Settlement Agreement, these costs have, in fact, been "traditionally and historically" recovered by the Company through the fuel adjustment clause, including recovery in Dockets Nos. 050001-EI, 120001-EI, 130001-EI, and 140001-EI. TR 521-523, 530 (Young). Thus, there is no conflict whatsoever with the Settlement Agreement as it relates to recovery of these expenses.

#### D. Removal of Expenses for Kathy Welch

Finally, the Company's positions reflected herein have been amended to reflect the exclusion of costs related to work performed by Ms. Kathy Welch, consistent with the testimony of Mr. Young at hearing. TR 558-559 (Young). As Mr. Young testified, upon further review and reflection, the Company agrees that the amounts associated with the activities of Ms. Welch

are not appropriate for recovery through the fuel adjustment clause and are appropriately removed. TR 559 (Young). As such, the amounts reflected in the position statements of the Company have been adjusted to reflect removal of the following amounts:

2014 True Up: \$2046

2015 Actual/Estimated: \$4532


Total Removed from Amount to be collected in 2016: \$6578.

### Conclusion

Florida Public Utilities has met its burden of proof in this case. As it relates to the proposed FPL interconnect, the Company has demonstrated that: (1) the proposed interconnect is prudent; (2) it will generate savings in the delivered cost of purchased power for FPUC; (3) it was not anticipated in the Company's last rate case; and (4) is otherwise consistent with the Commission application of its fuel adjustment policy, as set forth in Order No. 14546 and subsequent orders. Likewise, the Company has demonstrated that the legal and consulting fees for which it seeks recovery are: (1) prudent expenses associated with retaining outside expertise that the Company does not otherwise have in-house; (2) that the work for which these consultants were retained is associated with projects that are either currently producing fuel savings or are reasonably expected to produce savings for the Company and its customers; and (3) that these expenses are of the type that the Commission has traditionally allowed FPUC to recover through the fuel adjustment clause. No evidence to the contrary has been presented on either point. To do other than what the Company has requested in this proceeding would represent a deviation from past Commission decisions. As such, Florida Public Utilities

Company respectfully asks that its requests for recovery of costs through the fuel clause be approved.

RESPECTFULLY SUBMITTED this 13th day of November, 2015.

  
Beth Keating  
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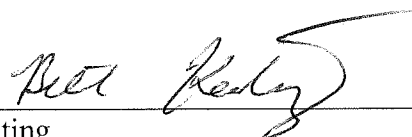
**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 13th day of November, 2015:

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