

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause.

DOCKET NO. 20170009-EI

FILED: AUGUST 31, 2017

**THE FLORIDA RETAIL FEDERATION'S
POST-HEARING STATEMENT AND BRIEF**

The Florida Retail Federation (“FRF”), pursuant to the procedural orders in this docket, Order No. PSC-2017-0057-PCO-EI and Order No. PSC-2017-0260-PCO-EI, and the Prehearing Order, Order No PSC-2017-0323-PHO-EI, hereby submits its Post-Hearing Statement and Brief. In summary, Florida Power & Light Company (“FPL”) has failed to comply with applicable requirements of, and failed to meet the burden of proof required by, Section 366.93, Florida Statutes, and the Commission’s Rule 25-6.0423, Florida Administrative Code (“F.A.C.”) (the “NCRC Rule”) implementing the statutes, and FPL has thus failed to meet its burden of proof required to obtain any Commission order authorizing recovery of costs through the Nuclear Cost Recovery Clause. Accordingly, FPL is not entitled to any order of the Florida Public Service Commission (“Commission”) approving cost recovery for any expenditures on its proposed Turkey Point Nuclear Project. The Commission should therefore order FPL to refund all monies collected from customers since January 1, 2015 and should further deny FPL’s request for approval to defer future costs for recovery at some unspecified future date.

PRELIMINARY STATEMENT

In this Post-Hearing Statement, the following naming conventions are used. The Florida Public Service Commission is referred to as the “Commission.” Florida Power & Light Company is “FPL.” Section 366.93, Florida Statutes, is the “NCRC Statute.” Rule 25-6.0423, F.A.C., is the “NCRC Rule.” Commission Orders are generally cited in the format in which they

were originally issued; Commission docket numbers are generally cited in the updated format in which the first four digits are the year of the docket, e.g., the current proceeding is Docket No. 20170009-EI. References to the hearing transcript are in the form “TR abc,” where abc denotes the page number referred to. Hearing exhibits are cited in the form “EXH jkl at xyz,” where jkl denotes the number assigned to the exhibit and xyz identifies the page number cited; in some instances, instead of page numbers, schedule numbers (e.g., TOR-7) are cited.

BACKGROUND

In 2006, the Florida Legislature enacted Section 366.93, Florida Statutes (the “Nuclear Cost Recovery Statute” or simply the “NCRC Statute”) to encourage utility investment in nuclear generation in Florida. The NCRC Statute was intended to provide for recovery of certain preconstruction costs and carrying costs during the construction period for nuclear plants. The NCRC Statute was amended in 2014 to impose certain additional requirements on continuing cost recovery by utilities seeking recovery pursuant to the NCRC Statute. Order No. PSC-2015-0521-FOF-EI at 3. Most significantly for purposes of this proceeding – herein referred to as the “2017 NCRC Docket” – the NCRC Statute now includes the following express requirement:

3. Beginning January 1, 2014, in making its determination for any cost recovery under this paragraph, the commission may find that a utility intends to 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.

Fla. Stat. § 366.93(3)(f)3. In sum, the NCRC Statute requires that, in order to qualify for “any cost recovery” pursuant to that Statute, a utility – FPL in this instance – must prove that it ***intends*** to construct its proposed plant, and that ***“its intent is realistic and practical.”***

Following enactment of the NCRC Statute, FPL obtained a determination of need for its Turkey Point 6 and 7 Nuclear Project (“Turkey Point Nuclear Project,” “Turkey Point Project,”

or simply the “Project”) in 2008. In its need petition, FPL represented that the in-service dates of the proposed units would be 2018 and 2020, respectively. In re: Petition to Determine Need for Turkey Point Nuclear Units 6 and 7 Electrical Power Plant, by Florida Power & Light Company, Docket No. 070650-EI, Order No. PSC-08-0237-FOF-EI at 2 (April 11, 2008) (“Turkey Point Need Order”). Among other things, in the Turkey Point Need Order, the Commission imposed the following requirement on FPL:

FPL shall provide a long-term feasibility analysis as part of its annual cost recovery process which, in this case, shall also include updated fuel forecasts, environmental forecasts, break-even costs, and capital cost estimates. In addition, FPL should account for sunk costs. Providing this information on an annual basis will allow us to monitor the feasibility regarding the continued construction of Turkey Point 6 and 7.

Turkey Point Need Order at 29 (emphasis supplied).

This requirement that utilities seeking cost recovery under the NCRC Statute must provide an annual long-term feasibility analysis was clearly stated in the Commission’s 2014 amendments to its Nuclear Cost Recovery Rule, as follows:

5. 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.

Rule 25-6.0423(6)(c)5., F.A.C.

Although FPL presented, and the Commission approved, the required feasibility analysis in 2015 (2015 NCRC Docket, Order No. PSC-15-0521-FOF-EI at 19), FPL did not present any such feasibility analysis in 2016, nor has FPL presented any such feasibility analysis in the 2017 NCRC Docket. In fact, in the 2016 NCRC Docket and in this current 2017 NCRC Docket, FPL did not present any testimonial or exhibit evidence to support a finding that FPL has a “realistic

and practical” intent to construct the Turkey Point Project. All action on FPL’s Turkey Point Project was deferred in the 2016 Need Docket, Order No. PSC-2016-0266-PCO-EI at 3, without FPL having provided any evidence, but with the statement in that order, upon which the Commission apparently relied, that “FPL plans to file a long-term feasibility analysis in the 2017 NCRC docket.” Id. at 2. Despite FPL’s prima facie failure to comply with the NCRC Statute and the Commission’s Nuclear Cost Recovery Rule in either 2016 or 2017, FPL now seeks an order of the Commission authorizing FPL to keep – i.e., Commission ratification of cost recovery of – funds collected from its customers in 2015 and 2016, and further seeks the Commission’s authorization to defer recovery of at least tens of millions of dollars of future costs (EXH 10, TOR-7; TR 134) for recovery at some unspecified future date.

In 2015, FPL recovered \$25,204,779 from its customers for expenditures on preconstruction costs, generally the licensing process, for the Turkey Point Project, and carrying costs. In 2016, FPL recovered \$28,679,830 from its customers. EXH 14. Per FPL’s accounting, recovery of these amounts led to an over-recovery of \$1,306,556 for 2015 and an over-recovery of \$5,998,797 for 2016. Id. In this 2017 NCRC Docket, FPL seeks the Commission’s determination of prudence for its 2015 and 2016 expenditures, TR 394, and thus requesting the Commission’s authorization to keep all of the monies recovered from customers except for the over-recoveries, which FPL proposes to refund. Id.

The FRF’s Post-Hearing Brief continues with the requisite statement of issues and positions, followed by the FRF’s Legal Brief on key issues.

POST-HEARING STATEMENT OF ISSUES AND POSITIONS

The following statement of issues and positions follows the issues as set forth in the Prehearing Order. Discussion of major issues is deferred to the FRF's Legal Brief in the following section.

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?**

FRF: *No Position.*

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?**

FRF: *The Commission should approve zero dollars for recovery through the NCRC, because FPL has not met its burden of proof – that it has a “realistic and practical” intent to construct the Turkey Point Project – in order to entitle it to a Commission order approving any cost recovery in this 2017 NCRC Docket. The final true-up amount should be a credit or refund to customers of the \$53,964,509 that FPL collected in 2015 and 2016.*

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?**

FRF: *No. FPL’s request is substantively a request for approval of cost recovery of its future costs, but FPL has not satisfied the requirements of Section 366.93(3)(f), Florida Statutes, nor has FPL complied with the Commission’s Rule, and accordingly, FPL is not entitled to the requested relief. Specifically, FPL has failed to meet the required burden of proof that it has a “realistic and practical intent” to construct the Turkey Point Project.*

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.?

FRF: *No. FPL’s request for approval of deferred cost recovery is substantively a request for cost recovery, and FPL has not satisfied the express requirement of Section 366.93(3)(f), Florida Statutes, to prove that it has a realistic and practical intent to construct the Turkey Point Nuclear Project. In fact, FPL did not provide any testimony or any evidence of its intent to construct the Project, and accordingly, its request must be denied.*

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

FRF: *No. Given the extreme doubt regarding the viability or value of ever constructing the Turkey Point Project, exacerbated by FPL’s failures to comply with the NCRC Statute and NCRC Rule, the prospect of FPL building the Turkey Point Project is neither reasonable, nor realistic, nor practical. Moreover, FPL’s request is beyond the scope of the Nuclear Cost Recovery Statute because it effectively seeks a declaratory statement regarding pursuing the COL, not approval of cost recovery.*

Issue 6: 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?

FRF: *Yes, FPL was required to make such a filing by the Turkey Point Need Order (Order No. 08-0237-FOF-EI) and also by Rule 25-6.0423(6)(c)5., F.A.C., but FPL has not complied with either the cited Turkey Point Need Order or the Commission's NCRC Rule. Further, it is clear on its face that FPL's failure was knowing and willful.*

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

FRF: *Because Order No. PSC-16-0266-PCO-EI was procedural in nature and only ordered that FPL's motion to defer was granted, it is difficult to say that FPL violated any express requirement of that Order. However, given that the Order was based on FPL's representation that it would file the requisite long-term feasibility analysis in the 2017 NCRC Docket, it is fair to say that FPL violated the spirit of the Order.*

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

FRF: *Because FPL hasn't satisfied the express requirement of Section 366.93(3)(f), Florida Statutes, to prove that it has a realistic and practical intent to construct the Project, FPL is not entitled to any order of the Commission approving any cost recovery. Accordingly, the jurisdictional amount to be included in establishing FPL's 2018 CCR factor is a refund of \$53,964,509, i.e., all customer monies collected in 2015 and 2016 for which prudence has not been determined.*

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?**

FRF: *In light of the uncontroverted facts that FPL has no planned in-service date and no realistic and practical intent to construct the Turkey Point Project, and since it is at best highly speculative that FPL would ever build the units as proposed, the estimated cost to construct these units is unknown.*

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

FRF: *FPL has no realistic and practical intent to construct the Turkey Point Project; rather, FPL has “assumed” commercial operation dates that are 14 and 15 years in the future, i.e., 2031 and 2032 (EXH 10, Schedule TOR-7), “for purposes of updating its non-binding cost estimate range.” Prehearing Order No. 2017-0323- PHO-EI at 30. Accordingly, FPL has no planned commercial operation date of the proposed Turkey Point Project.*

Duke Energy Florida

The following statements for the Duke Energy Florida issues in the 2017 NCRC Docket are included because they are listed in the Prehearing Order.

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?**

FRF: *No Position.*

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?**

FRF: *No Position.*

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?**

FRF: *No Position.*

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?**

FRF: *No Position.*

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?**

FRF: *No Position.*

LEGAL BRIEF

This section of the FRF's Post-Hearing Statement and Brief addresses several key issues presented in the 2017 NCRC Docket, including the following: Issues 2 and 8, which address the amounts that the Commission should approve for cost recovery in the 2017 NCRC Docket; Issues 3 and 4, which address FPL's request to defer cost recovery for expenditures in 2017 and future years; Issue 5, which addresses whether it is reasonable for FPL to continue pursuing the Combined Operating License ("COL") for the Turkey Point Project; and Issue 6, which addresses whether FPL complied with the Commission's NCRC Rule. The discussion is organized based on the question of proper cost recovery through the Nuclear Cost Recovery Clause, which is the subject of this proceeding. As explained below, FPL has not met its burden of proof imposed by the NCRC Statute to qualify for "any cost recovery," and FPL has further failed to comply with the Commission's NCRC Rule. Accordingly, FPL is not entitled to any Commission order approving "any cost recovery," including both the amounts that FPL has collected from its customers and now seeks to keep, without satisfying the statutory burden of proof that it has a realistic and practical intent to construct the Turkey Point Project, and also including the unknown and unspecified amounts that FPL proposes to be allowed to defer for future recovery at an unknown date.

SUMMARY OF ARGUMENT

The Florida Retail Federation respectfully asks the Commission to deny FPL's requests for cost recovery – both its request to keep funds already collected and its request for approval of recovery of unknown future costs at some unknown and unspecified future time – because they are barred, as a matter of law, by FPL's failure to comply with the NCRC Statute and the Commission's NCRC Rule.

The NCRC Statute plainly and clearly provides that, as a matter of law, in order to grant “any cost recovery,” the Commission must find that FPL has a “realistic and practical” intent to construct the Turkey Point Project. The Commission has made clear that its NCRC Rule, implementing that Statute, requires the same showing. Order No. PSC-2015-0521-FOF-EI at 19. However, in this 2017 NCRC Docket, and also in the 2016 NCRC Docket, FPL has failed to comply with this requirement: FPL has furnished no evidence of any intent to construct the Turkey Point Project, let alone any “realistic and practical” intent to do so. The only “intent” that FPL has indicated is its “intent” to “pause” its consideration of whether to construct the Turkey Point Project. TR 110; Prehearing Order at 7, 21. Accordingly, FPL is not entitled to any cost recovery through the NCRC Statute.

Further, based on known facts in the record evidence of this proceeding, no reasonable person could believe that any plan to construct the Turkey Point Project is either realistic or practical. Under these circumstances, good public policy requires that, if FPL wishes to proceed with its licensing efforts for a nuclear plant for which it doesn’t know the cost, for which it has no construction contracts, and whose principal corporate sponsor is now in bankruptcy with no plans to continue building nuclear plants, then FPL must do so solely at its own risk. As a matter of law, because of the lack of evidence, the Commission cannot find that FPL has a realistic and practical intent to construct the Turkey Point Project, and as a matter of good public policy, the Commission should tell FPL unequivocally that, if it proceeds, all risks associated with continued expenditures will be borne by FPL.

ARGUMENT

I. FPL Is Not Entitled To Any Cost Recovery for Nuclear Expenditures Because FPL Has Not Satisfied the Requirements of Section 366.93(3)(f)3., Florida Statutes.

A. As a Matter of Law, FPL Is Not Entitled to a Commission Order Approving Any Cost Recovery in the 2017 NCRC Docket Because FPL Has Failed to Meet the Statutory Burden of Proof for Any Such Order.

Section 366.93(3)(f)3. provides as follows:

3. Beginning January 1, 2014, in making its determination for any cost recovery under this paragraph, the commission may find that a utility intends to 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.

The NCRC Statute is clear on several key points. First, it applies to Commission determinations “for any cost recovery” under the NCRC Statute. Second, it requires that a utility seeking cost recovery must “prove by a preponderance of evidence” that it has a “realistic and practical” intent to construct its nuclear project. FPL has failed to provide any evidence of its intent to construct the Turkey Point Project for more than two years, since 2015, and has thus obviously failed to prove in this 2017 NCRC Docket that it has any intent to construct the Turkey Point Project, let alone the required “realistic and practical” intent. Rather, FPL’s “intent” is to “pause” in the licensing process until it figures out what it wants to do. TR 110; Prehearing Order at 7, 21. An intent to “pause” is, on its face, not the intent to construct.

FPL does not know how much the unit will cost, nor will it commit to any cost limit that it might seek to impose on its customers. TR 209. Nor does FPL know when the Turkey Point Project would come into service, if it were built at all; rather than providing evidence regarding a “planned” in-service date, FPL has merely “assumed” that the two reactors comprising the Turkey Point Project would come on line in 2031 and 2032. EXH 10, Schedule TOR-7;

Prehearing Order at 29-30. This is almost shocking in light of the fact that when it originally obtained the Commission's determination of need, FPL asserted that it would bring the units into service in 2018 and 2020. Turkey Point Need Order at 6, 7, 17. Today, what were "planned" and "needed" units are now shrouded in doubt to the point that FPL can only make vague assumptions for purposes of estimating possible costs, which FPL will not guarantee, TR 209, and for which FPL has no contracts to support any such cost estimates. Id.

FPL does not even characterize the Turkey Point Project as "planned," rather characterizing it as assumed for cost estimation purposes. Prehearing Order at 30. Moreover, FPL does not articulate any "plan" or "intent" to actually build the Turkey Point Project; rather, FPL intends to "pause" its activities after spending up to another \$100 million of customers' money to obtain and maintain the COL for the Project. See TR 134 and EXH 10, TOR-7. FPL does not know when it would build the unit, nor does FPL know how much it would cost; further, FPL cannot and will not commit to how much the Project would cost its customers if it were built. This loose "plan" to keep spending customers' money, while FPL "pauses" to figure out what to do some 4-plus years from now, simply does not satisfy the requirements of the NCRC Statute for Commission approval of "any cost recovery," and accordingly, the Commission must deny all of FPL's requests for cost recovery herein, including FPL's requests for recovery of 2015 and 2016 monies collected from customers, because such costs have never been approved in any way in compliance with the NCRC Statute, and also including FPL's request for advance approval for its proposal to create a regulatory asset for recovery of costs that it intends to incur but to defer for recovery from customers at some unspecified future date.

B. The Preponderance of Evidence in this Proceeding Supports Only One Conclusion, Namely, That It Is Not Realistic or Practical to Consider Building the Turkey Point Project.

Moreover, even if FPL were to assert that it “intends” to build the Turkey Point Project, any such intent could not be regarded as either realistic or practical. Westinghouse, which owns the design rights to the AP1000, filed for bankruptcy protection in the spring of 2017, TR 146, and has publicly stated it would no longer construct nuclear power plants in the future. TR 148. Until recently, there were two nuclear projects using the same technology as FPL’s proposed Turkey Point Project reactors under construction in the United States, at Plant Vogtle in Georgia in a project that would serve Georgia Power Company and Oglethorpe Power, and at the V.C. Summer plant in South Carolina, which would serve Santee Cooper and South Carolina Electric & Gas Company, a subsidiary of SCANA Corporation. EXH 42. The Summer project has been abandoned by its utility purchasers. EXH 41, EXH 46. The Vogtle project is in grave doubt. Westinghouse’s parent corporation, Toshiba, has made some limited commitments to the would-be utility owners of reactors under construction, EXH 42, but even Toshiba’s future as a going concern is subject to some doubt. EXH 42, EXH 43.

By any objective standard of reasonableness, the possibility that the Turkey Point Project would – or could – ever be built is neither realistic nor practical. At best, it is highly speculative. This is demonstrated by the continuing delays and cost overruns experienced at the two projects using exactly the same technology and designs. These delays and cost overruns, and the associated uncertainties have now led to one of those projects, the V.C. Summer project in South Carolina, being abandoned after the utility purchasers spending some \$14 Billion, EXH 41, and have cast the other project, at Plant Vogtle in Georgia, into troubled waters at best. EXH 42. The speculative proposition that the Turkey Point Project could or would ever be built is further

demonstrated by the bankruptcy of Westinghouse, the company that developed the AP1000, and by the public concern that the future of Westinghouse's parent, Toshiba, is on shaky financial ground because of Westinghouse's difficulties with the Georgia and South Carolina projects. EXH 42.

II. FPL Is Not Entitled to Any Cost Recovery, or to Any Commission Order Authorizing Cost Recovery, Because FPL Has Not Complied With the Commission's Nuclear Cost Recovery Rule or Applicable Orders.

As relevant to FPL's requests for cost recovery in this proceeding the Commission's NCRC Rule provides as follows.

5. 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.

To the same effect, in Order No. PSC-2015-0521-FOF-EI, the Commission explained the intent and requirements of the NCRC Rule, stating that:

The January 29, 2014 amendment to Rule 25-6.0423(6)(c)5., F.A.C., requires that FPL provide evidence of intent to construct the TP Project. The rule specifies that the utility show "it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical."

Order No. PSC-2015-0521-FOF-EI at 19. In other words, the Commission explained that its NCRC Rule tracks the NCRC Statute.

In its 2008 Turkey Point Need Order, the Commission similarly – and expressly and specifically – imposed the following requirement on FPL:

FPL shall provide a long-term feasibility analysis as part of its annual cost recovery process which, in this case, shall also include updated fuel forecasts, environmental forecasts, break-even costs, and capital cost estimates. In addition, FPL should account for sunk costs. Providing this information on an annual basis

will allow us to monitor the feasibility regarding the continued construction of Turkey Point 6 and 7.

Turkey Point Need Order at 29 (emphasis supplied).

Notwithstanding these clear, express, and specific requirements of the NCRC Rule and the Turkey Point Need Order (and, of course, the NCRC Statute itself), FPL provided no evidence of intent to construct the Turkey Point Project in this 2017 NCRC Docket, nor in the 2016 Need Docket. Further, FPL failed to deliver on its 2016 representation, upon which the Commission relied, that it would provide the required long-term feasibility analysis in the 2017 NCRC Docket. Order No. 2016-0266-PCO-EI at 2.

As explained above, the possibility that the Turkey Point Project would ever be built is neither realistic nor practical, based on known facts that shroud its viability in a vast and dark cloud of uncertainty. In the context of the Commission's NCRC Rule, the possibility that the Turkey Point Project would – or could – ever be built is also untested because of FPL's continuing failure to provide the annual feasibility study required by Commission Order No. 08-0237-FOF-EI and by the Commission's NCRC Rule. FPL has simply failed to give the Commission the information that it needs to fulfill its duty under the Statute and the NCRC Rule.

III. FPL Is Not Entitled to Any Commission Order Authorizing Deferral of Costs for Future Recovery Because FPL Has Not Satisfied the Requirements of the NCRC Statute and the Commission's NCRC Rule.

FPL has requested the Commission's approval to defer recovery to future NCRC proceedings for potentially tens of millions of dollars of costs to be incurred over an indefinite period beginning with approximately \$25 million in 2017 to be followed by \$10 million to \$15 million per year thereafter. TR 134; EXH 10, Schedule TOR-7. This is clearly an order seeking approval for cost recovery, and is therefore barred by the NCRC Statute and the NCRC Rule as

explained above. It should also be rejected as a matter of common sense, given the grave doubt surrounding the future of FPL's chosen technology and further given the fact that FPL has no clear intent to build the Turkey Point Project.

IV. Good Public Policy Requires That FPL Bear Any and All Risks for Costs Incurred in Connection with the Turkey Point Project Until and Unless It Proves That It Has a Realistic and Practical Intent to Construct the Project.

To allow FPL to keep customer monies without fully complying with the NCRC Statute, with the Commission's NCRC Rule, and with the Turkey Point Need Order, would be a failure of sound public policy, as well as a breach of the Commission's duty to protect customers from being charged costs that have not been supported by the proofs required by the Florida Legislature. Without the feasibility analyses required by the Commission's NCRC Rule and by the Commission's Turkey Point Need Order, the Commission has no basis upon which to approve any cost recovery. Allowing FPL to keep customers' money and to continue imposing risks on customers is plainly unfair and unsupportable. The Commission need not tell FPL that it cannot pursue the COL for the Turkey Point Project, but the Commission should tell FPL that FPL has now had multiple chances to prove its entitlement to "any cost recovery" and that FPL's failures to present any evidence in support of its requests here must result in FPL bearing all risks of any future expenditures on the Turkey Point Project, until and unless FPL proves that it has a realistic and practical intent to construct the Project. It is clear that FPL has no such intent at the present time.

Granting FPL relief beyond the scope of the NCRC Statute would likewise be contrary to sound public policy. In this proceeding, FPL has sought relief beyond the scope of the NCRC Statute – substantively, a declaratory statement that it is reasonable to pursue the COL and then

to continue to incur costs to maintain the COL for some unspecified period of time, at least four years. FPL has furnished no evidence to support this proposition, only its argument that it has already spent money toward the license and thus it should spend more customer money to finish getting it. Assuming that it had plead an appropriate statutory basis for the requested declaratory statement, FPL could have supported its request with evidence – e.g., in the form of the detailed long-term feasibility study required by the Turkey Point Need Order and by the Commission’s NCRC Rule.

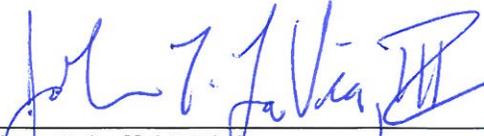
Based on known facts in the record evidence of this proceeding, no reasonable person could believe that any plan to construct the Turkey Point Project is either realistic or practical. Under these circumstances, good public policy requires that, if FPL wishes to proceed with its licensing efforts for a nuclear plant for which it doesn’t know the cost, for which it has no construction contracts, where one sister project has been abandoned after spending \$14 Billion of customer money and the only other sister project is in grave distress and doubt, and whose principal corporate sponsor is now in bankruptcy with no plans to continue building nuclear plants, then FPL must do so solely at its own risk. As a matter of law, because of the lack of evidence, the Commission cannot find that FPL has a realistic and practical intent to construct the Turkey Point Project, and as a matter of good public policy, the Commission should tell FPL unequivocally that, if it proceeds, all risks associated with continued expenditures will be borne by FPL.

CONCLUSION

As explained in this Post-Hearing Statement and Brief, FPL has failed to satisfy the express requirements of the NCRC Statute and the Commission's NCRC Rule. FPL has also failed to comply with the express requirements of the Turkey Point Need Order, which is directly applicable to FPL. Specifically, FPL has failed for the past two years to provide either the long-term feasibility analysis of the Turkey Point Project required by the NCRC Rule and the Turkey Point Need Order, and these failures can only be recognized as knowing and willful. Moreover, FPL has failed to provide any evidence of the "realistic and practical" intent to construct the Turkey Point Project that is expressly required to obtain any Commission order for "any cost recovery" pursuant to the NCRC Statute. As a matter of law, these failures bar FPL from obtaining an order of the Commission authorizing "any cost recovery" for expenditures on the Turkey Point Project, and the Commission should accordingly deny all of FPL's requests in this 2017 NCRC Docket. Because FPL has not satisfied its burden to show that its 2015 or 2016 costs were predicated on the required realistic and practical intent to construct the Project, all such monies collected should be refunded to customers. Further, FPL's request for advance approval to defer unknown future costs for future recovery at an unspecified time should be denied for the same reasons.

The proposition that the Turkey Point Project would ever be built is neither realistic nor practical; at best, it is highly speculative. Accordingly, if FPL wishes to pursue the license for the Turkey Point Project, good public policy, which must include appropriate protection for FPL's customers, requires the Commission to place all of the cost risks of FPL's actions on FPL, not on the backs of its customers.

Respectfully submitted this 31st day of August, 2017.



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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 on this 31st day of August, 2017, to the following:

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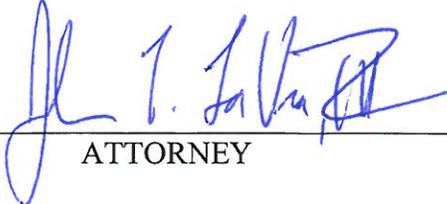
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