

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of arrangement to mitigate unfavorable impact of St. Johns River Power Park, by Florida Power & Light Company.

DOCKET NO. 20170123-EI  
ORDER NO. PSC-2017-0352-PHO-EI  
ISSUED: September 18, 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 Wednesday, September 6, 2017, in Tallahassee, Florida, before Chairman Julie I. Brown, as Prehearing Officer.

APPEARANCES:

JOHN T. BUTLER, KENNETH M. RUBIN and R. WADE LITCHFIELD, ESQUIRES, 700 Universe Boulevard, Juno Beach, Florida 33408  
On behalf of Florida Power & Light Company (FPL).

STEPHANIE A. MORSE, CHARLES J. REHWINKEL, and J.R. KELLY, ESQUIRES, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of Office of Public Counsel (OPC).

DANIJELA JANJIC, MARGO DUVAL and KYESHA MAPP, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

KEITH HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Florida Public Service Commission General Counsel.

PREHEARING ORDER

**I. CASE BACKGROUND**

On May 22, 2017, pursuant to Section 366.06, Florida Statutes (F.S.), Florida Power & Light Company (FPL) filed its Petition for Approval of Arrangement to Mitigate Unfavorable Impact of St. Johns River Power Park. Office of Public Counsel's (OPC) intervention into this docket was acknowledged by Order No. PSC-17-0216-PCO-EI, issued June 13, 2017. On June

29, 2017, OPC filed a Motion to Extend the Filing Date for Intervenor Testimony, which was granted by Order No. PSC-2017-0270-PCO-EI, the First Order Modifying Order Establishing Procedure. This matter is set for hearing on September 25, 2017 pursuant to Section 366.06(2), F.S.

## **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 Chapters 120 and 366 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.

While it is the policy of this Commission for 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, which shall be limited to three 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>		
Sam Forrest	FPL	2, 3, 4 and 6
Scott Bores	FPL	2, 3, 5 and 10
Keith Ferguson	FPL	7, 8 and 9
Patricia Merchant	OPC	1, 5, 7 – 10
<u>Rebuttal</u>		
Keith Ferguson	FPL	7, 8 and 9

**VII. BASIC POSITIONS**

**FPL:** FPL seeks Commission approval of a series of requests that will allow FPL and JEA to shut down the jointly owned St. Johns River Power Park Coal Units #1 and #2 (“SJRP”), a 1322 megawatt coal-fired, electric generating plant located in Jacksonville, Florida, as early as January 5, 2018, which will facilitate early termination of FPL’s obligation to purchase energy and capacity from SJRP (the “SJRP Transaction”). FPL projects that, if approved by the Commission, the SJRP Transaction will produce \$183 million (CPVRR) in customer savings, starting in Year 1 and continuing thereafter. Commission approval of the SJRP Transaction will also have a positive impact on Florida’s emission profile which will be reduced annually by almost 5.6 million tons of carbon dioxide (“CO<sub>2</sub>”), 10.3 tons of nitrogen oxides (“NO<sub>x</sub>”) and 2.8 tons of sulfur dioxide (“SO<sub>2</sub>”) based on the projected unit dispatch. Once SJRP is shut down, FPL will generate 97% of its electricity from clean sources.

**Background**

In 1981, the Commission approved the application of FPL and JEA for a determination of need for SJRP. FPL and JEA thereafter entered into a Joint Ownership, Construction and Operation Agreement of SJRP (the “JOA”) in 1982, with JEA owning an 80% interest and FPL owning the remaining 20% interest. Pursuant to the JOA, FPL takes its 20% share of the generation capacity of SJRP and has an obligation to purchase an additional 30% of SJRP’s generation capacity from JEA. FPL therefore controls 50% of SJRP’s dispatch

(subject to a megawatt-hour cap) and is responsible for 50% of the operating costs through the term of the existing power purchase agreement with JEA that is contained in Article 8 of the JOA (the “Article 8 PPA”) and, thereafter, 20% of such costs. The Commission thereafter approved recovery through the Capacity Cost Recovery (“CCR”) Clause the capacity payments to JEA under the Article 8 PPA. See Order Nos. PSC-1994-1092-FOF-EI and PSC-2010-0153-FOF-EI.

SJRPP was designed as a base-load asset when it entered service in 1988, and although it has operated effectively and reliably since that time, its contributions to FPL’s generation stack have been largely displaced by cleaner and more fuel-efficient natural gas-fired combined cycle units. Today, SJRPP is one of the highest cost units FPL operates, and it makes sense both economically and environmentally to retire the unit from service.

### **The Asset Transfer and Contract Termination Agreement**

On May 17, 2017, FPL signed the Asset Transfer and Contract Termination Agreement (the “ATA”) with JEA to terminate the JOA of SJRPP. Under the ATA, FPL would pay to JEA a \$90.4 million Shutdown Payment. In return, JEA would shut down SJRPP as early as January 5, 2018, which would have the effect of terminating the above market capacity payments and FPL’s other obligations under the Article 8 PPA. FPL and JEA will also enter into contracts, with third parties, for the dismantlement and remediation of the facility and will share the costs of this work in accordance with their respective equity ownership percentages, with FPL currently having reserved \$22 million for its portion. Following dismantlement and remediation, FPL will transfer to JEA at zero cost FPL’s interest in the SJRPP facilities that JEA has chosen to retain (*i.e.*, land, the electric switchyard, certain railway assets). This transfer will constitute the closing of the transaction.

### **Benefits of the SJRPP Transaction**

The early termination of the JOA and shutdown of SJRPP is projected to yield approximately \$183 million in CPVRR savings for customers over the analysis period of January 1, 2018 through December 31, 2052. FPL calculated these projected savings by comparing FPL’s total system costs assuming the SJRPP Transaction is approved and closes, versus FPL’s total system costs absent approval of the Transaction (*i.e.*, with the Article 8 PPA remaining in place through the end of its term and the JOA remaining in place until the projected retirement of SJRPP in 2052). In addition, the SJRPP Transaction is expected to yield substantial environmental benefits. The SJRPP coal units are high emitters of CO<sub>2</sub> and other pollutants such as SO<sub>2</sub> and NO<sub>x</sub>. FPL anticipates that the shutdown of the SJRPP facility will reduce CO<sub>2</sub> emissions in Florida by over 5.6 million tons per year, NO<sub>x</sub> emissions by 10.3 tons and SO<sub>2</sub> emissions by 2.8 tons, based on the projected unit dispatch. Once SJRPP is shut down, FPL will generate 97% of its electricity from clean sources.

### **Proposed Regulatory Accounting Treatment for the SJRPP Transaction**

FPL proposes recovery through the establishment of three separate regulatory assets, recovery in the shutdown year for remaining fuel inventory, and refunds to customers for the suspension liability, deferred interest liability and the dismantlement accrual related to the Article 8 PPA. Each of those forms of regulatory accounting is addressed below, specifically in FPL's position on Issue 7.

#### **Expedited Treatment**

FPL requests that the Commission consider this matter and issue an order on this Petition by no later than December 1, 2017, in order to allow for SJRPP to be shut down as early as January 5, 2018 and thus fully realize the projected customer savings. Closing the SJRPP Transaction is contingent upon a final, non-appealable Commission order approving the requests set forth in this Petition and the accompanying testimony. The \$183 million (CPVRR) in customer savings projected to result from the SJRPP Transaction are premised on shutting the plant down as early as January 5, 2018. Customer savings will diminish if the closing is delayed, because FPL has ongoing payment obligations under the existing Article 8 PPA as well as continuing co-owner obligations until SJRPP is shut down.

**OPC:** While FPL's proposal appears to provide the potential for incremental savings to customers, OPC is concerned that FPL has chosen an accounting strategy that causes FPL – even if inadvertently – to violate its obligations to customers under the operative 2016 rate case settlement (Docket No. 2016-0021-EI) by indirectly circumventing the base rate freeze provision of that settlement. As part of the referenced rate case settlement, FPL agreed to freeze customer rates. The accounting scheme that FPL proposed for part of the proposed St. Johns River Power Park (SJRPP) Transaction allows FPL to defer costs that would, absent Commission approval to defer them, be recovered under the existing agreement, while base rates are frozen. By deferring the costs for inclusion in base rate cost recovery after the term of the settlement, FPL would be indirectly, and thus effectively and impermissibly, raising frozen base rates, due to a cost that would otherwise be charged to expense during the three year settlement period. This approach appears to be designed to ensure that FPL's investors get the highest possible return on the proposed transaction, rather than to provide the best outcome regarding customers' rates.

In this docket, FPL proposes to terminate its power purchase agreement with the Jacksonville Electric Authority (JEA) related to FPL's ownership share of the SJRPP. The plan also entails the early shutdown and dismantlement of the SJRPP, and the creation of various regulatory assets to account for related costs. OPC takes issue with accounting treatment proposed for the "Early Retirement Regulatory Asset" (\$186.6 million). Rather than beginning the amortization of this regulatory asset on the date the retirement occurs, FPL proposes to defer

amortization until FPL's base rates are next adjusted in a rate case. However, there is no requirement that FPL file a rate case on a date certain. According to the 2016 settlement, the earliest date for FPL to file a rate case is 2020, for new rates to become effective in 2021.

FPL's burden in this case should be to demonstrate that the SJRPP Transaction is clearly "better" for the customers than the PPA, in that it provides material, demonstrable savings, and the accounting methods by which FPL completes the transaction do not allow it to circumvent its obligations regarding customer's rates. Otherwise, whatever the customers purportedly gain in "savings" could easily be lost in rate increases.

OPC does not believe that FPL has met its burden to prove that the proposed deferral of amortization regarding the Early Retirement Regulatory Asset is in the best interest of FPL's customers, and thus, is prudent. Therefore, the Commission should direct FPL to begin amortization of the Shutdown Payment at the time the plant is shut down, i.e., on or about January 1, 2018.

**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:** Does the request by FPL to defer amortization of the Early Retirement Regulatory Asset and the Asset Transfer Regulatory Asset until the next time FPL's base rates are adjusted in a rate case violate the terms of the October 6, 2016 Stipulation and Settlement between FPL, OPC, the South Florida Hospital and Healthcare Association and the Florida Retail Federation?

### **POSITIONS**

**FPL:** No.

**OPC:** Yes. By deferring costs which would otherwise be historically and traditionally recovered in base rates during 2018 - 2020, FPL is indirectly and impermissibly bypassing the base rate freeze anti-circumvention provision of the October 6, 2016 Stipulation and Settlement.

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

**ISSUE 2:** Did the existing JOA provide FPL with any reasonable, lower cost alternatives to the proposed SJRPP Transaction? If so, did FPL take reasonable steps to evaluate such alternatives, if any, in selecting the proposed SJRPP Transaction?

**POSITIONS**

**FPL:** No. Operating the plant pursuant to the JOA has become uneconomic. This is a consequence of the fundamental characteristics of the plant, which could not be addressed effectively through adjustments to the way that it is operated. SJRPP was designed as a base-load asset when it entered service in 1988. Although it has operated effectively and reliably since that time, its contributions to FPL's generation stack have been largely displaced by cleaner and more fuel-efficient natural gas-fired combined cycle units. Therefore, FPL approached bi-lateral discussions with JEA knowing that the best option for FPL's customers was to exit SJRPP and the JOA. As this dialogue progressed, JEA arrived at the same conclusion with respect to its customers, and the decision was jointly made to retire the unit. (Forrest, Bores)

**OPC:** FPL bears the burden of proving the SJRPP Transaction is in the best interest of FPL's customers, and thus is prudent. At this time, it is not clear whether FPL presented a full analysis of all options.

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

**ISSUE 3:** *Proposed Type 2 Stipulation, See Section X.*

**ISSUE 4:** What are the operational and regulatory risks associated with FPL's proposed SJRPP transaction, and has FPL appropriately accounted for these risks under the transaction?

**POSITIONS**

**FPL:** The operational and regulatory risks associated with SJRPP will be reduced as a result of the SJRPP Transaction; therefore, there is no need to account for them separately in the transaction. (Forrest)

**OPC:** FPL has not met its burden of demonstrating that it took into account all reasonable measures to mitigate risks to ratepayers.

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

**ISSUE 5: Is the proposed SJRPP Transaction reasonably expected to be cost-effective?**

**POSITIONS**

**FPL:** Yes. The SJRPP Transaction is projected to produce \$183 million (CPVRR) customer savings over the analysis period of January 1, 2018 through December 31, 2052. The SJRPP Transaction will also result in substantial reductions in SO<sub>2</sub>, NO<sub>x</sub> and CO<sub>2</sub> emissions. (Bores)

**OPC:** Maybe, except it would be more clearly cost-effective for FPL to begin amortization of the Early Retirement Regulatory Asset at the time the asset is retired, on or about January 1, 2018.

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

**ISSUE 6: Is FPL's proposal to enter into the Asset Transfer and Contract Termination Agreement and terminate the existing JOA (including the power purchase agreement with JEA) prudent? If so, should the Commission approve the proposed SJRPP transaction?**

**POSITIONS**

**FPL:** Yes, the proposal to enter into the ATA and terminate the existing JOA (including the Article 8 PPA) is prudent and should be approved by the Commission. Although SJRPP has operated effectively and reliably during its years of operation, its contribution to FPL's generation stack have been largely displaced by cleaner and more fuel-efficient natural gas-fired combined cycle units. Operating the plant pursuant to the JOA has become uneconomic. FPL is proposing to shut down an uneconomic plant, which is projected to produce \$183 million (CPVRR) in customer savings starting in year one and continuing thereafter, while also having a positive impact on Florida's emissions profile. (Forrest)

**OPC:** FPL bears the burden of proving the proposed transaction is prudent.

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

**ISSUE 7: *Proposed Type 2 Stipulation, See Section X.***

**ISSUE 8: *Proposed Type 2 Stipulation, See Section X.***

**ISSUE 9: When should the amortization of the Early Retirement Regulatory Asset and the Asset Transfer Regulatory Asset begin?**

**POSITIONS**

**FPL:** Amortization of the Early Retirement Regulatory Asset and the Asset Transfer Regulatory Asset should begin when base rates are next set in a general base rate case and continue over a 10 year period, consistent with the capital recovery schedules approved in FPL's most recent rate case. (Ferguson)

**OPC:** Consistent with the amortization commencement of the Shutdown Payment Regulatory Asset, the amortization of the Early Retirement Regulatory Asset and the Asset Transfer Regulatory Asset should begin the day after the plant is retired.

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

**ISSUE 10: *Proposed Type 2 Stipulation, See Section X.***

**ISSUE 11: Should this docket be closed?**

**POSITIONS**

**FPL:** Yes, this docket should be closed once a final order is issued approving the SJRPP Transaction and associated regulatory accounting.

**OPC:** OPC takes no position.

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

**IX. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
	<u>Direct</u>		
Sam Forrest	FPL	SF-1	Asset Transfer and Contract Termination Agreement between FPL and JEA, dated May 17, 2017
Scott Bores	FPL	SRB-1	Summary CPVRR Analysis for Retirement of SJRPP

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Keith Ferguson	FPL	KF-1	Proposed Journal Entries
Keith Ferguson	FPL	KF-2	SJRPP Capital Recovery Schedules
Patricia W. Merchant	OPC	PWM-1	Resumé of Patricia Merchant

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

## **X. PROPOSED STIPULATIONS**

As referenced in Section VIII, above, the parties have reached Type 2 stipulations on the issues described below. Type 2 Stipulations reflect stipulations upon which certain parties agree and the remaining parties take no position.

**ISSUE 3: If the Commission approves FPL's proposed SJRPP transaction, how will existing contracts between third party providers and the co-owners (JEA and FPL) be handled, what are the projected costs of fulfilling or terminating such contracts, and how should these costs be recovered?**

### ***\*Type 2 Stipulation***

**STIPULATION:** There are two contracts between third party providers and the co-owners that will be terminated, if the Commission approves the proposed SJRPP transaction. The contracts are for saleable ash and gypsum, which are by-products produced at the SJRPP generating station. Other than notifying these third party providers about the pending regulatory approval for the SJRPP transaction, the co-owners (FPL and JEA) are not under any requirement to produce saleable ash and gypsum pursuant to those contracts. FPL expects no costs associated with the termination of the contracts so there should be no need for FPL to seek any recovery related to these contracts. FPL and JEA are currently involved in two disputes related to coal transportation, one with the rail car lessor and the other with the railway used to deliver the rail cars to SJRPP. These pending disputes arise out of contracts that have already expired, and the disputes are independent of the SJRPP transaction. Consistent with current practice for fuel-related costs, FPL proposes to recover its share of the cost of resolving those disputes through the FCR Clause.

**ISSUE 7: If the Commission approves FPL’s proposed SJRPP transaction, what is the proper accounting treatment for the transaction?**

***\*Type 2 Stipulation***

**STIPULATION:** If the SJRPP transaction is approved, the establishment of regulatory assets, recovery of losses on fuel through the fuel clause, and the miscellaneous refunds is appropriate. Three regulatory assets will be established. The first will be for the early shutdown payment (the “Shutdown Payment Regulatory Asset”), with recovery through the Capacity Cost Recovery (“CCR”) Clause over the remaining Article 8 Power Purchase Agreement (“PPA”) term, which expires in October 2021. The second will be for the early retirement of SJRPP assets owned by FPL (the “Early Retirement Regulatory Asset”), with the majority of this asset being recovered through base rates, and the remainder being recovered through the Environmental Cost Recovery (“ECR”) Clause over a 10-year period. The third regulatory asset will be for losses on assets transferred to JEA (the “Asset Transfer Regulatory Asset”), with recovery through base rates over a 10-year period. The amortization of the Shutdown Payment Regulatory Asset will begin as provided in the stipulation on Issue 8, and amortization of the Early Retirement Regulatory Asset and Asset Transfer Regulatory Asset will begin as ruled on in Issue 9. Recovery of the loss resulting from FPL’s transfer to JEA of FPL’s ownership share in fuel inventory remaining at the time of shutdown (the “Inventory Transfer Recovery”) will be through the Fuel and Purchased Power Cost Recovery (“FCR”) Clause in the year when SJRPP is shut down (expected to be 2018). Refunds for the suspension liability, the deferred interest liability, and the dismantlement accrual related to the Article 8 PPA will be disbursed to FPL customers over the remaining term of the Article 8 PPA.

**ISSUE 8: When should the amortization of the Shutdown Payment Regulatory Asset begin?**

***\*Type 2 Stipulation***

**STIPULATION:** The amortization of the Shutdown Payment Regulatory Asset should begin at the beginning of the month in which the plant is retired (expected to be in January 2018), and continue over the remaining term of the Article 8 PPA, or approximately four years. Depreciation would cease on SJRPP at the same time that amortization of the Shutdown Payment Regulatory Asset begins, which would be at the beginning of the month that SJRPP is retired.

**ISSUE 10:** If the Commission approves FPL's proposed SJRPP transaction, what is the proper rate of return on the associated regulatory assets and liabilities?

***\*Type 2 Stipulation***

**STIPULATION:** The proper rate of return to be applied to FPL's unrecovered regulatory assets and liabilities recovered through the CCR Clause is FPL's WACC that is used for adjustment clause proceedings. The proper rate of return to be applied to FPL's unrecovered regulatory assets and liabilities recovered through base rates is the actual monthly WACC reported in FPL's Earnings Surveillance Report, which reflects the rate of return on equity and other capital structure adjustments approved by the Commission in Docket No. 160021-EI.

**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, 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. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 30 pages and shall be filed at the same time. Responsive briefs addressing Issue 1 shall be no more than 10 pages.

**XIV. RULINGS**

1. This matter has been rescheduled and is now set for hearing on September 25, 2017 at 1:30 p.m.
2. Opening statements, if any, shall not exceed seven (7) minutes per party.

3. Briefs shall be due on October 9, 2017. In addition, the parties shall have the opportunity to respond to any arguments made by the other party concerning Issue 1. Responsive briefs addressing Issue 1 shall be filed by October 16, 2017.

It is therefore,

ORDERED by Chairman Julie I. Brown, 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 Chairman Julie I. Brown, as Prehearing Officer, this 18th day of September, 2017.



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JULIE I. BROWN  
Chairman and Prehearing Officer  
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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.

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.