BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause	**DOCKET NO. 20170009-EI** **Date: August 31, 2017**

THE SOUTHERN ALLIANCE FOR CLEAN ENERGY'S POST HEARING STATEMENT, AND POST HEARING BRIEF

The Southern Alliance for Clean Energy ("SACE"), by and through its undersigned counsel, pursuant to Order Nos. PSC-2017-0057-PCO-EI and 2017-0323-PHO-EI hereby submits its Post-Hearing Statement, and Brief for the Florida Power and Light ("FPL") portion of the above docket. References to the hearing transcript will be denoted by "TR #." References to exhibits will be denoted as "Ex. #."

STATEMENT OF BASIC POSITION

SACE is a regional non-profit clean energy organization that advocates for moving the state to a lower cost, lower risk energy future. SACE has been a party to this annual nuclear cost recovery docket since it was granted party status in 2009.[1] Since then, it has consistently stated, on behalf of its members, that the proposed Turkey Point ("TP") 6 & 7 reactors are neither low cost nor low risk. It has likewise argued[2] that the proposed reactors are speculative, unlikely to be built, and a bad economic deal for SACE members in FPL's territory, and for all FPL customers.

The inherent risks for customers in the TP 6 & 7 reactor project are compounded this year by a meltdown in the US nuclear construction industry and FPL's failure to comply with mandatory filing requirements pursuant to Section 366.93, F.S. and Rule 25-6.0423 F.A.C.

[1] Florida Public Service Commission, Order No. PSC-09-0431-PCO-EI, June 19, 2009.
[2] *See e.g.* SACE post-hearing briefs in Docket Nos. 2009009, 20110009, 20140009, and 20150009.

Westinghouse, the designer and builder of the AP-1000 utilized by FPL has filed for bankruptcy. (TR 147) It has announced it is exiting the nuclear construction business and may not provide engineering and procurement services beyond the licensing phase. (TR 150) The AP-1000 Summer project in South Carolina was abandon recently after cost projections to complete the reactors jumped 41% from a contract signed just last year. (Ex. 47) The fate of the Vogtle AP-1000 project in Georgia is being considered by the Southern Company board this month and it could be abandoned as well. (TR 156)

Unfortunately, FPL uses this significant reactor industry uncertainty as support for providing even less transparency to the Commission by requesting suspension of filings[3] required by statute and rule in the nuclear cost recovery process. It has failed to follow the process established by the Florida Legislature and the Florida Public Service Commission ("Commission") for cost recovery of nuclear preconstruction costs. FPL has not filed the required feasibility analysis, a bedrock provision of the Commission's nuclear cost recovery rule process that ensures transparency, nor has it filed the required projected expenditures for the subsequent year pursuant to the Commission's rule, nor has it filed a waiver request from the rule. FPL is additionally requesting a finding of "reasonableness" from the Commission for actions to obtain and maintain the Combined License ("COL") for the proposed reactors. It asks to defer the associated costs for recovery from customers to some future date - at the discretion of the utility. The costs could be $90 million or more (TR 407) and will include significant profit for FPL shareholders – representing about 25% of all costs to be recovered rom FPL customers. (TR 408)

[3] 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

As fully discussed in SACE's Brief, FPL's unprecedented request is not consistent with the controlling statute for nuclear cost recovery, Section 366.93, F.S., nor the Commission's rule for nuclear cost recovery, Rule 25-6.0423 F.A.C. Therefore, as matter of law, the Commission cannot grant the relief requested by FPL. Moreover, FPL's has shown no intent to pursue the project, but rather to obtain and maintain the COL –without regard to the ultimate technical and economic feasibility of completing the project. Therefore, its intent is neither reasonable nor practical. The Commission should resist FPL's argument to essentially bifurcate the project into licensing costs, and post-licensing costs, without regard to whether the project is ultimately feasible.

FPL's request necessarily requires abandonment of the Commission's own rule to allow FPL incur costs that it will recover from customers for a COL it concedes may have no value for customers - for a project that FPL has not and cannot prove remains technically and economically feasible for its customers. FPL states that it is "this close to the finish line" (in obtaining a COL). (TR 159) What it fails to acknowledge is that the finish line is a dead-end.

FPL customers have already sunk over $300 million dollars into the TP 6 & 7 project. (TR 201) Why should families and businesses in FPL's territory continue to be on the financial hook for a project the utility cannot defend with quantifiable information? The bleeding must stop. Now is the time. A rejection of FPL's request would still allow FPL to pursue the COL and have its shareholders absorb the cost of obtaining and maintaining the COL. The Commission should reject FPL's request on public policy grounds alone. Regardless, because FPL's request violates Section 366.93, F.S. and Rule 25-6.0423 F.A.C., as a matter of law, the Commission cannot provide the relief that FPL seeks in this docket.

POSTION ON ISSUES

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?

POSITION: ***No.***

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?

POSITION: ***None. SACE maintains that FPL did not complete and properly analyze a realistic feasibility analysis in 2015. See SACE's 2015 post-hearing brief. As such, requested cost recovery flowing from that deficient feasibility analysis, is not reasonable, nor prudently incurred, and should be denied. Moreover, FPL provided no evidence in 2016 that cost were prudently incurred. ***

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?

POSITION: ***No. FPL has not filed the required long-term feasibility analysis for 2016 or 2017, or filed 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.***

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.?

POSITION: ***No. FPL has not filed the required long-term feasibility analysis, or filed 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.***

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?

POSITION: ***No. The TP 6 & 7 project is effectively dead. There is no builder for the reactors as Westinghouse has filed for bankruptcy. Proposed AP-1000 units in South Carolina were recently abandoned due to a 41% increase in the project price -to over $25 billion. FPL has not and cannot show the TP 6 & 7 project remains feasible. As a matter of law the Commission cannot provide FPL the relief it seeks.****

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?[4]

POSITION: ***Yes, Commission rule clearly requires FPL to file an annual long-term detailed feasibility analysis. No, FPL has not complied with that requirement or others, nor has it filed a rule waiver request. Accordingly, 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.****

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

POSITION: ***No. The Order was predicated on FPL filing the required feasibility analysis in this year's docket. FPL did not file it, 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.****

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

POSITION: ***Any over-recovery in previous years should be refunded to customers. Going forward, FPL cannot be granted deferred recovery of costs or a determination of reasonableness because it has not complied with Section**

[4] SACE maintains that this issue is not framed appropriately. SACE suggested language below that had appeared in previous dockets but was dropped by the prehearing officer in Order PSC-2017-0323-PHO-EI, August 10, 2017, p. 37 ("Should the Commission approve what FPL has submitted as its 2017 annual detailed analysis of the long term feasibility of completing the Turkey Point 6 & 7 project as provided for in Rule 25-6.0423, F.A.C.? (SACE)")

366.93 F.S., and Rule 25-6.0423 F.A.C. requirements. As a matter of law the Commission cannot provide FPL the relief it seeks.*

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?

POSITION: ***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 AP-1000 reactors will significantly exceed current estimates. Proposed AP-1000 units in South Carolina were recently abandoned after a projected price to complete that project was over $25 billion – well exceeding FPL's highest projection for the TP 6 & & reactor project.***

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

POSITION: ***The reactors will likely never come into service – the current in-service dates are simply a placeholder dates. There is no builder for the TP 6 & 7 reactors as Westinghouse has filed for bankruptcy and is no longer constructing reactors and likely not providing engineering and procurement services beyond licensing. FPL has not and cannot show a long-term feasibility analysis that reactors remain economical, nor commit that it will build them. ****

POST HEARING BRIEF

INTRODUCTION

FPL has failed to follow the process established by the Florida Legislature and this Commission for cost recovery of nuclear preconstruction and construction costs pursuant to Section 366.93, F.S. or the Commission's Rule 25-6.0423 F.A.C. FPL has not filed the required feasibility analysis, which is a bedrock provision of the Commission's nuclear cost recovery process that ensures transparency, nor has it filed the required projected expenditures for the subsequent year, nor has it filed a rule waiver request. The Commission is required to hold a

hearing on the reasonableness of those projected expenditures for the subsequent year. Instead of complying with the Commission's rule, FPL is requesting suspension of such filings for and extended and unknown period of time.[5] FPL is additionally requesting a finding of "reasonableness" from the Commission for actions related to obtaining and maintaining a COL. Moreover, it requests to defer cost recovery from customers that could amount to $90 million or more (TR 407) -which includes significant shareholder profit – about 25% of all costs. (TR 132, 402, 383-84) None of these unprecedented requests comply with the controlling statute and rule.

FPL's request's lack of transparency is especially egregious given that the project does not have a builder after the Westinghouse bankruptcy (TR 147) and that Westinghouse has announced it is exiting the nuclear construction business, (TR 148), and that the South Carolina AP-1000 Summer project was abandoned after a 41% spike in the price projection to complete that reactor project (Ex. 47), and finally as market factors, such as natural gas projections and environmental compliance costs remain unfavorable for nuclear construction. (TR 229-31) The Commission should resist FPL's request to effectively bifurcate the project into licensing costs, and post-licensing costs, without regard to whether the project is ultimately economically and technically feasible. FPL has not proven the project is realistic or practical – in fact, it concedes it is now merely pursuing an "option" to build (TR 229-31) FPL offered no quantitative benefits to customers of continuing to pursue the reactors, yet it wants to keep customers on the financial hook for a project it has not and cannot prove remains economically and technically feasible. To grant FPL's request, the Commission would necessarily have to engage in speculation on the reasonableness of licensing activities and related costs. The type of speculation required in FPL's

[5] 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.

request is wholly inconsistent with Section 366.93 F.S. and Rule 25-6.0423 F.A.C. Therefore, FPL's request must be rejected by the Commission, not only as a matter of good public policy, but as a matter of law.

ARGUMENT

I. AS A MATTER OF LAW, THE COMMISSION CANNOT GRANT FPL'S REQUEST (ISSUES 3, 4, 5, 6, 7 8)

The Florida Legislature never intended the Commission to engage in speculation related to nuclear cost recovery. That's why the Florida Legislature amended Chapter 366 in 2006 with Section 366.93, F.S. 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.[6] It clearly lays out a required framework for nuclear cost recovery. It tasked the Public Service Commission to establish rules to implement the law and made compliance with the Commission's rule a prerequisite for recovery.

1. The plain reading of the statute requires rejection of FPL's request

The Legislature has granted the Commission general ratemaking authority over electric utilities in Chapter 366, F. S. It has granted the Commission, for instance, general authority to prescribe "fair and reasonable rates and charges." §366.05, Fla. Stat. The Legislature subsequently amended Chapter 366 in 2006 with Section 366.93, F. S. and amended the section again in 2013 in order to provide more scrutiny to cost associated with nuclear reactor preconstruction and construction. The statute tasks 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.

[6] *See* Florida House of Representatives Final Bill Analysis, HB 7167, May 17, 2013.

> 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 . . . (emphasis added) §366.93(2), Fla. Stat.
>
> 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) §366.93 (3)(a), Fla. Stat.

It is well established that 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)).

The statute excerpts above clearly and unambiguously charges the Commission with establishing a rule for an "alternative cost recovery mechanism for the recovery of costs incurred in the siting, design and licensing" of nuclear power plants. It clearly and unambiguously provides that a utility may petition the for cost recovery permitted by this section and commission rules."[7] 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 statue and rule provide an option for a utility to recover those costs outside of the framework established by the Legislature and the Commission. It specifies that a utility must comply with the Commission's rule to avail itself of the opportunity for cost recovery. The specificity of the statute is further evidenced by its definition of "costs" that are eligible for recovery in Section 366.93(1)(a), F.S., or the statute's definition of "preconstruction" in Section 366.93(1)(f), F.S. and the clear and

[7] Section 403.519(4)(e) F.S. is not instructive in this case as it is limited to prudency, not reasonableness, determinations for nuclear construction.

unambiguous stepwise process for recovery outlined in the provisions of Section 366.93(3). F.S. Not only is the substance and intent of the section clear on its own, but when read in context of Chapter 366, the clear and unambiguous intent of Section 366.93, F. S. is to establish a mandated cost recovery process for nuclear reactor preconstruction and construction costs, which up to the date of the adoption of the law, did not exist in Florida statutes.

FPL may argue that the Commission can evoke powers under it s general ratemaking authority pursuant to Chapter 366 to grant the utility's request. This argument is badly misplaced. 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). Specifically, the doctrine of *in pari materia* applies to this statutory interpretation. The doctrine is a principle of statutory construction that requires statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent. Southern Alliance v. Graham, 113 So. 3d 742 (Fla. 2015); Fla. Dep't of State v. Martin, 916 So. 2d 763, 768, (Fla. 2005). When dealing with an entire statutory scheme, we do not look at only one portion of the statute in isolation but review the entire statute to determine intent. *See* GTC, Inc. v. Edgar, 967 So. 2d 781, 787 (Fla. 2007). The Legislature does not intend to enact useless legislation; thus, we give significance and effect to every word, phrase, sentence, and part of the statute and construe same "in harmony with one another." Heart of Adoptions, Inc. v. J.A., 963 So. 2d 189, 194 (Fla. 2007). Further, we cannot construe a statutory section in a manner that renders another statutory section meaningless. See Hechtman v. Nations Title Ins. of New York, 840 So. 2d 993, 996 (Fla. 2003);

State v. Goode, 830 So. 2d 817, 824 (Fla. 2002). Finally, we apply a "common-sense approach" to statutory interpretation in order to give effect to legislative intent. Sch. Bd. v. Survivors Charter Sch., Inc., 3 So. 3d 1220, 1232-1237 (Fla. 2009) ("We are not required to abandon either our common sense or principles of logic in statutory interpretation.").

If one were to adopt the argument that general rate making authority inherent in Chapter 366 supersedes the nuclear cost recovery process articulated in Section 366.93 F.S., then Section 366.93, F.S. would be rendered effectively "meaningless." As discussed below, the Commission established R.25-6.0423, F.A.C. to implement Section 366.93 in 2007 and again in 2014. The statutory authority referenced in the rule includes both Section 366.93 F.S. and the Commission's general rate making authority in Section 366.05. The Commission would have to "abandon principles of logic" to conclude a power company could selectively use the nuclear cost recovery framework when it is only advantageous to the utility, as FPL is proposing in the instant case. The Commission would have to suspend its "common sense" in order to permit FPL to utilize the nuclear cost recovery framework for cost recovery from 2009 though 2016 for nuclear preconstruction costs, then allow it to bypass the required cost-recovery process until some unknown future date of the utility's choosing, then allow the utility to step back into the nuclear cost recovery process to recover preconstruction costs incurred during the time it was out of the Commission's nuclear cost recovery process. FPL's request is simply contrary to the plain meaning of the statue, and the Commission's own rule.

2. The plain reading of the Commission's rule requires rejection of FPL's request

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 feasibility[8] of completing the reactors and a filing of projected preconstruction expenditures for the subsequent year for a Commission hearing to review and approval such costs. "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." (emphasis added) Rule 25-6.0423(6)(c)5., F.A.C. Moreover, "[a]utility shall submit, for Commission review and approval, its projected pre-construction expenditures for the subsequent year . . . ." (emphasis added) Rule 25-6.0423(6)(c)1.c., F.A.C. Lastly, "[t]he Commission shall conduct an annual hearing to determine the reasonableness of projected pre-construction expenditures. . . ." (emphasis added) Rule 25-6.0423(6)(c)2., F.A.C.

A. FPL failed to file a feasibility analysis and projected expenditures for the subsequent year

In this docket FPL has not filed a required feasibility analysis for the proposed TP 6 & 7 reactor project (TR 144, 230)[9] 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 current docket to prove the reactors remain feasible.[10] It failed to do so. The feasibility analysis has been a bedrock provision of the nuclear cost recovery process as it provides an opportunity for the Commission to monitor the feasibility of the project.[11] In fact, FPL failed to file any quantifiable data or projections, with the exception of

[8] 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." Order No. PSC-08-0237-FOF-EI, Docket No. 070650-EI, p. 29, April 11, 2008.
[9] *See also:* 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.
[10] Order No. PSC-16-0266-PCO-EI, July 12, 2016. ("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.")
[11] Order No. PSC-08-0237-FOF-EI, Docket No. 070650-EI, p. 29, April 11, 2008.

projected overnight costs of the reactors, that are typically found in a feasibility analysis such as load projections, environmental compliance projections and natural gas price projections. (TR 229-31)

Additionally, FPL did not file projected expenditures for recovery in the subsequent year. (TR 230). Without such filings, the Commission cannot hold a hearing to determine the reasonableness of such costs. Therefore, FPL has not provided the requisite information for a reasonableness determination.

B. A reasonableness determination is for costs, not actions, and is forward looking

The reasonableness determination, because it considers projected costs, is forward looking. The Commission's rule unambiguously states that the "[c]ommission shall conduct an annual hearing to determine the reasonableness of projected pre-construction expenditures. . . ." (emphais added) Rule 25-6.0423(6)(c)2., F.A.C. Even FPL witness Grant-Keene admits that a reasonableness determination is forward looking. (TR 402) 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 and a reasonableness determination of costs. FPL witness Scroggs, for instance, states "We are not asking the Commission to make a reasonableness determination to specific costs. That is something that we're asking to defer until a later point in time." (TR 214). Yet, the rule requires that projected costs, costs to be incurred in the future, must be reviewed for reasonableness prior to being incurred. The rule and common sense dictate that the Commission cannot do a backwards-looking reasonableness review on projected costs at a future date.

Additionally, the Commission's rule does not contemplate FPL's request (TR 132) for a reasonableness of actions related to obtaining and maintaining a COL. Instead, rule calls for the review of projected expenditures. A reasonableness review and determination of actions is found

nowhere in Rule 25-6.0423, F.A.C. Hence, FPL's contorted request for a reasonableness determination of actions now and costs in the future, defies common sense and isn't consistent with the Commission's rule.

In support of the deferral of the feasibility analysis and projected expenditures requirements in Commission rule, FPL cites in its petition last year's Commission order in the nuclear cost recovery docket granting FPL's motion to defer issues and costs to this year. 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, PSC-16-0266-PCO-EI, granting FPL's motion for deferral is easily distinguishable from FPL's current request. It did not, for instance, provide a reasonable determination of actions, it did not defer cost recovery for a yet-to-be determined time period at the discretion of the utility, and it did not involve customer impacts of $ 90 million or more (TR 407) – where at least 25% (over half of carrying costs is return on equity) will be FPL shareholder profit. (TR 384)

C. FPL did not file a request for a rule waiver

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 avail itself of that remedy. (TR 230)

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

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 and FPL has failed file a waiver request to be excused from the rules' requirements. FPL hasn't 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.

II. FPL's intent to build the project is not realistic and practical (ISSUES 3, 4, 5, 6, 7, 8, 9, 10)

FPL's intent to build the project is neither realistic nor practical. Rule 25-6.0423(6)(c)5. and (9), F.A.C., require the utility to file, along with the yearly filings 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."

"Realistic" is defined as concern for fact or reality and rejection of the impractical and visionary.[13] "Practical" is defined as not theoretical or ideal.[14] FPL's position in this docket fails both tests because it pins the ultimate construction of the project on a reality that does not exist today, but rather on a theoretical or ideal confluence of events that one-day in the future may

[13] Merriam Webster, at https://www.merriam-webster.com/dictionary/realistic
[14] Merriam Webster, at https://www.merriam-webster.com/dictionary/practical

lead to conditions that are favorable for the construction of the project. This is not evidence of either a reasonable or practical intent under the Commission's rule.

FPL Witness Scroggs concedes this point when he states:

> Possession of a valid COL and associated approvals will be a valuable option for FPL's customers to enable FPL to move forward in a timely manner with preconstruction 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. (emphasis added) (TR 132)

The factors influencing a decision on continued pursuit of the plant have significantly changed since 2015 – the date of the last feasibility analysis filed with the Commission. Westinghouse, the designer and builder of the AP-1000 reactor design utilized by FPL for the TP 6 & 7 project filed for bankruptcy earlier this year (TR 147) and has announced that it is exiting the nuclear construction business. (TR 148) It is unknown whether Westinghouse will provide engineering and procurement services for its design beyond licensing. (TR 150) FPL has not had any formal discussions with any other entity about undertaking the construction role for the project. After the Westinghouse bankruptcy, Santee Cooper, a co-owner of the Summer AP-1000 project in South Carolina recently abandoned that project after it was projected to cost 41% more to complete the project than a contract signed just last year. (Ex. 47)[15] The project was plagued by similar market conditions facing FPL such as continuing low price projections for natural gas and no CO_2 emission compliance costs imminent (TR 183, 226) The fate of the similar AP-1000 project, Plant Vogtle in Georgia, is under consideration by the Southern Company board. (TR 156) The board could decide to abandon the Vogtle project as well. (TR 156)

[15] While not in the record of the proceeding, as evidence of even greater nuclear industry uncertainty, Duke Energy Carolinas last week announced plans to abandon the Lee Nuclear Station plant. *See Duke Pulls Plug on Nuclear Plant, Cancellation is Latest Blow to Sector*, at http://www.foxbusiness.com/features/2017/08/25/duke-pulls-plug-on-nuclear-plant-cancellation-is-latest-blow-to-sector.html

Market factors continue to be unfavorable for nuclear reactor construction. All things being equal, lower natural gas price projections and no carbon costs in the foreseeable future make nuclear a less economically attractive option. (TR 183). FPL Witness Scroggs states the following:

> Natural gas prices have continued to move to exceptionally low levels, and due to delays in implementation of compliance costs for attaining carbon dioxide goals, fuel and emission savings associated with new nuclear have decreased relative to prior projections. (TR 78)

It's important to note that in the 2015 FPL feasibility analysis, the TP 6 & 7 project was the clear choice economically in only 8 of 14 sensitivity scenarios (breakeven costs were above the high end of FPL's non-binding cost estimate range) (TR 141-42). Now, with the persistently low natural gas price projections and with no CO_2 compliance costs imminent and greater uncertainty regarding the nuclear construction and engineering an procurement services for the AP-1000 design, the 2015 feasibility analysis cannot be relied upon. All signs point towards the TP 6 & 7 reactors not being economically or technically feasible. It is telling that FPL made no attempt in this docket to prove the quantitative feasibility of the reactor project. In an exchange with Commission Polmann, FPL witness Scroggs conceded that FPL could have provided information based on best available information at the time that may have been informative to the Commission in this docket. (TR 284)

Additionally, FPL's high-end estimate of $21.87 billion (TR 117) to complete the project can no longer be relied upon. FPL provides contradictory testimony on its high-end cost estimate. Witness Scroggs claims that he stands by the estimate. (TR 191) In other statements he claims that, in reference to first wave of projects that "[t]here's no access to the information that we're seeking to inform that capital cost estimate at this point in time" for the TP 6 & 7 project.

(TR 193) It's not clear where FPL stands on its cost estimate. Moreover, Santee Cooper concluded that the Summer reactor project would cost $25.3 billion. That is a projection that is more than $3 billion higher than FPL's high-end estimate presented in this docket and more than $10 billion higher than FPL low-end estimate. (TR 222) While FPL witness Scroggs objects to the comparison, the Summer project was projected to be in-service in 2024 – a full seven years before the date projected by FPL for its first unit to be in service, if the reactors are built at all. As a general rule, cost projections made in near term years are more reliable than projections made for years further out, (TR 218), hence the Summer project cost projection can be deemed more reliable than the FPL cost estimate. FPL cannot guarantee that it won't try to recover more than 21.87 billion (FPL's high-end projection) from customers for the TP reactors. (TR 209) Hence, the FPL reactors, if built at all, will significantly exceed FPL's current high-end estimate.

FPL states and has stated in previous proceedings that it is looking to the first wave of projects to glean lessons learned (TR 77). Since March 1st of this year, significant events have occurred related to the first wave of projects. (TR 146). None of the events have been positive for nuclear construction. With the bankruptcy of Westinghouse, there is no builder for the project, and there may be no provider of engineering and procurement services for the project beyond licensing. The AP-1000 Summer project in South Carolina was abandoned after cost projections put the price tag at over $25 billion. The fate of the similar AP-1000 project, Plant Vogtle in Georgia, is currently under consideration by the Southern Company board as we file this brief. To its credit, FPL generally acknowledges the industry and market challenges, but misses the lesson to be gleaned from them – that the TP 6 & 7 project is not technically or economically feasible.

FPL relies on the theme of preserving an "option" to construct the reactors at some future

date if events are ideal or some theoretical confluence of events takes place that make it favorable to construct the reactor project. For instance FPL states:

> A future project could proceed with a contracting option that would have Westinghouse, or its successor, provide EP services and another qualified company, or consortium of companies, providing Construction services. (TR 125)

> Possession of a valid COL and associated approvals will be a valuable option for FPL's customers to enable FPL to move forward in a timely manner with preconstruction at the right time. (TR 132)

As discussed above, and affirmed by FPL's own statements, FPL's intent to continue with the project is not realistic and certainly not practical.

It's important to note that Section 366.93, F.S. provides that a utility "may" pursue cost recovery pursuant to the statute and Commission rules. Therefore, FPL is free to pursue its COL without cost recovery from customers. In other words, if the Commission rejected FPL's demand, the utility's shareholders could support the costs required to obtain and maintain the COL. (TR 216)

CONCLUSION

FPL has made an unprecedented request in this docket that is contrary to the framework created by the Legislature and the Commission for nuclear cost recovery. Section 366.93, F.S. is the controlling statute for recovery of nuclear preconstruction and construction costs. It requires compliance with the Commission's rule for cost recovery, Rule 25-6.0423, F.A.C. FPL is requesting a determination of reasonableness for actions to obtain and maintain a COL and deferring cost recovery from customers to a later unknown date at FPL's discretion – requests that are not consistent with the Commission's rule.

FPL has failed to file a required feasibility analysis and required projected expenditures for the subsequent year – all required by the Commission's rule. Moreover, it failed to file a waiver request from the rule. As such, it has failed to comply with both the statute and rule-mandated process for nuclear cost recovery. As a matter of law, the Commission cannot grant the relief that FPL seeks. The TP 6 & 7 project is neither realistic nor practical. From a public policy perspective, the Commission should not heap more risk and costs on FPL customers if the utility is unwilling or cannot show that the project remains technically and economically feasible for customers. SACE respectfully requests that this Commission reject FPL's unprecedented and unfair request.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 31st day of August 2017, to the following:

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