

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 20170009-EI
ORDER NO. PSC-2017-0323-PHO-EI
ISSUED: August 10, 2017

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on August 2, 2017, in Tallahassee, Florida, before Commissioner Ronald A. Brisé, as Prehearing Officer.

APPEARANCES:

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On behalf of Florida Power & Light Company (FPL)

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On behalf of Duke Energy Florida, LLC (DEF)

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On behalf of Office of Public Counsel (OPC)

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On behalf of City of Miami (Miami)

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On behalf of Florida Industrial Power Users Group (FIPUG)

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On behalf of Florida Retail Federation (FRF)

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On behalf of White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate)

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On behalf of Southern Alliance for Clean Energy (SACE)

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On behalf of the Florida Public Service Commission (Staff).

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PREHEARING ORDER

I. CASE BACKGROUND

In 2006, the Florida Legislature adopted legislation encouraging the development of nuclear energy in the state. Section 366.93, Florida Statutes (F.S.), directed the Commission to adopt rules providing for alternate cost recovery mechanisms that will encourage investor-owned electric utilities to invest in nuclear power plants. The Commission adopted Rule 25-6.0423, Florida Administrative Code (F.A.C.), which provides for a clause recovery proceeding annually to consider investor-owned utilities' requests for cost recovery for nuclear plants.

Both FPL and DEF petitioned the Commission for recovery of costs through the Nuclear Cost Recovery Clause (NCRC) on March 1, 2017. This is the tenth year of this roll-over docket, which is set for hearing on August 15, 2017. OPC, FIPUG, FRF, PCS Phosphate, SACE, and Miami, have each been granted intervention in this docket. On July 20, 2017, Prehearing Statements were filed by FPL, DEF, Staff, OPC, FIPUG, FRF, PCS Phosphate, SACE, and Miami.

By Order No. PSC-2017-0260-PCO-EI, issued July 10, 2017, the Commission granted OPC and PCS Phosphate's Motion to Temporarily Hold in Abeyance and Reschedule the 2017

Hearing for Duke Energy Florida, LLC for the Levy Nuclear Project. Issues related to DEF's Levy Nuclear Project will be decided during a separate hearing beginning October 25, 2017.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
<u>Florida Power & Light Company</u>		
Steven D. Scroggs	FPL	1, 2, 3, 5, 9, 10
Jennifer Grant-Keene	FPL	1, 2, 8
Eugene T. Meehan	Miami	1, 2, 8,9,10
Iliana H. Piedra	Staff	2
Sofia Lehmann & David Rich	Staff	1
<u>Rebuttal</u>		
Steven D. Scroggs	FPL	5
John J. Reed	FPL	5
<u>Duke Energy Florida, LLC</u>		
Thomas G. Foster	DEF	11, 12, 13, 14, 15
Ronald A. Mavrides	Staff	12

VII. BASIC POSITIONS

FPL: Section 403.519(4), Florida Statutes, Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code (“the Rule”) establish the legal and regulatory framework for the recovery of costs in the development of nuclear generation in Florida.¹ Section 403.519(4), Florida Statutes, applies to the determination of need for a nuclear-fueled power plant as well as the cost recovery process. This section emphasizes the Florida Legislature’s desire to improve fuel diversity, reduce dependence on fuel oil and natural gas, reduce air

¹All statutory references are to the 2016 Florida Statutes, and all rule references are to the Florida Administrative Code.

emission compliance costs, and contribute to the long-term stability and reliability of the electric grid in Florida; establishes the prudence standard that shall be applied in nuclear cost recovery proceedings; and makes clear that a utility is entitled to recover all prudently incurred costs. Specifically, the statute states that after a determination of need is granted, “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 a preponderance of the evidence supports a finding that “certain costs” were imprudently incurred. Section 403.519(4)(e) further makes clear that (i) proceeding with the construction of the nuclear power plant following an order by the Commission approving the need for it “shall not constitute or be evidence of imprudence” and (ii) “imprudence shall not include any cost increases due to events beyond the utility’s control.” *See* § 403.519(4)(e), Fla. Stat.

Section 366.93, Florida Statutes, requires the Commission to establish by rule a cost recovery framework that promotes utility investment in nuclear power plants and allows for the recovery of all prudently incurred preconstruction costs and the carrying costs on construction cost balances. It also entitles utilities to increase their base rates upon commercial operation of the nuclear power plant, requires annual reporting of budgeted and actual costs, and provides for cost recovery should the project be cancelled. *See* §366.93(4), (5), and (6), Fla. Stat., respectively. In response to this legislative direction, the Commission promulgated Rule 25-6.0423, Florida Administrative Code (“the Rule”). The stated purpose of the Rule is to establish an alternative cost recovery mechanism that promotes utility investment in nuclear power plants and to allow for recovery of all prudently incurred costs. It also provides for the recovery of reasonable actual/estimated costs for the current year and reasonable projected costs for the following year.

FPL’s Turkey Point 6 & 7 project qualifies for cost recovery pursuant to the Nuclear Cost Recovery (“NCR”) statute and Rule. The project was granted an affirmative determination of need by the Commission pursuant to Section 403.519(4), Florida Statutes, and FPL therefore is entitled to recover all its prudent and reasonable costs. *See* Order No. PSC-08-0237-FOF-EI, issued April 11, 2008 (making an affirmative determination of need for Turkey Point 6 & 7).

Rather than seeking recovery of FPL’s 2017 and 2018 Turkey Point 6 & 7 costs at this time,² FPL has requested to defer cost recovery and the Commission’s related reviews until such time as the Company makes a decision regarding the initiation of preconstruction work on the Project. Granting FPL’s request would have the effect of suspending the NCR-related charges to customers as well as obviating the need for the FPL portion of the annual NCR proceeding during the time of the

² Pursuant to Section 366.93(3) and Rule 25-6.0423(6), a utility “may” petition for cost recovery.

deferral. FPL's proposal is particularly appropriate given the stage of the Project: FPL is completing its licensing activities and entering a period of reduced spending while FPL "pauses" to maintain the approvals it has received and observe the progress being made, and issues being faced, at other new nuclear construction projects.

FPL's deferral request is consistent with the Commission's prior decisions allowing for the deferral of cost recovery as well as its prior determination that it has "the authority to address options relating to the timing of recovery..." pursuant to its "broad ratemaking powers" so long as the Commission does not run afoul of the statutory mandate to allow a utility to recover all prudently incurred costs. *See* Docket No. 100009-EI, Order No. PSC-11-0095-FOF-EI, pp. 8-9 (explaining that the Commission had the authority to approve a rate management plan for Progress Energy Florida, but did not have the authority to require a risk sharing mechanism). FPL's deferral request invokes the Commission's broad ratemaking authority while preserving the Commission's ability to allow for the recovery of all prudently incurred costs pursuant to Section 366.93 and Rule 25-6.0423 upon request, satisfaction of all necessary reviews, and consideration of any challenges at a future time.

The final true-up of FPL's 2015 and 2016 costs, which have been the subject of prior cost recovery requests, is unaffected by FPL's deferral request. As demonstrated in the testimony, exhibits, and NFRs filed in this docket, FPL's expenditures in 2015 and 2016 were prudently incurred. No party has filed testimony disputing the prudence of any particular 2015 or 2016 cost or the calculation of the \$7.3 million over-recovery that FPL proposes to return to customers through the CCRC in 2018. Additionally, the FPSC Office of Auditing Performance and Analysis's 2015 and 2016 reports on FPL's project management internal controls conclude that FPL's project internal controls, risk evaluation, and management oversight for the Turkey Point 6 & 7 project are adequate and responsive to current project requirements. Accordingly, the prudence and final true-up of FPL's 2015 and 2016 Turkey Point 6 & 7 costs are unopposed and should be approved.

Lastly, FPL has requested the Commission to determine that FPL's decision to complete the final licensing steps underway for Turkey Point 6 & 7 is reasonable and appropriate. This issue is similar to issues considered by the Commission in prior NCR dockets, in which the Commission was asked to review the reasonableness of a company decision or action.³ This is the only portion of

³ *See* Order No. PSC-09-0604-PHO-EI ("Issue 7A: Is FPL's decision in 2008 to pursue an alternative to an Engineering Procurement Construction (EPC) contract for the Turkey Point 6 & 7 project prudent and reasonable?") and "Issue 21A: Was it reasonable and prudent for PEF to execute its EPC contract at the end of 2008? If the Commission finds that this action was not reasonable and prudent, what actions, if any, should the Commission take?"); Order No. PSC-10-0538-PHO-EI ("Issue 7: Is PEF's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Levy Units 1 & 2 reasonable? If not, what action, if any,

FPL's request that is the subject of any prefiled intervenor testimony in this case. Mr. Meehan, on behalf of the City of Miami, claims an economic feasibility analysis and other quantitative analyses are necessary for the Commission to assess the reasonableness of completing licensing. Respectfully, his conclusions are not supportable. His testimony overlooks just how meaningless such analyses would be at this time from a project management perspective and, therefore, from the Commission's perspective. As further explained by FPL witness Scroggs, completing the licensing phase would secure the opportunity to add nuclear generation for at least the next 20 years, while halting the licensing work at this stage could permanently prevent FPL's customers from being able to attain any value from the licensing investment made thus far. As discussed further in Mr. Scroggs's and Mr. Reed's rebuttal testimonies, it is reasonable for FPL to complete licensing.

DEF: **CR3 EPU Project**

The disposition of EPU-related assets was completed in 2015, the last remaining EPU assets are those that DEF has determined should be abandoned in place. If DEF is able to disposition any of the remaining assets, DEF will credit customers for the value received. DEF is continuing to amortize the uncollected balance of project costs as authorized by the 2013 RRSSA, and will continue to do so through 2019.

The Commission should approve DEF's proposed CR3 Uprated related 2018 NCRC recovery factors, and find that DEF's 2016 CR3 EPU accounting and cost oversight controls were reasonable and prudent.

OPC: **FPL**

In this year's Nuclear Cost Recovery Clause ("NCRC") proceeding FPL has requested that the Commission: (1) find it is reasonable for FPL continue to pursue its Combined Operating License (COL); and (2) allow FPL to create a deferred regulatory asset for these costs, with ongoing and continuing applicable carrying charges, for later recovery through the NCRC. Section 366.93(3)(f)(3), F.S., requires that

in making its determination for any cost recovery under this paragraph, the commission may find that a utility intends to

should the Commission take?" and "Issue 19: Is FPL's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?"; Order No. PSC-11-0335-PHO-EI ("Issue 3A: Was FPL's 2010 decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?"); Order No. PSC-12-0455-PHO-EI ("Issue 16: Is it reasonable for PEF to incur or expend all of the estimated and projected Crystal River Unit 3 Uprate project expenditures in 2012 and 2013 in the absence of a final decision to repair or retire CR3?")

construct a nuclear or integrated gasification combined cycle power plant **only if** the utility proves by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed **and that its intent is realistic and practical.** (Emphasis added)

In 2015, FPL filed a stale long-term feasibility study in that year's NCRC docket. In 2016, FPL did not file a long-term feasibility study in the NCRC docket and instead sought a waiver of Rule 25-6.0423(6)(c)(5), F.A.C. FPL subsequently withdrew its requested waiver and was granted a deferral on its NCRC issues until this year's NCRC proceeding. See, Order No. PSC-16-0266-PCO-EI, issued July 12, 2016, in Docket No. 160009-EI (20160009-EI) at p. 2 and 3. Further, this Order stated that "FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket." *Id.* However, FPL failed again to file a long-term feasibility study in accordance with Rule 25-6.0423(6)(c)(5), F.A.C., in this year's 2017 NCRC proceeding.

In addition, there have been major developments which call into question the validity and value of pursuing the COL for Turkey Point Units 6 & 7, and whether FPL can demonstrate by the *preponderance of the evidence* that "its intent is realistic and practical." See Section 366.93(3)(f) 3., F.S. Westinghouse, who owns the design rights to the AP1000, filed for bankruptcy protection in the Spring of 2017 and has publicly stated it would no longer construct additional nuclear power plants in the future. Moreover, FPL has stated that it has not spoken with anyone at Westinghouse regarding whether they would maintain a traditional role of an engineering and procurement contractor. The first wave of Westinghouse's AP 1000 plants are being built by Georgia Power Company at Plant Vogtle and South Carolina Electric & Gas Co. at Plant Summer. Each of these projects have experienced, and continue to experience, significant delays and massive cost overruns. These major changes in circumstances, along with other factors, call into question whether FPL's continued pursuit of the COL and related costs is realistic and practical.

FPL argues that it is not required to provide a long-term feasibility study pursuant to Rule 25-6.0423(6)(c)(5), F.A.C., because it is not seeking to recover costs for several years. However, this argument is meritless. First, FPL is asking this Commission to make a finding that incurring costs to be paid by FPL's customers for the COL is reasonable now which would bind future Commissions and create a future liability, in the form of potentially fruitless expenditures and statutorily required carrying costs, for customers at some level of cost recovery. Second, FPL is asking to defer these COL related costs for an indefinite period of time for subsequent recovery through the NCRC with applicable carrying charges.

Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs which include COL costs "will be recovered within 1 year, unless the Commission approves a

longer recovery period. Any party may, however, propose a longer period of recovery, **not to exceed 2 years.**” Unlike the single year deferral granted last year by the Commission in Order No. PSC-16-0266-PCO, FPL is requesting deferral for at least a minimum of 4 years. In addition, as part of its request for creation of a deferred asset, FPL is asking the Commission to approve carrying charges for the COL costs. According to FPL’s testimony, over a ten year period, customers could become liable for more than \$100 million in COL related costs and yet FPL could still not build Turkey Point Units 6 & 7.

In addition, Rule 25-6.0423(6)(c)(5), F.A.C., requires FPL to submit each year for Commission review and approval, as part of its cost recovery filing, “a detailed analysis of the long-term feasibility of completing the power plant.” FPL has not made this filing. Based on FPL’s failure to comply with this rule and the lack of a 2017 long-term feasibility study demonstrating that its Turkey Point Units 6 & 7 project is feasible going forward, no new costs should be allowed for recovery nor should any costs be allowed to be deferred for later recovery.

OPC adopts the basic position of PCS Phosphate for DEF.

Miami:

As an initial matter, FPL has not complied with Florida Public Service Commission (“FPSC”) Order No. PSC-16-0266-PCO-EI. FPL chose to not file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 despite assurances to the contrary in its Motion to Defer⁴ and statements made by FPL’s counsel to the FPSC at the Commission Conference held on July 7, 2016.⁵ FPL has blatantly disregarded the FPSC’s order and at a minimum all issues deferred from the 2016 docket should not be considered by the FPSC and/or FPL’s 2017 petition should be denied.

Alternatively, if it is determined by the FPSC that FPL complied with Order No. PSC-16-0266-PCO-EI, the FPSC cannot make any reasonableness or prudence determinations because FPL’s petition is incomplete and has not shown good cause for the incomplete application. The purpose of Section 366.93, F.S., is to promote investment in nuclear or integrated gasification combined cycle power plants, provide certainty, and to allow the utility recover all prudently incurred costs. *See* § 366.93(2), Fla. Stat. In furtherance of that purpose, section 366.96 authorizes the FPSC to “establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant, including new, expanded, or relocated electrical transmission lines and facilities that are necessary thereto, or of an integrated gasification combined cycle power plant.” *Id.* In accordance with the statute, the

⁴ Florida Power & Light Company’s Motion to Defer Consideration of Issues and Cost Recovery, Docket No. 20160009-EI, Document No. 03821-16 (June 17, 2016) (“Upon approval of this motion, FPL will withdraw its Petition for Waiver and will plan to file a feasibility analysis in the ordinary course of the 2017 NCR cycle.”).

⁵ In re Nuclear Cost Recovery Clause, Commission Conference Agenda Item No. 3, Document No. 05084-16 (July 7, 2016).

FPSC promulgated Rule 25-6.0423 outlining the requirements for petitioning the FPSC to recover the costs incurred by the utility in the prior year and the required filings so that FPSC can make a reasonableness and prudence finding. “[P]ursuant to the order establishing procedure in the annual cost recovery proceeding, a utility *shall* submit for Commission review and approval, as part of its cost recovery filings” (1) a true-up of actual expenditures for the previous year, (2) a true-up and projection of expenditures for the current year, and (3) a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project (“feasibility study”). *See* Rule 25-6.0423(c), F.A.C. (emphasis added).

The requirement for a long-term feasibility helps provide certainty and ensure that costs have been prudently incurred by the utility. The rule does this by ensuring that a utility has “committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.” Rule 25-6.0423(6)(c)5., F.A.C. It is important to consider the feasibility of the investment when determining whether the costs were prudently incurred. Assuming *arguendo* that costs are being incurred pursuant to a “step-wise approach” and using disciplined cost, business, and process controls, if a project is no longer feasible or practical, then the costs incurred are not prudent. Investment into a project that no longer is economically feasible or is no longer practical to complete would make any investment into the project imprudent.

FPL has not filed a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project. As such, FPL has not submitted a required filing for the 2017 docket. Furthermore, FPL has not petitioned for a waiver of the rule requirements pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C. As such, the requirement for FPL to file a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project is still in place and FPL’s failure to file the feasibility study will not allow the FPSC review and approve a required filing in accordance with Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Therefore, the FPSC cannot make any reasonableness or prudence determinations in the deliberate absence of a required detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project.

FIPUG: DEF

FIPUG takes no position and does not object to DEF’s positions on the issues related to the recovery of the CR3 EPU project which costs are being recovered pursuant to the provisions of the Revised and Restated Stipulation and Settlement Agreement (RRSSA) approved in Order No. PSC-13-0598-FOF-EI. For the Levy Nuclear Project (LNP), no costs should be recovered from customers.

FPL

FPL has not filed a long-term feasibility study in neither the 2016 nor the 2017 Nuclear Cost Recovery Clause proceeding. Based on the lack of a 2016 or 2017

long-term feasibility study which demonstrates that FPL's Turkey Point Units 6 & 7 project is feasible going forward, any new costs incurred on the project should not be allowed, and indeed are not legally eligible to be recovered through the Nuclear Cost Recovery Clause.

Specifically, the Nuclear or Integrated Gasification Combined Cycle Power Plant Cost Recovery Rule, 25-6.0423, requires FPL to file a feasibility study when seeking to recover rates from customers. The rule provision in question states in pertinent part:

Along with the filings required by this paragraph, each year a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

See, 25-6.0423, F.A.C.

Preparing and filing a feasibility study is not an optional requirement. It is "required" by the express terms of Rule 25-6.0423, F.A.C to be filed "each year". The Commission's policy is sound, so that it may make a real time determination whether a project should move forward and, importantly, whether customers rates should be increased. If material facts have changed such that the project is no longer feasible, the Commission should know and act on that information sooner rather than later. Absolving the utility from filing current, updated information as legally required deprives the Commission and the parties of the opportunity to understand how matters may have changed. The Commission's rule should be enforced and FPL not permitted to recover monies for a nuclear project for which no feasibility study has been filed.

FRF: FPL – Turkey Point 6&7 Project

The Commission should reject FPL's requests that: (1) the Commission find it is reasonable that FPL continue to pursue its Combined Operating License (COL); and (2) allow FPL to create a deferred regulatory asset for these costs, with ongoing and continuing applicable carrying charges, for later recovery through the NCRC. FPL has not satisfied, and almost certainly cannot satisfy, the statutory requirement that it prove that it has committed sufficient resources to enable its Turkey Point project to be completed, and that its alleged intent to do so is realistic or practical. FPL has not filed a realistic feasibility study for its project for more than two years, and in those intervening years, significant developments have occurred that cast serious doubt on the viability value of pursuing the COL for Turkey Point Units 6 & 7. Westinghouse, which owns the design rights to the

AP1000, filed for bankruptcy protection in the spring of 2017 and has publicly stated it would no longer construct additional nuclear power plants in the future. Moreover, FPL has stated that it has not spoken with anyone at Westinghouse regarding whether they would maintain a traditional role of an engineering and procurement contractor. The first wave of Westinghouse's AP 1000 plants are being built by Georgia Power Company at Plant Vogtle and South Carolina Electric & Gas Co. at Plant Summer. Each of these projects has experienced, and continues to experience, significant delays and staggering cost overruns. These major changes in circumstances, along with other factors, call into question whether FPL's continued pursuit of the COL and related costs is realistic and practical.

FPL is asking the Commission to make a finding now that incurring costs to be paid by FPL's customers for the COL is reasonable, which would bind future Commissions and create a future liability, in the form of potentially fruitless expenditures and statutorily required carrying costs, for customers at some level of cost recovery. FPL is further asking to defer these COL related costs for an indefinite period of time for subsequent recovery through the NCRC, with carrying charges for whatever length of time the deferral continues, and apparently, regardless whether FPL ever builds the units.

Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs which include COL costs "will be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, not to exceed 2 years." FPL is requesting deferral for at least a minimum of 4 years. In addition, as part of its request for creation of a deferred asset, FPL is asking the Commission to approve carrying charges for the COL costs. According to FPL's testimony, over a ten year period, customers could become liable for more than \$100 million in COL related costs and yet FPL could still not build Turkey Point Units 6 & 7.

Moreover, Rule 25-6.0423(6)(c)(5), F.A.C., requires that FPL submit for Commission review and approval, as part of its annual cost recovery filing, "a detailed analysis of the long-term feasibility of completing the power plant." FPL has not made this filing. Based on FPL's failure to comply with this rule and the lack of a 2017 long-term feasibility study demonstrating that its Turkey Point Units 6 & 7 project is feasible going forward, no new costs should be allowed for recovery nor should any costs be allowed to be deferred for later recovery.

Duke Energy Florida

The NCRC issues associated with Duke's Levy Nuclear Project have been deferred to a hearing on October 25, 2017. The FRF takes no position on the remaining issues relating to the Crystal River Unit 3 Extended Power Uprate Project.

PCS

Phosphate: In the *First Order Modifying Procedure*, the Prehearing Officer approved the *Motion of the Office of Public Counsel and White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs to Temporarily Hold in Abeyance and Reschedule the 2017 Hearing for Duke Energy Florida, LLC*, filed in this docket on June 16, 2017. That order temporarily held in abeyance the Levy Nuclear Project portion of this proceeding, to be addressed at a later time. As a result of that order, only DEF issues regarding the Crystal River Unit 3 power uprate project remain in this portion of the proceeding. PCS Phosphate agrees that these issues for Duke Energy Florida, Inc. can be addressed as a “Type 2” stipulation.

SACE: *Florida Power and Light*

SACE supports the development of low cost, low risk energy resources primarily through increased energy efficiency implementation and meaningful renewable energy development. The proposed Florida Power and Light (“FPL”) nuclear reactor project, Turkey Point (“TP”) units 6 & 7, is neither low cost, nor low risk. The risks to customers have been compounded this year with the bankruptcy of Westinghouse, the designer and the builder of the AP-1000 reactor, which is exiting the nuclear construction business. FPL is nine years into the project and will not commit to a price, or an in-service date for the reactors, and it now has no builder for the reactors. Without a builder, the prospect of the completion of the proposed reactors has devolved from speculation to fantasy.

Yet, FPL uses this significant reactor industry uncertainty as support for providing even less transparency to the Commission and FPL customers by requesting suspension of filings required by statute and rule in the nuclear cost recovery process.⁶ FPL has not included with this filing detailed actual/estimated 2017 Nuclear Filing Requirements (“NFRs”) or projected 2018 NFRs, nor has FPL included a feasibility analysis.⁷ FPL is additionally requesting a finding of “reasonableness” from the Commission for continuing to pursue the reactor licenses so that it can defer recovery (later recover costs, including shareholder profit, from customers). While not pled in any detail in FPL’s petition or testimony in this docket, it purports to ask for the deferral under the agency’s general ratemaking authority pursuant to Chapter 366, not specifically Section 366.93 F.S., and Rule 25-6.0423 F.A.C.

⁶ Florida Power and Light, *FPL’s Petition for Recovery of 2018 Nuclear Power Cost Recovery Reflecting 2015 & 2016 True-ups and Approval to Defer Recovery of Costs Beginning in 2017*, Docket No. 20170009, p. 2, May 1, 2017

⁷ *Id.* at 6. The City of Miami is the only party to address the economic feasibility of the reactors in this docket. Its conclusion is that, due to changing market and regulatory conditions since 2015, the reactors are not economically feasible. See Testimony of Eugene T. Meehan, Docket No. 20170009, June 20, 2017. Additionally, even by FPL’s own account, the reactors were economically feasible in only “8 of the 14 scenarios analyzed” in 2015. Testimony of Richard Brown, Docket No. 20150009, p. 28, May 1, 2015.

FPL's position begs a basic policy question: if FPL cannot produce a feasibility analysis showing that pursuing the reactors makes economic sense for customers, why would the Commission saddle customers with more risk and costs? Doing so would essentially create a predatory credit card scheme where FPL gets to run up their customers' charges for as long as it wants, then and at some unknown future date, present its customers with a staggering bill for both project costs and profits. And ironically, customers will not have purchased anything since the fantasy reactors will likely never be built – so no electricity will ever be produced. While this would be a great deal for FPL shareholders, it would be patently unfair to FPL's customers who have already been charged more than \$300 million for the fantasy reactors.⁸ In the context of FPL's \$1.7 billion profit last year, its request to saddle customers with even more risk and costs is particularly egregious. The Commission should reject FPL's request on public policy grounds alone. Regardless, as a matter of law, the Commission cannot grant FPL's request.

FPL has not met the requirements for cost recovery under Section 366.93, Fla. Stat. and Rule 25-6.0423 F.A.C. The Legislature has granted the Commission general ratemaking authority over electric utilities in Chapter 366, Fla. Stat. The Legislature amended Chapter 366 in 2006 with Section 366.93, Fla. Stat. and amended the section again in 2013 in order to perfect a specific process for utilities to recover costs associated with new nuclear reactor construction. It tasked the Public Service Commission to establish rules to implement the law. The law provides that the utility may petition the Commission for cost recovery as permitted by Section 366.93 and Commission rules.

Within 6 months after the enactment of this act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant, including new, expanded, or relocated electrical transmission lines and facilities that are necessary thereto, or of an integrated gasification combined cycle power plant . . . After a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules. (emphasis added)
Section 366.93(2), (3)(a), Fla. Stat.

The statute clearly requires compliance with Commission rules for cost recovery of the reactor construction costs, including costs associated with the licensing of

⁸ Similar AP-1000 reactor, Georgia Power's Vogtle reactors and SCANA's Summer reactors are years behind schedule and significantly over budget, and with the Westinghouse bankruptcy, are facing a very uncertain future. In terms of Plant Vogtle's expansion, it is 8 years into the project construction, but only 32% complete, productivity is still a problem, workers are spending more time on "non-work activities" than actual "work-related activities" and there is neither a reliable cost estimate nor schedule for completion. The original \$14.1 billion cost may have doubled. See 16VCM, docket 29849, Testimony of panel of Philip Hayet and Lane Kollen on behalf of the GA PSC, June 8, 2017, at <http://www.psc.state.ga.us/factsv2/Document.aspx?documentNumber=168569>

nuclear reactors. When construing the meaning of a statute, we must first look at its plain language. *Montgomery v. State*, 897 So. 2d 1282, 1285 (Fla. 2005). Furthermore, "when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Id.* (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). Additionally, it is well-settled law that to ascertain the meaning of a specific statutory section, beyond looking at the plain meaning of the statute, the section should be read in the context of its surrounding sections. *Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000) (stating that "statutes must be read together to ascertain their meaning"); *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992). When the Legislature passed Section 366.93, Fla. Stat. it provided the Commission direction, beyond its general ratemaking authority, on how a utility must recover costs related to new nuclear construction. When read in context of Chapter 366, Section 366.93, Fla. Stat. plainly provides a mandated cost recovery process for nuclear reactor construction, like the TP 6 & 7 reactors at issue in this docket.

The Commission subsequently promulgated a rule, with specific filing requirements, to implement the law. The two bedrock provisions of the rule since its inception have been the filing of a detailed analysis of the feasibility⁹ of completing the reactors and a review and approval for reasonableness of projected preconstruction expenditures for the subsequent year.

A utility shall submit, for Commission review and approval, its projected pre-construction expenditures for the subsequent year . . . [t]he Commission shall conduct an annual hearing to determine the reasonableness of projected pre-construction expenditures. . . [a]long with the filings required by this paragraph, each year a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. (emphasis added). Rule 25-6.0423(6)c., F.A.C.

In this docket FPL has not filed a required feasibility analysis for the proposed TP 6 & 7 reactor project.¹⁰ FPL did not file a feasibility analysis in the 2016 docket either – but FPL was granted a reprieve, a deferment, by the Commission with the understanding that FPL must meet its burden in this docket to prove the reactors remain feasible.¹¹ Moreover, FPL has not submitted specific projected

⁹ Since 2008, the Commission's Orders have expressly stated that FPL "shall" provide an annual feasibility analysis as part of its annual cost recovery process. The Commission stated that "[p]roviding this information on an annual basis will allow us to monitor the feasibility regarding the continued construction of Turkey Point 6 and 7." *See*, Order No. PSC-08-0237-FOF-EI, Docket No. 070650-EI, p. 29, April 11, 2008.

¹⁰ Florida Power and Light, *FPL's Petition for Recovery of 2018 Nuclear Power Cost Recovery Reflecting 2015 & 2016 True-ups and Approval to Defer Recovery of Costs Beginning in 2017*, Docket No. 20170009, p. 2, May 1, 2017.

¹¹ Order No. PSC-16-0266-PCO-EI, July 12, 2016.

preconstruction expenditures for a reasonableness determination for the subsequent year, but rather it is requesting a reasonableness determination for the underlying actions (pursuing licenses) rather than the expenditures related to the actions – the total expenditure amount is yet-to-be-determined and deferred for a yet-unknown future date. The rule does not contemplate a reasonableness determination for actions, but rather specific projected expenditures. FPL argues that at some point in the future, at FPL's choosing and based on market conditions, it will return to the Commission for cost recovery. This contorted request is simply not consistent with the Commission's rule. To be clear, while the statute and rule permissively allow recovery by a utility for nuclear-related construction costs, it does not naturally follow that the statute and rule provide an option for a utility to recover those costs outside of the framework established by the Legislature and the Commission.

Yet, FPL argues that the Commission can provide a reasonableness determination for the pursuance of licenses and defer cost recovery from customers. As support, it cites last year's Commission order in this docket granting FPL's motion to defer issues and costs. But in a display of bad faith, it fails to acknowledge that last year's deferral was predicated on the understanding that FPL would file a feasibility analysis this year. That order resolved a dispute between FPL and a number of parties regarding FPL's request for a waiver from filing a feasibility analysis requirement in 2016, and provides in part that "FPL states that following our approval of this motion, FPL will withdraw its Petition for Waiver. FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket."¹² That order granting FPL's motion for deferral is easily distinguishable from FPL's current request. If FPL believes that strict application of any provision of the Commission's rules lead to unreasonable, unfair, and unintended results in this docket, it could have requested a waiver pursuant to Section 120.542, Fla. Stat. – as it did last year. In the current case, FPL has failed to pursue that remedy. An agency cannot selectively apply its own rules because the regulated entity, in this case, FPL, wishes them to do so. FPL has failed to provide a required feasibility analysis. FPL has failed to provide specific projected preconstruction expenditures for recovery in the subsequent year. FPL has failed to comply with the Commission's 2016 order. As such, FPL has not provided the Commission with the facts necessary for the Commission to render the required factual determinations it must make pursuant to its rules. The Commission, therefore, as a matter of law, cannot provide FPL's requested relief. FPL's request for a reasonableness determination and deferral of costs beginning in 2017 and beyond must be rejected.

Lastly, SACE maintains that FPL did not meet the requirement of Rule 25-6.0423(5)(c)5, F.A.C., in 2015. FPL failed to complete and properly analyze a realistic feasibility analysis and did not meet its burden of proving that the project

¹² *Id.*

is economically feasible. Additionally, the Company's resource planning process, which forms the foundation for its economic feasibility analysis, does not place demand-side resources, such as energy efficiency, on a "level playing field" with supply-side resources in its analysis - thereby skewing the results of that analysis towards approval of the proposed TP reactors

Duke Energy Florida

SACE supported the cancellation of the Duke Energy Florida ("DEF") Levy Nuclear Project ("LNP") in Docket No. 20130009. SACE's position continues to be that costs related to the wind-down of both the LNP cancellation and the Crystal River Unit 3 ("CR3") retirement be closely scrutinized to ensure that the recovery of costs protects the interests of DEF customers.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: **Should the Commission find that FPL's 2015 and 2016 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?**

POSITIONS:

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; procurement processes and controls; and Business Unit specific controls. Project specific controls include procedures and work/desktop instructions and regular reporting, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL were highly developed, well documented, and adhered to by the project team. 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. There is no testimony to the contrary. (Scroggs, Grant-Keene)

DEF: No position.

OPC: No position.

Miami: No. FPL's failure to file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 constitutes an incomplete petition and

therefore FPL is not entitled to relief under Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Additionally, FPL violated Order No. PSC-16-0266-PCO-EI when it failed to file a feasibility study in the 2017 docket. FPL made specific representations in its Motion to Defer and to the FPSC that it would file a feasibility study. Failure to file a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project invalidates Order No. PSC-16-0266-PCO-EI since the FPSC granted the deferral based on FPL's representations that it would file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 in the 2017 docket. As such, project management, contracting, accounting and cost oversight controls for the Turkey Point Units 6 & 7 Project may not be considered by the FPSC because FPL failed to file its annual petition for consideration by the FPSC in Docket No. 20160009-EI.

FIPUG: No.

FRF: No position.

PCS

Phosphate: No position.

SACE: No.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 2: **What jurisdictional amounts should the Commission approve as FPL's actual 2015 and 2016 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 Project?**

POSITIONS:

FPL: 2015: For cost recovery purposes, the Commission should approve FPL's final 2015 Preconstruction expenditures of \$17,309,494 (jurisdictional, excluding Initial Assessment costs), and the resulting 2015 true-up amount of (\$1,328,727). The Commission also should approve actual 2015 Preconstruction carrying charges of \$6,668,729 and the resulting true-up amount of \$22,171; and actual 2015 Site Selection carrying charges of \$160,088 and the resulting true-up amount of \$345. FPL's 2015 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were prudently incurred. The net 2015 jurisdictional true-up amount of (\$1,306,211) should be included in FPL's 2018 NCR amount. There is no testimony to the contrary. (Scroggs, Grant-Keene)

2016: For cost recovery purposes, the Commission should approve FPL's final 2016 Preconstruction expenditures of \$15,673,982 (jurisdictional), and the

resulting 2016 true-up amount of (\$5,383,328). The Commission also should approve actual 2016 Preconstruction carrying charges of \$7,007,051 and the resulting true-up amount of (\$615,469); and actual 2016 Site Selection carrying charges of \$159,395 and the resulting true-up amount of (\$193). FPL's 2016 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were prudently incurred. The net 2016 jurisdictional true-up amount of (\$5,998,991) should be included in FPL's 2018 NCR amount. There is no testimony to the contrary. (Scroggs, Grant-Keene)

DEF: No position.

OPC: Based on FPL's failure to file a 2016 long-term feasibility study demonstrating that the Turkey Point Units 6 & 7 project is feasible going forward, any 2016 costs incurred on the project should not be allowed to be recovered through the NCRC docket.

Miami: None. FPL's failure to file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 constitutes an incomplete application and therefore FPL is not entitled to relief under Section 366.93, F.S., and Rule 25-6.0423, F.A.C. Additionally, FPL violated Order No. PSC-16-0266-PCO-EI when it failed to file a feasibility study in the 2017 docket. FPL made specific representations in its Motion to Defer and to the FPSC that it would file a feasibility study. Failure to file a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project invalidates Order No. PSC-16-0266-PCO-EI since the FPSC granted the deferral based on FPL's representations that it would file a detailed analysis of the long-term feasibility of completing Turkey Point Units 6 & 7 in the 2017 docket. As such, FPL's actual 2015 and 2016 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 Project may not be considered by the FPSC because FPL failed to file its annual petition for consideration by the FPSC in Docket No. 20160009-EI.

FIPUG: None. FPL seeks to recover more than 24 million dollars from customers for 2015 but failed to file a feasibility analysis as required by Commission Rule 25-6.0423 F.A.C. FPL seeks to recover more than 22 million dollars from customers for 2016 but failed to file a feasibility analysis as required by Commission Rule 25-6.0423 F.A.C. FPL cannot meet its statutory burden that it has to show that FPL intends to complete the project that is realistic and practical, as required by s. 366.93(f)(3) F.S.

FRF: Agree with OPC.

PCS

Phosphate: No position.

SACE: None. SACE maintains that FPL did not complete and properly analyze a realistic feasibility analysis in 2015. As such, requested cost recovery flowing from that deficient feasibility analysis, is not reasonable, nor prudently incurred, and should be denied.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 3: **Should the Commission approve FPL’s request to defer recovery of costs for the Turkey Point Units 6 & 7 Project incurred after December 31, 2016, pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.? If so, what type of information should FPL report on an annual basis in the Nuclear Cost Recovery docket?**

POSITIONS:

FPL: Yes. FPL expects to receive its Combined Operating License from the Nuclear Regulatory Commission in late 2017 or early 2018, and FPL’s near term plan is to “pause” to focus only on completing licensing, maintaining approvals received, and learning from the experience at first wave new nuclear construction projects. FPL’s deferral request relieves the Commission, its Staff, and all parties from the administrative burden of an annual docketed proceeding during a time of relatively low project spending, while preserving all parties’ opportunities to challenge cost recovery in the future, when it is requested. (Scroggs)

Nothing in Section 366.93 or Rule 25-6.0423 precludes the Commission from granting FPL’s request. Indeed, deferral is consistent with the Commission’s broad ratemaking authority as well as its specific statutory authority to allow FPL’s recovery of all prudently incurred costs. *See* Order No. PSC-11-0095-FOF-EI, pp. 8-9. Several NCR deferral requests, for both FPL and Duke Energy Florida, have been granted in the past. *See, e.g.,* Order No. PSC-16-0266-PCO-EI, p. 3 (approving FPL’s motion to defer and noting that “neither Section 366.93 F.S., nor Rule 25-6.0423, F.A.C., require a utility to seek recovery of nuclear project costs in any given year”); *see also*, Order No. PSC-15-0521-FOF-EI, pp. 31-32 (approving the deferral of costs associated with FPL’s Initial Assessments until FPL petitions for approval to proceed with preconstruction work).

FPL will continue to file with its Annual Report (*see* Rule 25-6.135) the budgeted and actual costs of the project as compared to the estimated in-service cost of the power plant pursuant to Section 366.93(5) and Rule 25-6.0423(9)(f).

DEF: No position.

OPC: No. Section 366.93(3)(f)(3), F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources

to enable the project to be completed **and that its intent is realistic and practical.** Rule 25-6.0423, F.A.C., further requires FPL to submit each year for Commission review and approval, as part of its cost recovery filing “a detailed analysis of the long-term feasibility of completing the power plant.” FPL has not made this filing. Based on this lack of compliance, no new costs should be allowed for recovery nor should any costs be allowed to be deferred for later recovery.

Miami: No. Section 366.93, F.S., or Rule 25-6.0423, F.A.C., requires FPL to annually petition the FPSC to recover reasonable and prudently incurred costs. If FPL wishes to defer recovery of costs for the Turkey Point Units 6 & 7 Project incurred after December 31, 2016, it must petition the FPSC to defer recovery of any costs or not seek to recover costs under Section 366.93, F.S., or Rule 25-6.0423, F.A.C.

If the FPSC approves the FPL’s request to defer recovery of costs for the Turkey Point Units 6 & 7 project, FPL should annually file a (1) true-up of actual expenditures for the previous year and (2) a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project.

FIPUG: No. FPL cannot establish, as required by s. 366.93(f)(3) F.S., that it has committed significant, meaningful and available resources to enable the project to be completed and that FPL’s intent to complete the project is realistic and practical. Furthermore, no recovery should be permitted given the lack of a current feasibility study.

FRF: No. Agree with OPC.

PCS

Phosphate: No position.

SACE: No. FPL has not filed the required long-term feasibility analysis for 2016 or 2017, or specific projected preconstruction expenditures for the subsequent years, nor has it filed a rule waiver request this year. FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 4: **If FPL continues to seek its combined operating license and defers the associated costs, are these costs eligible for cost recovery in a future time period pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.?**

POSITIONS:

FPL: Yes. Nothing in Section 366.93 or Rule 25-6.0423 precludes the deferral and later recovery of NCR eligible costs. Please see FPL's position on Issue 3, above.

DEF: No position.

OPC: No. Section 366.93(3)(f)(3), F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed **and that its intent is realistic and practical**. Further, Rule 25-6.0423(6)(a), F.A.C., states that preconstruction costs which include COL costs "will be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, **not to exceed 2 years.**" FPL proposes to defer these costs for an indefinite period, but at a minimum of 4 years. This request is contrary to the Commission's Rule and should be denied.

Miami: No. Section 366.93, F.S., or Rule 25-6.0423, F.A.C. requires FPL to *annually* petition the FPSC to recover reasonable and prudently incurred costs. A complete petition consists of (1) a true-up of actual expenditures for the previous year, (2) a true-up and projection of expenditures for the current year, and (3) a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project. FPL has not filed a feasibility study in two (2) years and as such neither the FPSC nor the parties of record can make a determination whether the project is still feasible and that the costs incurred by FPL are reasonable and prudent during the approximately four (4) year pause FPL intends to take and concurrently defer the recovery of costs. A detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project cannot retroactively be applied beyond a year to costs incurred and expenditures made by FPL. As a matter of policy, allowing a utility company to retroactively apply a detailed analysis of the long-term feasibility of completing a project would allow utility company to expend funds during a period when the project is not feasible and then ultimately recover a majority of, if not all, costs incurred by the utility during a period of time when the project is quantifiably feasible. Therefore, any costs deferred by FPL are not recoverable in a future time period.

FIPUG: No. Agree with OPC.

FRF: No. Agree with OPC that FPL's request is contrary to the Commission's rules and should be denied.

PCS

Phosphate: No position.

SACE: No. FPL has not filed the required long-term feasibility analysis, or specific projected preconstruction expenditures for the subsequent year, nor has it filed a rule waiver request. FPL cannot be granted deferred recovery of costs or be granted a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 5A: Is FPL's decision to continue pursuing a combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable?

POSITIONS:

FPL: FPL's decision to complete the final licensing steps for Turkey Point 6 & 7 is eminently reasonable. Possession of a valid COL and associated approvals will enable FPL to move forward with preconstruction work at the right time. The license may be acted upon for a period of at least 20 years once issued, providing a significant window of time during which factors influencing a decision to move to construction may change. The alternative – halting licensing work at this time – could permanently preclude FPL's customers from ever attaining value from the licensing investment made thus far. These considerations, coupled with the comparatively low level of costs required to complete the licensing phase, demonstrate that FPL's decision to complete licensing is reasonable. (Scroggs, Reed)

DEF: No position.

OPC: No. Section 366.93(3)(f)(3), F.S., requires FPL to prove by a preponderance of the evidence that it has committed sufficient, meaningful, and available resources to enable the project to be completed **and that its intent is realistic and practical**. Westinghouse, the AP 1000 design owner, has filed for bankruptcy protection and has publicly stated it will not be constructing any additional nuclear power plants. FPL is delaying any decision to move forward with the project indefinitely after it hopes to obtain the COL. Under these circumstances, it is not realistic or practical for FPL to incur any additional costs that its ratepayers must bear for the COL in light of such uncertainty.

Miami: The City takes no position on the issue until the Contention is resolved by the Prehearing Officer.

FIPUG: No.

FRF: No. Agree with OPC that, given the existing circumstances regarding the vendor of the units that FPL proposes would be Turkey Point Units 6&7, and given the extraordinary cost overruns experienced on other sister units, which are not subject to any known cap on customer responsibility, it is patently unreasonable to believe or conclude that the prospect of FPL building the subject units is either realistic or practical. Accordingly, under these circumstances, it is not realistic or practical for FPL to incur any additional costs that its ratepayers must bear for the COL in light of such uncertainty.

PCS

Phosphate: No position.

SACE: No. There is no builder for the TP 6 & 7 reactors as Westinghouse has filed for bankruptcy and is no longer constructing reactors. Proposed AP-1000 units in South Carolina were recently cancelled after the Westinghouse bankruptcy due to a “best case” scenario projection indicating the cost of the reactors would be 75% more than originally planned and significantly delayed. FPL has not filed the required long-term feasibility analysis, or specific projected preconstruction expenditures for the subsequent year, nor has it filed a rule waiver request. FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 5B: **DROPPED** (*See Section XIV – Rulings*)

ISSUE 6A: **DROPPED** (*See Section XIV – Rulings*)

ISSUE 6B: **Was FPL required to file an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 project, pursuant to Rule 25-6.0423(6)(c)5., F.A.C.,? If so, has FPL complied with that requirement?**

POSITIONS:

FPL: No, FPL was not required to file an annual detailed analysis of the long term feasibility of completing the Turkey Point 6 & 7 project in this docket. Section (6) makes filing for cost recovery optional. Subsection (6)(c) applies to the process for seeking cost recovery, but FPL is not seeking cost recovery at this time. Accordingly, parts (6)(c)1.b and (6)(c)1.c; portions of (6)(c)2 and (6)(c)4; and (6)(c)5 (requiring the annual feasibility analysis) do not apply in this proceeding.

DEF: No position.

OPC: Rule 25-6.0423, F.A.C., specifically requires FPL to submit each year for Commission review and approval, as part of its cost recovery filing “a detailed analysis of the long-term feasibility of completing the power plant.” FPL has not made this filing. Based on this lack of compliance, no new costs should be allowed for recovery nor should any costs be allowed to be deferred for later recovery.

Miami: Yes. Rule 25-6.0423(6)(c)5., F.A.C. requires that FPL *annually* file, along with its true-up of actual expenditures for the previous year and true-up and projection of expenditures for the current year, a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project. FPL is excused from the rule requirements only if the FPSC grants a waiver pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, F.A.C. FPL has not filed a Petition for a Waiver, there is no Order from the FPSC granting a waiver, and FPL has failed to demonstrate that it is not required to file an annual feasibility study. Further, pursuant to Order No. PSC-16-0266-PCO-EI, FPL represented it would file a detailed feasibility study and despite that representation it did not file a detailed feasibility study. As such, FPL has not complied with the requirements set forth in Rule 25-6.0423(6)(c)5., F.A.C.

FIPUG: Yes, an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 project was and is required to be submitted. FPL has not complied with this requirement.

FRF: Yes, FPL was required to make such filing, but FPL has not complied with that requirement.

PCS

Phosphate: No position.

SACE: Yes, FPL is required to file an annual long-term detailed feasibility analysis. Yet, FPL has not filed the required long-term feasibility analysis, or specific projected preconstruction expenditures for the subsequent year, nor has it filed a rule waiver request. FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 7: Has FPL complied with Order No. PSC-16-0266-PCO-EI? If not, what action should the Commission take, if any?

POSITIONS:

FPL: Yes. Order No. PSC-16-0266-PCO-EI did not require FPL to take any particular actions. Instead, that order granted FPL's Motion to Defer Consideration of Issues and Cost Recovery. In doing so, the order recited two representations made by FPL in its motion and at the agenda conference during which the motion was considered. Those representations were that (1) FPL would withdraw its Petition for Waiver of Rule 25-6.0423(6)(c)5; and (2) FPL planned to file a long-term feasibility analysis during the ordinary course of the 2017 NCR cycle. FPL did withdraw its Petition for Waiver of Rule 25-6.0423(6)(c)5. FPL also accurately represented its plan and intention to file a feasibility analysis in the 2017 NCR docket. That remained FPL's plan several months into 2017.

FPL's subsequent decision to not seek cost recovery in the 2017 NCR docket reflected a material change in FPL's filing plans. As a result of FPL's decision to not seek contemporaneous cost recovery, the requirement found in Rule 25-6.0423(6)(c)5 does not apply, and FPL's plan to file a feasibility analysis pursuant to that rule provision became moot.

DEF: No position.

OPC: No. In Order No. PSC-16-0266-PCO-EI, issued July 12, 2016, in Docket No. 160009-EI (20160009-EI) at pages 2 and 3, the Commission states "FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket." FPL failed to file in this year's docket a long-term feasibility study in accordance with Rule 25-6.0423(6)(c)(5), F.A.C.; therefore, FPL has not complied with the Commission's Order.

Miami: No. FPL represented in its Motion to Defer and during the July 7, 2016 Commission Conference for Docket No. 20160009-EI that if the FPSC granted its Motion to Defer, that it would, *inter alia*, file a feasibility study in the 2017 docket. FPL has not filed a feasibility in blatant disregard of its representations to the FPSC and Order No. PSC-16-0266-PCO-EI. As a result of this non-compliance, the FPSC should deny FPL's Petition for Approval of Nuclear Power Plant Cost Recovery True-Up for the Years 2015 and 2016 and require it to reimburse any and all costs recovered in 2015 and 2016. Additionally, FPL should be precluded from petitioning the FPSC for any advanced cost recovery until the FPSC approves FPL's petition to begin the construction phase of the Turkey Point Units 6 & 7 project pursuant to Section 366.93(3)(e), F.S.

FIPUG: No. The Commission should deny FPL the relief it seeks.

FRF: No. Agree with OPC.

PCS

Phosphate: No position.

SACE: No. The Order was predicated on the understanding that FPL would file the required feasibility analysis in this year's docket. In a display of bad faith, FPL has not filed the required long-term feasibility analysis, or specific projected preconstruction expenditures for the subsequent year, nor has it filed a rule waiver request in this year's docket. FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 8: What is the total jurisdictional amount to be included in establishing FPL's 2018 Capacity Cost Recovery Clause factor?

POSITIONS:

FPL: The total jurisdictional amount of (\$7,305,202) should be included in establishing FPL's 2018 CCRC factor. There is no testimony to the contrary. (Grant-Keene)

DEF: No position.

OPC: The jurisdictional amount to be included in the 2018 Capacity Cost Recovery Clause factor should be limited to the 2015 true-up amount.

Miami: None. This determination should not be made until FPL files a complete petition which consists of (1) a true-up of actual expenditures for the previous year, (2) a true-up and projection of expenditures for the current year, *and* (3) a detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project.

FIPUG: Nothing.

FRF: The jurisdictional amount to be included in the 2018 Capacity Cost Recovery Clause factor should be limited to the 2015 true-up amount.

PCS

Phosphate: No position.

SACE: The Commission cannot determine the 2018 Cost Recovery factor because FPL has not complied with the applicable statute and rule in 2016 or 2017. FPL did not file the required long-term feasibility analysis, or specific projected preconstruction expenditures for the subsequent year, nor has it filed a rule waiver request this year. FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section 366.93 F.S., and Rule 25-6.0423 F.A.C. As a matter of law the Commission cannot provide FPL the relief it seeks.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 9: **What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?**

POSITIONS:

FPL: When time-related costs such as inflation and carrying costs are included, and in-service dates of 2031 and 2032 are assumed, the total non-binding cost estimate range is \$14.96 to \$21.87 billion for the 2,200 MW project. There is no testimony to the contrary. (Scroggs)

DEF: No position.

OPC: The current total estimated all-inclusive costs are unknown.

Miami: Adopts the positions of SACE.

FIPUG: More than FPL previously stated.

FRF: Unknown.

PCS

Phosphate: No position.

SACE: The proposed reactors will likely never be built. Regardless, the current estimated costs are too low, and the ultimate cost of the proposed TP 6 & 7 reactors will significantly exceed current estimates. Proposed AP-1000 units in South Carolina were recently cancelled after the Westinghouse bankruptcy due to a “best case” scenario projection indicating the cost of the reactors would be 75% more than originally planned and significantly delayed.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 10: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

POSITIONS:

FPL: FPL has assumed in-service dates of 2031 and 2032 for purposes of updating its non-binding cost estimate range. FPL intends to update its project schedule when the first wave of new nuclear construction projects (*i.e.*, Georgia Power Company's Vogtle project and South Carolina Electric & Gas's Summer project) are complete. There is no testimony to the contrary. (Scroggs)

DEF: No position.

OPC: The current estimated planned commercial operation date is unknown.

Miami: Adopts the positions of SACE.

FIPUG: Longer than FPL previously stated.

FRF: Unknown.

PCS

Phosphate: No position.

SACE: The reactors will likely never come into service. There is no builder for the TP 6 & 7 reactors as Westinghouse has filed for bankruptcy and is no longer constructing reactors. Proposed AP-1000 units in South Carolina were recently cancelled after the Westinghouse bankruptcy due to a "best case" scenario projection indicating the cost of the reactors would be 75% more than originally planned and significantly delayed. FPL will not even provide a long-term feasibility analysis for the reactors showing that they remain economical for its customers.

STAFF: Staff has no position pending evidence adduced at the hearing.

ISSUE 11: *Proposed Type-2 Stipulation – see Section X*

ISSUE 12: *Proposed Type-2 Stipulation – see Section X*

ISSUE 13: *Proposed Type-2 Stipulation – see Section X*

ISSUE 14: *Proposed Type-2 Stipulation – see Section X*

ISSUE 15: *Proposed Type-2 Stipulation – see Section X*

IX. EXHIBIT LIST

Exhibits marked with an asterisk (*) are deferred until the October 25, 2017 hearing.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
<u>Florida Power & Light Company</u>			
Steve Scroggs/ Jennifer Grant-Keene	FPL	SDS-1	2015 T- Schedules Turkey Point 6 & 7 Site Selection and Pre- Construction Costs
Steve Scroggs/ Jennifer Grant-Keene	FPL	SDS-2	2016 T- Schedules Turkey Point 6 & 7 Site Selection and Pre- Construction Costs
Steve Scroggs	FPL	SDS-3	Turkey Point 6 & 7 Licenses, Permits and Approvals
Steve Scroggs	FPL	SDS-4	Turkey Point 6 & 7 Procedures and Work Instructions
Steve Scroggs	FPL	SDS-5	Turkey Point 6 & 7 Project Reports
Steve Scroggs	FPL	SDS-6	Turkey Point 6 & 7 Project Instructions and Forms
Steve Scroggs	FPL	SDS-7	Turkey Point 6 & 7 Summary Tables of the 2015 Expenditures
Steve Scroggs	FPL	SDS-8	Turkey Point 6 & 7 Summary Tables of the 2016 Expenditures
Steve Scroggs/ Jennifer Grant-Keene	FPL	SDS-9	Turkey Point 6 & 7 Site Selection and Pre-construction Nuclear Filing Requirement Schedules
Steve Scroggs	FPL	SDS-10	Steps in Turkey Point 6 & 7 Licensing

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Jennifer Grant-Keene	FPL	JGK-1	Final True-Up of 2015 Revenue Requirements
Jennifer Grant-Keene	FPL	JGK-2	Final True-Up of 2016 Revenue Requirements
Jennifer Grant-Keene	FPL	JGK-3	2018 Revenue Requirements
Eugene T. Meehan	Miami	ETM-1	CV of Eugene T. Meehan
Eugene T. Meehan	Miami	ETM-2	Deposition of Steven D. Scroggs
Eugene T. Meehan	Miami	ETM-3	Ten Year Site Plan 2015-2024
Eugene T. Meehan	Miami	ETM-4	Ten Year Site Plan 2017-2026
Eugene T. Meehan	Miami	ETM-5	2015 Testimony & Exhibits of Richard O. Brown
Eugene T. Meehan	Miami	ETM-6	Second Quarter 2017 Survey of Professional Forecasters
Eugene T. Meehan	Miami	ETM-7	2015 Testimony & Exhibits of Eugene T. Meehan
Iliana H. Piedra	Staff	IHP-1	Auditor's Report - Turkey Point Units 6 & 7 Twelve Months Ended December 31, 2016
Iliana H. Piedra	Staff	IHP-2	Auditor's Report - Turkey Point Units 6 & 7 Twelve Months Ended December 31, 2015
Sofia Lehmann & David Rich	Staff	LR-1	Review of Project Management Internal Controls for Turkey Point 6 & 7 Construction – June 2017
Sofia Lehmann & David Rich	Staff	LR-2	Review of Project Management Internal Controls for Turkey Point 6 & 7 Construction – June 2016

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Rebuttal</u>			
John Reed	FPL	JJR-1	John J. Reed Resume
John Reed	FPL	JJR-2	Expert Testimony of John J. Reed.
<u>Duke Energy Florida, LLC</u>			
Thomas G. Foster/ Christopher Fallon	DEF	TGF-1*	2016 Summary, 2016 Detail Schedule, 2016 Detail-LLE Deferred Balance Schedule and Appendices A through E, which reflect DEF's retail revenue requirement for the LNP from January 2016 through December 2016 (CONFIDENTIAL DN. 02611-17)
Thomas G. Foster	DEF	TGF-2	Reflects the actual costs 2016 True-Up Summary, 2016 Detail Schedule and Appendices A through E, which show DEF's retail revenue requirements for the EPU project from January 2016 through December 2016.
Thomas G. Foster/ Christopher Fallon	DEF	TGF-3*	Duke Energy Florida, LLC Levy Nuclear Units 1 & 2 Commission schedules January 2017-December 2018. (CONFIDENTIAL DN. 04538-17)

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Thomas G. Foster	DEF	TGF-4	Reflects the actual costs associated with the EPU project and consists of: 2018 Revenue Requirement Summary, 2017 Revenue Requirement Detail Schedule, 2018 Revenue Requirement Detail Schedule, 2018 Estimated Rate Impact Schedule, and Appendices A through F.
Thomas G. Foster	DEF	TGF-5*	March 2, 2015 Direct Testimony of Thomas G. Foster in support of actual costs.
Thomas G. Foster	DEF	TGF-6*	March 1, 2016 Direct Testimony of Thomas G. Foster in support of actual costs.
Ronald A. Mavrides	Staff	RAM-1	Auditor's Report - Crystal River Unit 3 Uprate
Ronald A. Mavrides	Staff	RAM-2*	Auditor's Report - Levy Nuclear Plant Units 1 & 2
Ronald A. Mavrides	Staff	RAM-3*	Auditor's Report - Levy Nuclear Plant Units 1 & 2
Ronald A. Mavrides	Staff	RAM-4*	Auditor's Report - Levy Nuclear Plant Units 1 & 2

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are proposed Type 2 stipulations as shown below.

ISSUE 11: Should the Commission find that during 2016, DEF's accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project?

PROPOSED STIPULATION

Yes, for 2016, DEF's accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project (EPU).

ISSUE 12: What jurisdictional amounts should the Commission approve as DEF's actual 2016 prudently incurred costs for the Crystal River Unit 3 Uprate project?

PROPOSED STIPULATION

The Commission should approve the following amounts as DEF's actual 2016 prudently incurred costs for the Crystal River Unit 3 Uprate project:

Wind-Down & Exit Costs (Jurisdictional, net of joint owners)-- \$36,123

Carrying Costs-- \$14,219,464

The over-recovery of \$608,728 should be included in setting the allowed 2018 NCRC recovery.

(Foster)

ISSUE 13: What jurisdictional amounts should the Commission approve as reasonably estimated 2017 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate Project?

PROPOSED STIPULATION

The Commission should approve the following amounts as DEF's reasonably estimated 2017 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate project consistent with Section 366.93(6), Fla. Stat., and Rule 25-6.0423(7), F.A.C.:

Wind-Down & Exit Costs (Jurisdictional, net of joint owners)-- \$37,087

Carrying Costs -- \$10,077,523

The over-recovery of \$175,014 should be included in setting the allowed 2018 NCRC recovery.

ISSUE 14: What jurisdictional amounts should the Commission approve as reasonably projected 2018 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate Project?

PROPOSED STIPULATION

The Commission should approve the following amounts as DEF's reasonably estimated 2018 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate project consistent with Section 366.93(6) and Rule 25-6.0423(7):

Wind-Down & Exit Costs (Jurisdictional, net of joint owners)-- \$38,750

Carrying Costs-- \$6,084,679

Amortization of 2013 Regulatory Asset -- \$43,681,007

ISSUE 15: What is the total jurisdictional amount for the Crystal River Unit 3 Uprate Project to be included in establishing DEF's 2018 Capacity Cost Recovery Clause Factor?

PROPOSED STIPULATION

The total jurisdictional amount for the CR3 EPU project to be included in establishing DEF's 2018 Capacity Cost Recovery Clause factor should be \$49,648,457.

XI. PENDING MOTIONS

There are no pending motions.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 75 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 75 words, it must be reduced to no more than 75 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's brief, including proposed findings of fact and conclusions of law, if any, statement of issues and positions, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Issues 5B and 6A are dropped; Issue 5A shall remain as a live issue for the hearing. Any arguments that a party may have made under dropped Issue 5B are subsumed under Issue 5A, and dropped Issue 6A is subsumed under Issues 3, 4, 5A, 6B, and any other issues that a party believes may support its arguments.

Opening statements, if any, shall not exceed 5 minutes per Intervenor, and shall not exceed 10 minutes for Florida Power & Light Company. Duke Energy Florida, LLC has waived opening statements.

Witnesses' summary of testimony shall not exceed 3 minutes.

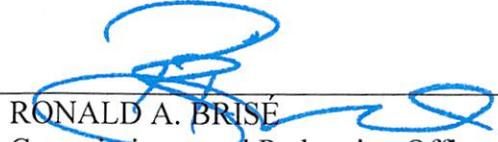
White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate – White Springs has been excused from attending the Prehearing Conference, and the August 15, 2017 hearing.

The City of Miami has been excused from attending the Prehearing Conference.

It is therefore,

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 10th day
of August, 2017.



RONALD A. BRISÉ
Commissioner and Prehearing Officer
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Tallahassee, Florida 32399
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

KRM

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.