

Steel Hector & Davis

Tallahassee, Florida

Matthew M. Childs, P.A.
(904) 222-4448

ORIGINAL
FILE COPY

July 10, 1989

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 870098-EI

Dear Mr. Tribble:

Enclosed herewith for filing in Docket No. 870098-EI are the original and fifteen (15) copies of the Brief of Florida Power & Light Company.

Respectfully submitted,



Matthew M. Childs, P. A.

MMC:ka
Enclosures

cc: All Parties of Record

| | |
|------------|------------|
| ACK | <u>✓</u> |
| AFA | <u>3</u> |
| APP | <u> </u> |
| CAF | <u> </u> |
| CMU | <u> </u> |
| CTR | <u> </u> |
| EAG | <u> </u> |
| LEG | <u>1</u> |
| LIN | <u>6</u> |
| OPC | <u> </u> |
| ROH | <u> </u> |
| SEC | <u>1</u> |
| WAS | <u> </u> |
| OTR | <u> </u> |

RECEIVED & FILED

1-B
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06723 JUL 10 1989

FPSC-RECORDS/REPORTING

Tallahassee Office
215 South Monroe
Suite 601
Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

4000 Southeast Financial Center
Miami, FL 33131-2388
(305) 577-2800
Fax: (305) 358-1418

515 North Flagler Drive
1200 Northbridge Centre 1
West Palm Beach, FL 33401-4307
(305) 650-7200
Fax: (305) 655-1509

440 Royal Palm Way
Palm Beach, FL 33480
(305) 650-7200

1200 North Federal Highway
Suite 409
Boca Raton, FL 33432
(305) 394-5000
Fax: (305) 394-4858

**ORIGINAL
FILE COPY**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions for approval)
of an increase in the accrual)
of nuclear decommissioning costs)
by Florida Power Corporation)
and Florida Power & Light Company.)

Docket No. 870098-EI
Filed: July 10, 1989

BRIEF OF FLORIDA POWER & LIGHT COMPANY

STEEL HECTOR & DAVIS
215 S. Monroe Street
Suite 601
First Florida Bank Building
Tallahassee, FL 32301-1804

DOCUMENT NUMBER-DATE
06723 JUL 10 1989
EPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions for approval)
of an increase in the accrual) Docket No. 870098-EI
of nuclear decommissioning costs) Filed: July 10, 1989
by Florida Power Corporation)
and Florida Power & Light Company.)

BRIEF OF FLORIDA POWER & LIGHT COMPANY

Introduction

By Order No. 12356 which was entered in Docket No. 810100-EU on August 12, 1983, the Commission concluded its investigation concerning the accounting for and recovery of the cost of decommissioning nuclear units. In Docket No. 810100-EU, the Commission concluded among other matters that: decommissioning costs should be accrued in equal annual amounts; decommissioning costs should be accounted for separately in a funded reserve to assure adequate funds to pay for decommissioning; and, decommissioning costs should be reviewed and, if necessary, changed no less often than every five years. On April 20, 1988, Florida Power & Light Company ("FPL") filed nuclear decommissioning studies for its St. Lucie Nuclear Units 1 and 2, accompanied by a Petition seeking approval of revised annual accruals to its nuclear

decommissioning reserve. On June 29, 1988, FPL filed nuclear decommissioning studies for its Turkey Point Nuclear Units 3 and 4 and revisions to its studies on the St. Lucie Nuclear Units 1 and 2. Also, on June 29, 1988, FPL filed a Petition seeking approval of these revised annual accruals to its nuclear decommissioning reserve for the Turkey Point Nuclear Units and the amended revised accruals for its St. Lucie Nuclear Units.

Pursuant to notice, a Prehearing Conference was held in this Docket on May 4, 1989 establishing the issues to be addressed. Thereafter, hearings were held on May 25, 1989.

Discussion of the Issues.

A number of the issues identified for this proceeding were not in dispute except as to "generic disagreements" that each affected other issues. The position on each issue which FPL believes is supported by the record in this proceeding is presented in Attachment A to this brief. The "generic disagreements" as well as the remaining individual issues as to which there was dispute will be addressed in the body of the brief in separate sections.

Further comment is necessary on the "generic disagreements." Although there was agreement on the appropriate methodology to decommission the nuclear units (Issue No. 4), the year the nuclear units will no longer be

in rate base (Issue No. 11), the years in which funds will be spent for decommissioning (Issue No. 9) and the frequency with which contributions will or should be made to the decommissioning reserve (Issue No. 21), the disagreement between FPL and the Commission Staff over the appropriateness of a contingency allowance (Issue No. 5) and escalation rates and methodology (Issue No. 7) is the basis for the differences in position on six issues relating to the cost, annual accruals and the revenue requirements for decommissioning. These issues are Nos. 6, 8, 10, 26, 27, and 29. Thus, the decision of the Commission on Issue Nos. 5 and 7 will determine the outcome on these issues. Therefore, Issue Nos. 5 and 7 have been identified as ones to which there is "generic disagreement."

Other issues, such as those relating to the requirement of the Nuclear Energy Regulatory Commission ("NRC") and the Internal Revenue Service ("IRS") as to the control of the qualified decommissioning funds and the management of the investment of those funds have the degree of commonality as to permit them to be addressed together.

A. The Contingency Allowance

The total cost of decommissioning the Turkey Point and St. Lucie nuclear units upon the termination of their operating life includes an average contingency of approximately 25%. The basis for the contingency allowance

was explained in the individual decommissioning studies prepared by TLG Engineering, Inc. (TLG). Exhibit 23, at p. 118 for the St. Lucie nuclear units and at p. 105 for the Turkey Point nuclear units. Mr. LaGuardia explained that:

The purpose of that contingency is to allow for the cost of high probability program problems as they occur in the field. Contingency must be allowed to account for such problems as delays in shipment of materials, adverse weather conditions, strikes, illnesses, mechanical equipment breakdowns which we cannot predict with any accuracy at the estimating stage. The allowance of 25% contingency comes from our experience of working in the field, and has been confirmed by other estimators in other companies, both in utilities as well as consultants. It is our experience that that type of contingency is appropriate, and we encounter that type of contingency every day during a decommissioning operation.

Tr. 71 and 72. The Commission Staff's explanation of its position on this issue is set forth on page 10 of Prehearing Order No. 21245. There, the Commission Staff concludes that a contingency factor is not warranted now because "the purpose of a five year minimum review of the companies' decommissioning funds is to 'zero in' on the actual cost of decommissioning." During cross-examination by the Commission Staff, Mr. LaGuardia explained that "the contingency allowance he concluded to be appropriate was not to reflect a misestimation at this time." Instead, it is "based on the factors that are going to occur in the field at the time the plant shuts down." Tr. 73. Therefore, FPL submits that the

Staff misperceived the purpose for the contingency allowance. It is not intended to reflect uncertainty as to the ability to accurately estimate the cost of decommissioning if all activities are performed according to schedule, rather, it is to reflect the potential for cost to be higher than the estimate because of the occurrence of the types of contingencies identified by Mr. LaGuardia which will make it impossible to complete decommissioning as scheduled. It is not an "estimator's cushion," Tr. 77; it is, as explained by Mr. LaGuardia, who has experience in decommissioning nuclear units, to reflect the potential day-to-day tool breakdowns, weather delays, etc., that affect the ability to complete the decommissioning activities.

During the course of the hearing, Commissioner Gunter expressed his concern that a contingency allowance might create a self-fulfilling prophecy, Tr. 74, and asked whether it would be appropriate to identify what portion of the decommissioning cost was related to contingency so that future Commissions could review the prudence of actual decommissioning expenditures. Tr. 81. Although Mr. LaGuardia agreed that "on paper" such an identification could be done, Tr. 81 and 82, he also spoke to the practical difficulties of that type of a tracking process. Tr. 82 and 83.

During the hearing, Commissioner Easley noted that the 25% average contingency was made up of contingencies for

individual activities ranging from 3% to 75%. She then inquired as to the relationship of the contingency allowance for individual activities with respect to the point in time during the total decommissioning period that the particular activity would be performed. Tr. 85. Mr. LaGuardia responded by pointing out that the 25% overall contingency allowance was an attempt to average the total contingency over a 7 year period and that while activities having higher contingencies and scheduled for completion early in the decommissioning process could have lower actual contingencies, one could not conclude that contingencies estimated at lower levels and to occur later during the decommissioning process could not actually have a higher contingency cost. Tr. 87. As he noted, "the contingency dollars shift from one [decommissioning activity] to the other [decommissioning activity]." Tr. 87 and 88.

FPL submits that the record in this proceeding establishes that the 25% average contingency allowance is appropriate and necessary to obtain a reasonable estimation of the potential actual costs of decommissioning the Turkey Point and St. Lucie nuclear units. Therefore, the estimated "appropriate cost of decommissioning as set forth by FPL in response to Issue No. 6, should not be adjusted as Staff proposes. Moreover, the related issues which set forth the future cost of decommissioning, the annual accruals to be made and therefore the revenue requirements necessary to

produce the appropriate decommissioning contributions, should not be adjusted to reflect elimination of the contingency allowance as the Staff proposes.

B. The Appropriate Escalation Rates.

Because the cost estimates for decommissioning the nuclear units are expressed in "current dollars," and decommissioning will occur many years in the future, it is necessary to establish appropriate rates of escalation to apply to the "current dollar" estimates so that the revenue requirements and monthly contributions to the decommissioning funds will provide sufficient dollars to complete the decommissioning activities in the future.

Issue No. 7 in Prehearing Order No. 21245 poses the question of the appropriate methodology and escalation rates to be used in converting the current estimated decommissioning cost to the future estimated decommissioning cost. The Commission Staff has taken the position that the methodology used by FPL to determine the escalation rate is reasonable for determining an appropriate rate. However, they explained that their recommended escalation rates are the result of "differences in the time frame and type of inflation measures used." While FPL recommended escalation rates of 5.6% for St. Lucie Units 1 and 2 and Turkey Point Unit 3 and 4.9% for Turkey Point Unit 4, the Commission Staff proposes escalation rates for FPL ranging between 6.34% and

6.63%. The dollar impact of even a small difference in escalation rates is significant in the calculation of the future cost of decommissioning because of the compounding effect over many years to the date such decommissioning costs will be incurred. For example, if the Staff's estimate for the current cost of decommissioning FPL's four nuclear units (which excludes the 25% contingency allowance) is used and the differential between the escalation rate recommended by FPL (the lower rate) and that recommended by the Staff (the higher rate) is compounded for each unit to the date decommissioning would commence for each unit, the Staff's recommended escalation rates would increase the future cost of decommissioning by approximately \$195-million. This is not to say that a lower escalation rate is the appropriate rate; however, it does illustrate the substantial financial impact.

The detailed explanation of the computation of the escalation rates used by FPL is set forth in Schedule J of Exhibit 23 for both the Turkey Point and the St. Lucie nuclear units. Mr. Hoffman explained the methodology for determining the escalation rate used to convert the current estimated decommissioning cost to the future estimated decommissioning cost in his direct testimony. As he explained, FPL's methodology considers the current and projected costs of each of the seven decommissioning activities separately for purposes of computing an overall,

or average, escalation rate. Tr. 118. Further, each of these seven activities is divided further into three component parts: labor, materials and other. Tr. 118. The proportion which each of these three component parts contributed to the total cost of each decommissioning activity was determined. Tr. 119. The inflation index used for the labor component was separated into an Average Hourly Earnings Index For Construction Workers and Average Hourly Earnings Index For Service Workers. The Producer Price Index (for capital equipment) and GNP Deflator were used to escalate material and the other cost components. Tr. 119. Mr. Hoffman then explained that the escalated cost for each of the seven decommissioning activities was determined for each year of the study and that summing the escalated costs of all activities for a particular year and comparing that cost to the previous year's cost provided the annual escalation rate for the total decommissioning process from one year to the next. Tr. 119. This permitted the calculation of an overall effective rate which was equivalent to the year-by-year rate. Tr. 119, 120. The respective rates for each of the four FPL nuclear units are:

| <u>Unit</u> | <u>Overall Escalation Rate</u> |
|-------------------------|--------------------------------|
| St. Lucie Unit No. 1 | 5.0% |
| St. Lucie Unit No. 2 | 5.0% |
| Turkey Point Unit No. 3 | 5.0% |
| Turkey Point Unit No. 4 | 4.9% |

As shown by their statement of position to Issue No. 7 in Prehearing Order No. 21245, the Staff's proposal for decommissioning escalation rates are:

| <u>Unit</u> | <u>Overall Escalation Rate</u> |
|-------------------------|--------------------------------|
| St. Lucie Unit No. 1 | 6.63% |
| St. Lucie Unit No. 2 | 6.48% |
| Turkey Point Unit No. 3 | 6.35% |
| Turkey Point Unit No. 4 | 6.34% |

Although the Staff did not offer evidence in support of the proposed escalation rates, they did cross-examine Mr. Hoffman. There were three principal areas of questioning by the Commission staff which related to the appropriate escalation rates to use. These were the use of the Average Hourly Earnings Index For Labor as opposed to an alternative DRI Index, the use of the Producer Price Index (for capital equipment) as opposed to the Producer Price Index (for intermediate goods), and whether the determination of the average annual escalation factor properly reflected the fact that decommissioning funds would be spent two years prior to the commencement of actual decommissioning.

As to the use of the Average Hourly Earnings Index, Mr. Hoffman explained the index was most appropriate because of the type of work and labor that would be utilized in decommissioning activities. Since these activities would be heavily construction orientated, a construction-related index would best support that. Tr. 149. He also explained that

the average hourly earnings index reflected anticipated escalation in the wage component of labor costs and excluded other benefits. Tr. 151. However, he noted that the base number, that is the current cost of labor for decommissioning, included both the wage and benefit components. Tr. 151. Thus, the escalation rate used by FPL did in fact escalate both the wage and benefit components of compensation for workers.

The separate DRI Index included escalation for both wages and other benefits. Tr. 151. Mr. Hoffman explained that the DRI Index anticipates escalation increases of as much as 7% per year in the later years which raises the Index to quite high levels. Tr. 151. He noted that there was a question as to whether benefits could increase that rapidly, Tr. 151, and therefore felt that portion of the DRI Index was not constructed properly. Tr. 151-152.

Next, the Staff inquired as to the use of the Producer Price Index for capital equipment suggesting that the duration of the decommissioning activities would relate more to the use of intermediate type leasing rather than the making of capital investments. Tr. 152. Mr. Hoffman explained that from the information available, he had concluded that the decommissioning effort would be capital intensive requiring the buying of tools and cranes and investing in a number of items that are more like finished goods. Tr. 152. For this reason, he concluded that it was

more appropriate to use the Producer Price Index for Capital Goods although he conceded that he was not an expert on that subject. Tr. 152.

The final principal area of inquiry with respect to the determination of the escalation rates related to the fact that payments for the cost of decommissioning will commence as early as two years prior to the actual decommissioning of the nuclear units. Mr. Hoffman explained that he used the current estimated cost of decommissioning and escalated that to the point where decommissioning would commence and did not adjust for the expenditures made prior to the commencement of decommissioning. Tr. 153-155. Mr. Hoffman finally concluded that the expenditures during those two years would have to be quite significant in order to move the average annual escalation rate by even a tenth of a percent. Tr. 155, 156.

Of course, the correctness of Mr. Hoffman's conclusion can be determined by looking at the statement of position on Issue No. 10 of Prehearing Order No. 21245 which sets forth the years in which decommissioning funds will be expended and the amount of the expenditures for those years. For example, there it is noted that expenditures for Turkey Point Unit No. 3 will commence in the year 2005, which is approximately two and one-third years prior to the license expiration date for that unit. See Issue No. 8, Prehearing Order No. 21245. If it is assumed that the approximately \$28.2-million shown as the decommissioning expenditures for the year 2007 for Turkey

Point Unit No. 3 is spread evenly throughout the year, and the resulting percentage amount of that figure, approximately \$9-million, is added to the \$5.5-million to be expended in the years 2005 and 2006, the total decommissioning expenditures prior to the expiration of the license represents approximately 3.1% of the total estimated future cost of decommissioning of \$463-million for the Turkey Point Unit No. 3. FPL submits that the exclusion of this relatively small portion of the total future decommissioning cost and determining the annual average escalation rate to use would produce an insignificant differential.

C. NRC and IRS Requirements As To The Control Of the Decommissioning Funds and Management of the Investments of the Funds.

During the Prehearing Conference held on May 4, 1989, the Prehearing Officer directed that four issues be identified and addressed by the companies at the hearing. FPL prefiled the Supplemental Testimony of Gary G. Kuberek to address these issues (Issues No. 12, 13, 14 and 15). The Commission Staff has agreed that FPL complies with the NRC requirements pertaining to the control of the decommissioning funds (Issue No. 12) and with the IRS requirements pertaining to the management of the investments of the decommissioning trust funds (Issue No. 15). The Staff did not take a position on whether FPL complies with NRC requirements pertaining to the management of the investments of the

decommissioning trust funds (Issue No. 13) or whether FPL complies with the IRS requirements pertaining to the control of the decommissioning funds (Issue No. 14). The position of FPL on these four issues will be presented in the appendix to this brief. However, in addition to those statements of position in the appendix, FPL would point out that as to Issue No. 13, which questions whether FPL complies with the requirements of the NRC pertaining to the management of the investments of the decommissioning trust funds, that the NRC Staff has indicated that they will construe the applicable rule to require only that the trustee of the decommissioning funds be unrelated to the licensee, that is FPL. Tr. 212. Moreover, although Mr. Kuberek concluded that FPL's current method of investment management complies with the NRC requirements, he stated that should the NRC require external management of the investments, FPL would comply. Tr. 212.

As to the issue of whether FPL complied with the IRS requirements pertaining to the control of the decommissioning funds (Issue No. 14), Mr. Kuberek testified that the applicable treasury regulation, Section 1.468A-5(a), requires that a qualified fund "be established and maintained at all times in the United States pursuant to an arrangement that qualifies as a trust under state law." Tr. 213. The Internal Revenue Code and Treasury Department regulations do not prescribe requirements as to the control of non-qualified funds. Tr. 213. Finally, Mr. Kuberek testified that the

Company had a legal opinion that the qualified fund qualifies as a trust under state law and that it had been reviewed by the IRS and deemed to meet those requirements. Tr. 241.

For these reasons, and for the reasons stated in the statement of position on Issues 12 through 15 in the appendix to this brief, FPL submits that its fund meets all applicable requirements of both the NRC and the IRS as to control of the funds and the management of the investment in those funds.

D. Issues Related to Fund Investments

Three issues were identified which related to this category. They include: what is an appropriate investment strategy for a nuclear decommissioning trust fund (Issue No. 18), should a minimum fund earnings rate be imposed and, if so, how should the rate be determined (Issue No. 19), and what is the assumed appropriate fund earnings rate, net of tax, for a nuclear decommissioning trust fund (Issue No. 20). FPL submits that the combination of Issues 18 and 19 raise fundamental questions about the purpose of investments of decommissioning funds as well as the objective sought to be achieved through those investments. They raise the question of the relative importance of potential fund earnings through investments versus the risk associated with those investments. Quite simply, the attempt to maximize the potential investment return for decommissioning funds requires a recognition of the associated risk of doing so and

the potential resulting consequence that decommissioning fund balances may be less than adequate to pay the cost of decommissioning when required.

1. The Appropriate Investment Strategy.

The individual decommissioning funds for FPL's four nuclear units will be required to pay for the decommissioning activities many years from now. For example, and although relatively small expenditures from the fund will take place before these dates, the decommissioning of Turkey Point Nuclear Units Nos. 3 and 4 will begin approximately 18 years from now, while decommissioning for St. Lucie Nuclear Unit No. 2 will begin 34 years from now. See Issue No. 8. The availability of sufficient funds to pay the cost of decommissioning when needed will be a function primarily of the annual contributions to the funds, the federal and state income tax rates, and the assumed earnings on investments in the funds. The assumed earnings rate has a direct impact upon the level of monthly contributions because, the higher the earnings, the lower the level of contributions necessary to achieve the same targeted fund balance. However, primarily because of the volatility of the interest markets which Mr. Hoffman pointed out, it is unrealistic to expect to achieve a return on the funds greater than some target rate such as that proposed by FPL which is tied to the expected level of inflation. Tr. 142. Higher returns, if achieved, will be beneficial in serving to reduce the level of future

contributions, but the difficulty of establishing a realistic return level over the longer term that is not tied to expected levels of inflation could have substantial negative effects on the ability to accurately establish fund contribution levels. This could result in the contributions to the fund becoming more volatile and tied to the volatility of achieved returns on investments.

Another aspect of decommissioning funding that is of particular significance to investment strategy is the need to have the decommissioning funds available at the right time and to consider the impact of riskier investment strategies on the level of future funding contributions. As Mr. Hoffman explained, a fairly conservative strategy is appropriate for a decommissioning fund because "what you don't want to do is eat into the customers' contributions, effectively have such losses that the contributions that customers have already provided would be eroded." Tr. 177.

Yet another factor affecting the investment strategy for decommissioning funds is the taxability of earnings and restrictions on the type of investments available to qualified funds. To obtain the tax benefits offered by Section 468A of the IRS Code the funds are required to be invested in assets as defined in the "Black Lung Act," which are public debt securities of the United States, obligations of state or local governments or time or demand deposits. Tr. 130, 145. The fact that a decommissioning fund is a

taxable entity, Tr. 131, also requires recognition of the need to realize that any earned return that is taxable is substantially lower on an after tax basis than that provided by an investment vehicle such as municipal bonds which are not subject to tax. For example, at an effective tax rate of 37.63% reflecting both federal and state income taxes, the 5.5% return proposed by FPL equates to a pretax return on taxable investments of approximately 8.82%.

With all of these factors involved, Mr. Hoffman explained that FPL's primary objective is to provide the capital necessary for decommissioning at the end of the respective licensing periods for the Company's nuclear units. The accomplishment of this strategy requires a maximization of earnings growth of the investment portfolios while maintaining a high degree of safety so as to minimize future customer contributions. Tr. 130. Finally, in order to have a strategy sensitive to change in the environment related to decommissioning costs, the course to be followed is one that diversifies market risk over time rather than matching all investment maturities with each plant's expected license expiration date. Tr. 131. Therefore, FPL submits that its market strategy of focusing on long-term earnings accumulation rather than capitalization on short-term differentials between securities while maintaining a high degree of safety is compatible with the goal of providing the

capital needed for the decommissioning of the Company's nuclear units. Tr. 135, 138 and 142.

2. Imposing a Minimum Earnings Requirement for Decommissioning Funds.

As pointed out in the introduction to this section of FPL's brief, any return targeted for achievement must reflect a policy decision as to the degree of risk to which the decommissioning funds are to be subjected. Thus, the appropriate investment strategy to be followed is an essential element in identifying any target earnings level. Moreover, the ability to achieve a targeted rate of earnings on decommissioning funds will be dependent upon the actual market conditions experienced in the future. Therefore, an evaluation of whether decommissioning funds actually achieved the targeted earnings level will of necessity require an analysis of actual market conditions reflecting those conditions which formed the basis for establishing the targeted earnings rate. See Tr. 138, 142 and 178. This is the point Mr. Hoffman was making in response to a question by Commissioner Gunter when he noted that it would be better to review the performance of the investments in the decommissioning fund after the fact and consider the circumstances that were actually faced. Tr. 144. It is FPL's position that the Commission shouldn't establish a minimum earnings rate for tracking the performance of

investments. Tr. 142. However, if the Commission deems it appropriate to review the investment performance of the decommissioning funds, then, FPL proposes that such review be conducted periodically and in conjunction with the Commission's periodic review of decommissioning studies in the future.

3. The Appropriate Assumed Earnings Rate.

The position of the Commission Staff on Issue No. 20 was that the earnings rate should be equal to or greater than the rate of inflation. See Order No. 21245, p. 21. The 5.5% fund earnings rate assumed by FPL is in excess of the forecasted rate of inflation. See Schedule L for the Turkey Point Nuclear Units and the St. Lucie Nuclear Units in Exhibit No. 23.

In his direct testimony, Mr. Hoffman explained that because the earnings of the decommissioning funds are taxable, the funds receive the greatest benefit from tax-free municipal bonds. Tr. 133. Therefore, an analysis of historical municipal bond yields having maturities of ten and twenty years was performed and compared to the Consumer Price Index for the thirty-year period of analysis. Although noting that the assumed earnings rate for the investments in the decommissioning funds will be tied to the forecast of the CPI and thus subject to change from time to time in the future, the addition of the weighted average yield spread for the municipal bonds above the CPI for the thirty-year

historic period produced an assumed earnings rate on investments of 5.5%. Tr. 134. Mr. Hoffman concluded that this long-term look at historical municipal bond yields gives a good picture of the trend of bond yields during periods of both very low and high inflation and the effects that the "oil shock" of the 1970's had on the market. Tr. 134. For these reasons, FPL submits that FPL's assumed return on the decommissioning fund investments of 5.5% is reasonable and appropriate for use in this proceeding.

E. Qualification versus Non-qualification of the Decommissioning Funds.

There were four issues identified in Prehearing Order No. 21245 relating to this subject. Issue No. 23 posed the question of whether it was appropriate for FPL to qualify the nuclear decommissioning funds for the years 1984-1987. Issue No. 24 posed the question of whether it was appropriate for FPL to not qualify the nuclear decommissioning funds for 1988. Issue No. 25 asks whether FPL should be required to qualify nuclear decommissioning funds prospectively. The evidence presented in response to Issue No. 22, which was identified by the Prehearing Officer in this proceeding, provides the basis for the result on these Issues 23-25. That Issue reads:

Issue 22: What are the tax and revenue requirements implications of having a qualified fund versus a non-qualified fund?

To address this issue, FPL filed the Supplemental Testimony of Mr. Kuberek and Document No. 3 to that Supplemental Testimony. This document, which is a part of Exhibit No. 25, is enclosed as Attachment II to this brief.

The significant differences between a qualified and a non-qualified fund are the timing of the tax deductions associated with the two types of funds and the consequent impact of a potential change in the federal income tax rate. As Mr. Kuberek explained, contributions to a qualified fund are tax deductible in the year made under IRS Code Section 468A while contributions to a non-qualified fund are not. Tr. 215. On the other hand, expenditures for decommissioning from a qualified fund are not tax deductible while those from a non-qualified fund are. Tr. 215. Earnings from investments on both qualified and non-qualified funds are taxable if they are from investments subject to tax. Tr. 131. Thus, the basis on which a decision should be made to evaluate whether to qualify a decommissioning fund should be whether it is more or less probable that the federal income tax rate will be higher or lower in the year decommissioning funds are to be spent than in the years that contributions are actually made to the funds.

Mr. Kuberek's Document No. 3 to his Supplemental Testimony illustrates these effects. First, on page two of that Document, Mr. Kuberek reflects the differences between tax effects for qualified and non-qualified funds where the

federal income tax rate in the years of decommissioning is the same as during the years contributions were made to the fund. As can be seen from that Document, the revenue requirement for each year is the same for both the qualified and non-qualified funds. In addition, the tax deduction taken on the decommissioning expenditures from the non-qualified fund are equal to the annual tax deductions available for the qualified fund together with the increased earnings on investments from that fund. Therefore, where the federal income tax rate does not change, there is no difference between the revenue requirements or tax implications for either the qualified or non-qualified fund.

Page three of Mr. Kuberek's Document No. 3 analyzes the consequences of having a federal income tax rate in the year of decommissioning that is lower than the tax rate applicable to the years contributions were made to the fund. This analysis shows that if the federal income tax rate is lower in the year of decommissioning than in the year contributions are made to the fund, then the decision to not qualify the fund produces adverse consequences.

Finally, page four of Mr. Kuberek's Document No. 3 evaluates the consequences where the federal income tax rate in the year of decommissioning exceeds the tax rates applicable to the years in which contributions were made to the fund. This analysis shows that the decision not to qualify the fund under these circumstances produces favorable

financial consequences. Therefore, as is clearly shown by the analysis performed by Mr. Kuberek in his Document No. 3 to his Supplemental Testimony, the decision to qualify a decommissioning fund should be based upon an evaluation of whether it is more reasonable to conclude that the federal income tax rate will be higher or lower in the years decommissioning funds will be expended than in the years contributions are made to the fund.

In addition, it should be recognized that once a qualified fund has been established and a taxpayer has elected to contribute to a qualified fund, the taxpayer, FPL, is not required to continue to make contributions to the qualified fund for every year thereafter. Tr. 217. It is discretionary with FPL on an annual basis to make a decision as to whether to contribute to a qualified or a non-qualified fund. FPL believes that it is important to maintain this discretion so that if federal income tax rates are changed in the future, an evaluation can be then made as to whether it is more reasonable to assume that tax rates in the year of decommissioning will be higher or lower than the newly established federal income tax rate. As Mr. Kuberek concluded:

It is clear from the examples in my Document 3 that the tax rate in the year of decommissioning could affect the amount of funds available for decommissioning when contributions are made to the non-qualified funds. Under present law, I believe that the ratepayer will benefit in the long run if

contributions are made to the qualified funds when the tax rates are high, as they were in prior years, and to non-qualified funds when the tax rates are low, as they are presently. Therefore, by following this practice of electing qualified contributions selectively based on each year's facts and circumstances, I believe FPL can provide the necessary decommissioning funds at a lower total cost to the ratepayer.

Tr. 218.

For these reasons, FPL believes that the record clearly establishes that its position on Issues 22 through 25 should be adopted.

F. Costs Associated With Non-Contaminated Structures and Facilities.

Although stated separately, it appears that the Commission Staff's positions for Issues No. 1 and No. 2 have the same rationale. The statements of position in the Prehearing Order do not fully reflect this commonality. Thus, the Staff's stated position on Issue No. 1, which asks whether certain components at a nuclear facility could be used after removal of the contaminated components, is:

STAFF: Yes, there are portions of the nuclear electric generating units that, if not radioactive, could be retained and used for future generation of electricity. (Woerner)

The Staff's stated position in response to Issue No. 2, which asks whether the cost of dismantlement of non-contaminated components should be included in the funding for "nuclear decommissioning" or recovered separately, is:

STAFF: The dismantlement of non-contaminated plant components should be

recovered separately through the use of lives and costs specifically related to those components. However, based on the current studies filed in this proceeding, there is no way to distinguish between the costs of dismantling contaminated and potentially non-contaminated assets at the time of decommissioning. (Woerner)

The direct testimony of Staff witness Mr. Woerner clarifies that the Staff's position on both Issues 1 and 2 is based upon a view that the non-contaminated components may have additional use even after the license for a nuclear unit expires. Thus, in responding to a question as to "What is inherently wrong with collecting money to be used for decommissioning the nuclear side and dismantling the non-nuclear side of the generation station simultaneously?" Mr. Woerner testified:

The money collected from the ratepayers to dismantle an electric generating station are calculated using two factors:
1) Estimated Expenses That Will Be Incurred At The Time Of Dismantling and
2) The Period Of Time Over Which The Generating Station Would Be Serving The Ratepayer. The second factor is my major concern.

Tr. 337.

To address these issues, FPL presented the testimony of Mr. Denis who sponsored Exhibit No. 7. Mr. Denis' testimony established that it is presently impossible to determine whether there are components at the nuclear units that could be retained for use elsewhere and that the ability to use these components would depend upon their "wear and tear"

status at the time any reuse commenced. Tr. 256. Obviously, potential technological changes would have to be considered as well. He pointed out that the recycling of non-contaminated components would have to be evaluated in light of the then existing environmental, economic and strategic concerns and that the ability to predict over the long-term is limited and speculative. Tr. 257. The long-term problems identified by Mr. Denis are explained by his Document No. 1 (Exhibit No. 7). There, it is shown that the elapsed time between the present and the completion of decommissioning of FPL's four nuclear units ranges between twenty-four years and thirty-nine years.

Mr. Denis also pointed out that when a nuclear unit was taken off-line to commence decommissioning, the Company would need replacement capacity for that unit. Tr. 258. Thus, it would be impossible to use any non-contaminated structures or components of the nuclear units in the replacement unit because the replacement unit would have to be available at the time decommissioning commenced. Finally, in evaluating the potential to "repower" the nuclear units, Mr. Denis concluded that partial repowering was unlikely and that full repowering would require 4,840 MW of combustion turbine capacity at the Turkey Point site and 5,600 MW of the same capacity at the St. Lucie site.

Mr. LaGuardia also addressed these issues noting that it was not cost-effective to attempt to refurbish the units.

Tr. 92. He explained that the difference in the thermodynamic cycles for nuclear units would result in a very inefficient overall operating system because the efficiency of nuclear power plant turbine generator systems and condenser systems are not designed to run "with our efficient or current design boilers that we have available." Tr. 93.

Mr. LaGuardia further noted that because of the potential danger and liability to the Company his recommendation is for complete dismantlement. Tr. 94.

In view of this uncertainty and lack of ability to predict whether any non-contaminated components at a nuclear plant to be decommissioned would be useful, FPL recommends that its position on Issues No. 1 and 2 be adopted. Moreover, in considering whether to attempt to separate non-contaminated structures and materials from nuclear decommissioning funding because of their potential reuse that the Commission consider the financial implications of such an action. For example, if a component is to be reused in the future then the utility should be permitted to either earn a return on that net investment or, at a minimum, capitalize a return on that net investment. If the earned or capitalized return exceeded the rate of escalation for the purchase of a similar component then, any potential reuse of non-contaminated structures and materials may be very uneconomic. If, however, the Commission determines that it is appropriate for there to be additional decommissioning studies addressing

the consequences of separate recovery and the potential reuse of non-contaminated structures and facilities, then FPL recommends that those studies be completed in accordance with the normal cycle for new decommissioning studies and periodic review of those studies by this Commission.

Conclusion

FPL submits that the record in this proceeding establishes that the results of the decommissioning studies for its Turkey Point and St. Lucie nuclear units should be adopted and that the Commission should approve the jurisdictional decommissioning costs, expressed in current January 1, 1989, dollars, of \$206,262,473 and \$203,421,665 for St. Lucie Nuclear Units Nos. 1 and 2, respectively, and \$162,771,355 and \$191,133,750 for the Turkey Point Nuclear Units 3 and 4, respectively; approve the annual accrual associated with these costs of \$8,325,464, \$7,113,878, \$8,611,724 and \$11,424,866 recognize these annual accruals as being included in FPL's cost-of-service commencing January 1, 1989. In addition, FPL requests that specific rulings on Issue Nos. 4, 6, 7, 8, 9, 10, 11, 20, 21, 26 and 27 be set

forth in the Final Order of the Commission in this proceeding
because they are required by the IRS.

Respectfully submitted,

STEEL HECTOR & DAVIS

Attorneys for Florida Power &
Light Company

By: 
Matthew M. Childs, P. A.

Appendix A

APPENDIX TO BRIEF OF FLORIDA POWER & LIGHT COMPANY

ISSUE 1: Are there components and facilities now at the nuclear production units which could be retained to generate electricity with another steam source after the removal of the current contaminated steam generation components?

FPL: It is unknown at this time. Components with potential for reuse after decommissioning would be limited to the nuclear non-contaminated components. These would primarily include portions of the turbine-generator power block, cooling system and electrical grid interconnecting facilities. The usability of these components however, will depend on the wear-and-tear status at the time reuse is commenced, the economic viability of such reuse and the conformance to future regulatory standards. (Denis)

ISSUE 2: Should the dismantlement of non-contaminated plant components be included in the funding for "Nuclear Decommissioning", or recovered separately through the use of lives and costs specifically related to those non-contaminated reusable components?

FPL: At this time, the dismantlement of the nuclear non-contaminated plant components is and should be included in the funding for nuclear decommissioning. If the nuclear non-contaminated portion of the unit is retired at the same time as the nuclear contaminated portion, there would be no significant difference in total costs since such costs have not been considered in current depreciation studies and the removal of such costs from the decommissioning study would cause an offsetting deficiency in depreciation reserves. However, if at a future time the nuclear non-contaminated portion is determined to have a useful life beyond the nuclear contaminated portion, it may be preferable to recover the related removal costs as a component of depreciation to more closely match these costs with each unit's period of generation. (Kuberek)

ISSUE 3: Should a decommissioning cost study be required from each company addressing the exclusion of non-contaminated components and facilities which can be used for generation of power subsequent to decommissioning of the present nuclear components? If so, in what time-frame should they be required?

FPL: It does not appear that there is any basis to conclude that nuclear non-contaminated components will have any significant value

Appendix A

upon decommissioning. If it can later be established that the nuclear non-contaminated components and facilities have a useful life beyond the nuclear contaminated facilities, a cost study should be required and the removal cost of the nuclear non-contaminated portion should be spread over the extended period the unit would provide generation. Since decommissioning studies are filed no less frequent than every five years, any change to exclude non-contaminated components and facilities should be incorporated in the Company's next studies. (Kuberek, Denis)

ISSUE 4: What methodology should Florida Power Corporation and Florida Power & Light utilize to decommission their nuclear units?

FPL: The appropriate methodology for decommissioning Turkey Point Unit Nos. 3 and 4 is an Integrated Prompt Removal/Dismantling approach. The Integrated Prompt removal/dismantling for Turkey Point is presently the lowest cost method and was chosen, among other reasons, because it utilizes those individuals familiar with the nuclear facility to support the dismantling effort and is the method recommended by the Nuclear Regulatory Commission (NRC).

The appropriate methodology for decommissioning St. Lucie Unit Nos. 1 and 2 is a Mothball/Prompt Integrated Dismantling approach. The Mothball/Prompt Integrated Dismantling approach is the lowest cost method and, due to the difference in license expiration dates, allows for a one time mobilization of contractor personnel and equipment by mothballing Unit No. 1 until the expiration of Unit No. 2's license. (Hoffman, LaGuardia)

ISSUE 5: Should there be a contingency allowance applied to the total cost at this time, and if so, what should the percentage be?

FPL: Yes. The contingency percentage is 25%. This percentage provides for the costs of high probability program problems where the occurrence, duration, and severity cannot be accurately predicted and have not been included in the basic estimate. The contingency provides for site specific problems that may arise and does not represent a provision for inaccurate cost estimates. If cost estimates were to be made at the time of commencement of decommissioning activities they would also include a contingency allowance of 25%. Contingency items that could occur include changes in the regulatory requirements, the effects of craft labor strikes, bad weather halting or slowing down waste shipments to the burial grounds, equipment/tool breakage, changes in the anticipated plant shutdown conditions, etc. Summation of the categories examined, yielded an average contingency of approximately 25%. (LaGuardia)

Appendix A

ISSUE 6: What is the estimated appropriate cost in current (January 1, 1989) dollars to decommission each of the nuclear units?

| FPL: | Unit | Estimated Future Costs at 1/1/89 |
|-------------|-------------------------|---|
| | Turkey Point Unit No. 3 | \$162,771,355 |
| | Turkey Point Unit No. 4 | \$191,133,750 |
| | St. Lucie Unit No. 1 | \$206,262,473 |
| | St. Lucie Unit No. 2 | \$203,421,665 |

The above was based on the Company's May 1989 Inflation Rate Forecast. (Hoffman, LaGuardia)

ISSUE 7: What is the appropriate methodology and escalation rate to use in converting the current estimated decommissioning cost to the future decommissioning estimated cost?

FPL: An escalation rate methodology which considers the potential for escalation rate differences between the decommissioning activities of decontamination, removal, packaging, shipping, burial, staff and other is used. These activities are separated further into labor, material and other. Costs identified were inflated by use of the Company's Inflation Rate Forecast and/or Average Hourly Earnings Index in addition to Producer Prices Indices and GNP Deflator when appropriate.

The escalated costs for each of the different decommissioning activities were determined for each year of the study. Summing the escalated costs of all activities for a particular year and comparing this cost relative to the previous year's cost provided the annual escalation rate for the total decommissioning process from one year to the next. This process was repeated for each of the four nuclear units over the applicable analytical horizon.

An overall effective rate, equivalent to the year by year rates was determined for each unit and are shown below:

| Unit | Overall Escalation Rate |
|-------------------------|--------------------------------|
| Turkey Point Unit No. 3 | 5.0% |
| Turkey Point Unit No. 4 | 4.9% |
| St. Lucie Unit No. 1 | 5.0% |
| St. Lucie Unit No. 2 | 5.0% |

Appendix A

The above was based on the Company's May, 1989, Inflation Rate Forecast. (Hoffman)

ISSUE 8: What is the total estimated cost of decommissioning each unit in future dollars based upon present operating license termination date?

FPL:

| <u>Unit</u> | <u>License Expiration</u> | <u>Est. Future Cost</u> |
|--------------------|---------------------------|-------------------------|
| Turkey Point No. 3 | April 27, 2007 | \$ 462,822,891 |
| Turkey Point No. 4 | April 27, 2007 | \$ 557,567,350 |
| St. Lucie No. 1 | March 1, 2016 | \$1,156,040,449 |
| St. Lucie No. 2 | April 6, 2023 | \$1,272,855,821 |

The above was based on the Company's May, 1989, Inflation Rate Forecast. (Hoffman, LaGuardia)

ISSUE 9: As presently planned, in which years will the funds accumulated in the Nuclear Decommissioning Trust Funds be expended, by unit?

FPL:

| <u>Unit</u> | <u>Year(s) of Fund Expenditure</u> |
|---------------------|------------------------------------|
| Turkey Point Unit 3 | 2005-2013 |
| Turkey Point Unit 4 | 2005-2014 |
| St. Lucie Unit 1 | 2014-2028 |
| St. Lucie Unit 2 | 2021-2028 |

(Hoffman, LaGuardia)

Appendix A

ISSUE 10: What is the estimated future cost of decommissioning, by unit, in each year in which decommissioning funds will be expended?

FPL:

Turkey Point Plant:
Integrated Prompt Removal/Dismantling

| <u>Year of Decommissioning</u> | <u>Estimated Future Cost</u> | |
|--------------------------------|------------------------------|-----------------------------|
| | <u>Unit No. 3</u> | <u>Unit No. 4</u> |
| 2005 | \$ 1,043,067 | \$ 562,625 |
| 2006 | 4,432,678 | 2,437,959 |
| 2007 | 28,236,950 | 20,082,623 |
| 2008 | 87,716,291 | 29,831,671 |
| 2009 | 116,491,727 | 99,502,966 |
| 2010 | 122,316,313 | 131,947,742 |
| 2011 | 61,930,931 | 138,413,181 |
| 2012 | 30,114,852 | 77,328,929 |
| 2013 | 10,540,081 | 45,521,897 |
| 2014 | | 11,937,757 |
| Totals | <u>\$462,822,891</u> | <u>\$557,567,350</u> |

St. Lucie Plant:
Mothball/Prompt-Integrated Dismantling

| <u>Year of Decommissioning</u> | <u>Estimated Future Cost</u> | |
|--------------------------------|-------------------------------|-------------------------------|
| | <u>Unit No. 1</u> | <u>Unit No. 2</u> |
| 2014 | \$ 1,634,646 | |
| 2015 | 6,411,176 | |
| 2016 | 68,854,515 | |
| 2017 | 24,649,790 | |
| 2018 | 10,980,815 | |
| 2019 | 11,529,856 | |
| 2020 | 12,106,349 | |
| 2021 | 12,711,666 | \$ 1,122,585 |
| 2022 | 65,026,359 | 4,672,311 |
| 2023 | 221,961,640 | 53,920,525 |
| 2024 | 241,815,795 | 237,021,222 |
| 2025 | 253,906,585 | 306,142,509 |
| 2026 | 112,271,649 | 321,449,635 |
| 2027 | 103,153,326 | 200,065,343 |
| 2028 | <u>9,026,282</u> | <u>148,461,690</u> |
| Totals | <u>\$1,156,040,449</u> | <u>\$1,272,855,821</u> |

(Hoffman, LaGuardia)

Appendix A

ISSUE 11: What is the projected date that each nuclear unit will no longer be included in rate base for ratemaking purposes?

FPL: For purposes of the present decommissioning filing, the Company projected that the nuclear units would be retired and removed from rate base for ratemaking purposes as follows:

| | |
|-------------------------|----------------|
| Turkey Point Unit No. 3 | April 27, 2007 |
| Turkey Point Unit No. 4 | April 27, 2007 |
| St. Lucie Unit No. 1 | March 1, 2016 |
| St. Lucie Unit No. 2 | April 6, 2023 |

(Kuberek)

ISSUE 12: Do FPL and FPC comply with NRC requirements as they pertain to control of the decommissioning funds?

FPL: The final rule set forth by the Nuclear Regulatory Commission (NRC) requires that the Company submit a report to the NRC by July 27, 1990, indicating how reasonable financial assurance will be provided that funds will be available for decommissioning. Financial assurance is to be provided by either prepayment prior to the start of operation, external sinking fund or a surety method, insurance or other guarantee method. The external sinking fund method as defined in the final rule is "a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of the operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit or deposit of government securities." 10 C.F.R. Section 50.75(e)(1)(ii). The Company provides for financial assurance through monthly contributions to its Nuclear Decommissioning Funds. These nuclear decommissioning funds are in the form of a trust with State Street Bank and Trust Company as trustee for each trust. Based on the Company's interpretation of the NRC final rule, the Company believes its method would constitute an external sinking fund which complies with the final rule and that reasonable financial assurance will be provided that funds will be available for decommissioning. After the Company submits its report to the NRC, should the NRC impose any additional requirements pertaining to the control of the decommissioning funds, the Company will comply with such requirements. (Kuberek)

Appendix A

ISSUE 13: Do FPL and FPC comply with NRC requirements as they pertain to the management of the investments of the decommissioning trust funds?

FPL: The management of the investment of the fund assets is currently performed by Staff within the Finance Department of FPL.

The final rule set forth by the Nuclear Regulatory Commission (NRC) requires that the Company submit a report to the NRC by July 27, 1990, indicating that reasonable financial assurance will be provided that funds will be available for decommissioning. As described in Issue 12, the Company's decommissioning funds are in the form of an external sinking fund pursuant to the final rule. There is no requirement in the final rule or in any other regulations promulgated by the NRC that mandate the use of an external investment manager for nuclear decommissioning funds. The final rule does require that a licensee utilizing an external sinking fund set aside monies composing the external sinking fund "in an account segregated from licensee's assets and outside licensee's administrative control." 10 C.F.R. Section 50.75(e)(1)(ii). Because of potential differences in interpretations of the foregoing language, the Company's outside counsel contacted the NRC for clarification. The NRC has indicated they will construe this language to require only that the trustee of the decommissioning fund must be unrelated to the licensee. Based on the Company's interpretation of the final rule and NRC clarification, the Company believes its current method of investment management of the nuclear decommissioning fund investments complies with the NRC requirements and that should the NRC require external management of the decommissioning fund investments, the Company will comply with such requirements. (Kuberek, Hoffman)

ISSUE 14: Do FPL and FPC comply with IRS requirements as they pertain to control of the decommissioning funds?

FPL: Yes. For a qualified nuclear decommissioning fund, Treasury Regulation Section 1.468A-5(a) requires that "a nuclear decommissioning fund must be established and maintained at all times in the United States pursuant to an arrangement that qualifies as a trust under State law. Such trust must be established for the exclusive purpose of providing funds for decommissioning of one or more nuclear power plants, but a single trust agreement may establish multiple funds for such purpose." The Company established and maintains its decommissioning funds in a trust with State Street Bank and Trust Company as trustee of each trust. This arrangement complies with the IRS requirements.

Appendix A

The Internal Revenue Code and Treasury Department Regulations do not prescribe requirements for a non-qualified nuclear decommissioning fund. (Kuberek)

ISSUE 15: Do FPL and FPC comply with IRS requirements as they pertain to the management of the investments of the decommissioning trust funds?

FPL: Internal Revenue Code Section 468A and the Treasury regulations applicable to Section 468A do not require external management of nuclear decommissioning funds. They do require that the funds only be invested in public securities of the United States, obligations of state and local government or time and demand deposits in a Bank or insured Credit Union.

The management of the funds' assets is presently performed by Staff within the Finance Department of Florida Power & Light Company. Investment criteria established for the qualified fund is limited to those required under the Internal Revenue Code.

The Internal Revenue Code and Treasury Department Regulations do not prescribe requirements for a non-qualified nuclear decommissioning fund. (Kuberek, Hoffman)

ISSUE 16: What are the fee structures associated with the administration and management of the decommissioning trust funds for Florida Power & Light and Florida Power Corporation and are these appropriate?

FPL: The fee structures for FPL are appropriate. Administration fees payable to the trustee, State Street, are assessed on a sliding scale based on the market value of the securities. The current fee structure is as follows:

| | |
|-------------------|--------------|
| First \$5 million | 1/5th of 1% |
| Next \$10 million | 1/10th of 1% |
| Next \$15 million | 1/20th of 1% |
| Next \$20 million | 1/30th of 1% |
| Over \$50 million | 1/50th of 1% |

In addition, nominal transaction and accounting fees are charged.

The management of the Fund's assets is presently performed by Staff within the Finance Department, therefore there is no fee structure associated with management of the decommissioning trust fund. (Hoffman)

Appendix A

ISSUE 17: Are the parties owning an interest in the nuclear units of Florida Power & Light and Florida Power Corporation providing their share of the total decommissioning costs?

FPL: The participation agreements are associated with St. Lucie Unit No. 2 and are between the Company and Florida Municipal Power Agency and Orlando Utilities Commission, respectively. These agreements state that the participants shall make funds "available for payment of decommissioning (and disposal) costs on the same bases and with the priority as (those) provided by the Company."

In September 1983, the Company notified each participant of their required annual contribution to their decommissioning fund. To verify that each participant is making the required contribution the Company requires copies of each participant's audited financial statements. The notes to these statements indicate that the participants have the required funds deposited in separate restricted accounts. (Kuberek)

ISSUE 18: What is an appropriate investment strategy for a nuclear decommissioning trust fund?

FPL: Our investment strategy is an appropriate one in that it meets the primary objective of the fund which is to provide the capital necessary for the decommissioning of the Company's nuclear power plants at the end of their respective licensing periods. To accomplish this, the strategy is to maximize the earnings growth of the portfolio while maintaining a high degree of safety so as to minimize future customer contributions. Since establishing the fund in 1983, the Company has pursued a strategy of using tax-advantaged fixed income instruments, namely, municipal bonds and preferred stock. (Hoffman)

ISSUE 19: Should a minimum fund earning rate be imposed and, if so, how should that rate be determined?

FPL: No the Commission should not establish a minimum earnings rate for the actual earnings performance of the funds. Our investment strategy of maximizing the earnings growth of the portfolio while maintaining a high degree of safety is compatible with the goal of providing the capital needed for the decommissioning of the Company's nuclear plants. High volatility in interest rates makes it unrealistic to assume that a minimum earnings rate can be consistently achieved for the overall fund on a total return basis. For computational purposes, however, it is

Appendix A

reasonable to use the inflation rate as a proxy for the long term expected earnings rate as demonstrated in our analysis of historical returns for Municipal instruments. (Hoffman)

ISSUE 20: What is the assumed appropriate fund earnings rate, net of tax, for a nuclear decommissioning trust fund?

FPL: Because of the inability to determine with complete certainty the future level of inflation or investment premiums an appropriate fund earnings rate cannot be determined. Since inflation will play such an important role in determining the future obligation of a decommissioning fund, the Company hopes to achieve a return on the fund greater than the rate of inflation. The Company's most recent analysis indicates that based on long term historical relationships it is reasonable to expect an average fund earnings rate (net of tax) of 5.5% or .21% over forecasted CPI. since the assumed earnings rate is tied to the Company's forecast of the CPI this rate will be subject to change from time to time. (Hoffman)

ISSUE 21: How often should contributions be made to the company's decommissioning fund?

FPL: In that the costs are recovered by the Company on a monthly basis, monthly contributions to the fund are considered to be most appropriate. (Hoffman)

ISSUE 22: What are the tax and revenue requirements implications of having a qualified fund versus a non-qualified fund?

FPL:

Tax Implications - The qualified fund allows the Company to take a current tax deduction for contributions to a qualified nuclear decommissioning fund. Contributions to a non-qualified decommissioning fund are not deductible currently. The tax deduction is deferred until the year decommissioning costs are incurred. Therefore, Federal and State income taxes are paid currently on revenues collected for decommissioning and recorded as prepaid taxes.

The non-exempt earnings of both the qualified and non-qualified nuclear decommissioning funds are currently taxable.

Revenue Implications - The revenue requirements for a qualified or a non-qualified fund are the same assuming the inflation rate, tax rate and earnings rates are the same for both funding methods. (Kuberek)

Appendix A

ISSUE 23: Was it appropriate for Florida Power & Light and Florida Power Corporation to qualify the nuclear decommissioning funds under Section 468(a) of the Internal Revenue Code for 1984 through 1987?

FPL: Yes. After considering the reduction in the corporate federal income tax rate from 46% to 34%, effective July 1, 1987, the Company believed the advantages of the qualified fund outweighed the disadvantages for those years. The annual revenue requirements requested under the petition as filed would have been higher had the Company not made these elections. (Kuberek)

ISSUE 24: Was it appropriate for Florida Power & Light to not qualify the nuclear decommissioning funds under Section 468(a) of the Internal Revenue Code for 1988?

FPL: Yes, Florida Power & Light Company believes that it is in the customers' best interest not to qualify the nuclear decommissioning funds when the federal income tax rate is extremely low as in 1988. If the federal income tax rate is higher in the year of decommissioning the customer will benefit by the reduced revenue requirements associated with the tax rate differential. Also, the customer may benefit from greater fund earnings since the investments in the non-qualified fund are not restricted as in the qualified funds. (Kuberek)

ISSUE 25: Should utility companies, prospectively, be required to qualify nuclear decommissioning trust funds pursuant to Section 468(a) of the Internal Revenue Code?

FPL: No. The Company must be able to determine whether to make contributions to either the qualified or non-qualified nuclear decommissioning fund based on current facts and circumstances applicable to the Company. If the Commission were to require the Company to elect and make contributions to the qualified funds, it would take away the Company's ability to adapt to changes in circumstances that might produce lower revenue requirements for our customers. (Kuberek)

Appendix A

ISSUE 26: What is the appropriate annual accrual in equal dollar amounts necessary to recover future decommissioning cost over the remaining life of each nuclear power plant for Florida Power Corporation and Florida Power & Light?

FPL:

| <u>Unit</u> | <u>Jurisdictional Annual Accrual</u> | <u>Annual Revenue Requirements</u> |
|--------------------|--|--|
| Turkey Point No. 3 | \$ 8,611,724 | \$ 8,777,675 |
| Turkey Point No. 4 | \$ 11,424,866 | \$ 11,645,027 |
| St. Lucie No. 1 | \$ 8,325,464 | \$ 8,485,898 |
| St. Lucie No. 2 | <u>\$ 7,113,878</u> | <u>\$ 7,250,965</u> |
| Totals | <u>\$ 35,475,932</u> | <u>\$ 36,159,565</u> |

The revenue requirements exceed the annual accrual due to the need to provide for Regulatory Assessment Fees, Gross Receipts Tax and Uncollectible Accounts. (Hoffman)

ISSUE 27: In which years are decommissioning costs projected to be included in the company's cost of service and what are the projected amounts that will be included each year?

FPL: Decommissioning accrual amounts will be included in the Company's cost of service each year until each unit's license expiration date. The accrual amounts Florida Power & Light Company is requesting are as follows:

| | <u>Total Company</u> | <u>Jurisdictional</u> |
|-------------------------|----------------------|-----------------------|
| Turkey Point Unit No. 3 | \$ 8,766,809 | \$ 8,611,724 |
| Turkey Point Unit No. 4 | \$11,630,612 | \$11,424,866 |
| St. Lucie Unit No. 1 | \$ 8,475,393 | \$ 8,325,464 |
| St. Lucie Unit No. 2 | \$ 7,241,989 | \$ 7,113,878 |

ISSUE 28: What should be the effective date for adjusting the annual accrual amount?

FPL: Effective date for adjusting the annual accrual amount should be January 1, 1989. (Kuberek)

Appendix A

ISSUE 29: What are the jurisdictional revenue requirements needed to recover the costs associated with the decommissioning of each nuclear unit?

FPL: The jurisdictional revenue requirements were based on FPL's estimates of 1988 decommissioning costs using the methodologies referenced in Issue 4. The decommissioning costs are assumed to be collected equally over the remaining operating life of each unit, beginning January 1, 1989. The jurisdictional revenue requirements for each of the units are:

| | <u>Previously Authorized by the Commission</u> | <u>Increase Based on Current Studies</u> | <u>Total Annual Revenue Requirements</u> |
|---------------------|--|--|--|
| Turkey Point Unit 3 | \$ 5,459,105 | \$ 3,318,570 | \$ 8,777,675 |
| Turkey Point Unit 4 | 3,989,885 | 7,655,142 | 11,645,027 |
| St. Lucie Unit 1 | 4,978,857 | 3,507,041 | 8,485,898 |
| St. Lucie Unit 2 | <u>4,756,925</u> | <u>2,494,040</u> | <u>7,250,965</u> |
| Total | <u>\$19,184,772</u> | <u>\$16,974,793</u> | <u>\$36,159,565</u> |

(Hoffman, LaGuardia)

ISSUE 30: Should base rates be revised in this docket to reflect any change in revenue requirements?

FPL: Florida Power & Light Company is not requesting that its base rates be adjusted at this time; however, the increased costs of nuclear decommissioning should be authorized to be included in cost of service effective January 1, 1989. (Kuberek)

Appendix B

Florida Power & Light Company
Qualified vs Non-qualified
Decommissioning Fund

ASSUMPTIONS

- | | |
|---|-----------|
| 1. Decommissioning Cost | \$100,000 |
| 2. After Tax Earnings Rate | 6% |
| 3. Decommissioning occurs immediately at the end of year 5 | |
| 4. Funds deposited annually at the end of the year | |

Docket No. 1981-10
FPL Witness: G. J. Kulera
Exhibit _____, Document No. 3
Page 1 of 4

Appendix B

FLORIDA POWER & LIGHT COMPANY
 QUALIFIED VS. NON-QUALIFIED
 DECOMMISSIONING FUND

QUALIFIED DECOMMISSIONING FUND

| | |
|--------------------------|-----------|
| REVENUE REQUIREMENT | \$ 88,700 |
| TAX ON REVENUE REQ. | 0 |
| NET CONTRIBUTION | 88,700 |
| FUND EARNINGS AFTER TAX | 11,300 |
| FUNDS BEFORE TAX BENEFIT | 100,000 |
| TAX BENEFIT OF DEDUCTION | 0 |
| TOTAL FUND | 100,000 |
| DECOMMISSIONING COST | 100,000 |
| DIFFERENCE | \$ 0 |

NONQUALIFIED DECOMMISSIONING FUND

| | |
|--------------------------|-----------|
| REVENUE REQUIREMENT | \$ 88,700 |
| TAX ON REVENUE REQ. | (30,160) |
| NET CONTRIBUTION | 58,540 |
| FUND EARNINGS AFTER TAX | 7,460 |
| FUNDS BEFORE TAX BENEFIT | 66,000 |
| TAX BENEFIT OF DEDUCTION | 34,000 |
| TOTAL FUND | 100,000 |
| DECOMMISSIONING COST | 100,000 |
| DIFFERENCE | \$ 0 |

| (1) YEAR | (2) TAX RATE | (3) REVENUE REQUIREMENT | (4) FUND CONTRIBUTION | (5) FUND EARNINGS AFTER TAX | (6) END OF YEAR FUND BALANCE | (7) REVENUE REQUIREMENT | (8) TAX ON REVENUE REQUIREMENT | (9) FUND CONTRIBUTION | (10) FUND EARNINGS AFTER TAX | (11) END OF YEAR FUND BALANCE |
|--------------------------|-----------------|-------------------------------|-----------------------------|--------------------------------------|---------------------------------------|-------------------------------|---|-----------------------------|---------------------------------------|--|
| 1 | 34.00% | \$17,740 | \$17,740 | \$ | \$17,740 | \$17,740 | \$4,032 | \$11,708 | \$ | \$11,708 |
| 2 | 34.00% | 17,740 | 17,740 | 1,044 | 34,544 | 17,740 | 6,032 | 11,708 | 703 | 24,119 |
| 3 | 34.00% | 17,740 | 17,740 | 2,193 | 56,476 | 17,740 | 6,032 | 11,708 | 1,447 | 37,274 |
| 4 | 34.00% | 17,740 | 17,740 | 3,389 | 77,604 | 17,740 | 6,032 | 11,708 | 2,236 | 51,218 |
| 5 | 34.00% | 17,740 | 17,740 | 4,656 | 100,000 | 17,740 | 6,032 | 11,708 | 3,074 | 66,000 |
| TAX BENEFIT OF DEDUCTION | | | | | | | | | | |
| TOTAL | | \$88,700 | \$88,700 | \$ 11,300 | 0 | \$88,700 | \$30,160 | \$58,540 | \$7,460 | \$100,000 |

Appendix B

FLORIDA POWER & LIGHT COMPANY
 QUALIFIED VS. NON-QUALIFIED
 DECOMMISSIONING FUND

| QUALIFIED DECOMMISSIONING FUND | | NON-QUALIFIED DECOMMISSIONING FUND | |
|---|------------------|---|-----------------------|
| REVENUE REQUIREMENT TAX ON REVENUE REQ. | \$ 88,700 | REVENUE REQUIREMENT TAX ON REVENUE REQ. | \$ 88,700 (29,000) |
| NET CONTRIBUTION FUND EARNINGS AFTER TAX | 88,700 11,300 | NET CONTRIBUTION FUND EARNINGS AFTER TAX | 59,604 7,400 |
| FUNDS BEFORE TAX BENEFIT | 100,000 | FUNDS BEFORE TAX BENEFIT | 67,004 |
| TAX BENEFIT OF DEDUCTION | 0 | TAX BENEFIT OF DEDUCTION | 28,000 |
| TOTAL FUND | 100,000 | TOTAL FUND | 95,004 |
| DECOMMISSIONING COST | 100,000 | DECOMMISSIONING COST | 100,000 |
| DIFFERENCE | \$ 0 | DEFICIENCY IN FUND | \$ (4,996) |

| (1) YEAR | (2) TAX RATE | (3) REVENUE REQUIREMENT | (4) FUND CONTRIBUTION | (5) FUND EARNINGS AFTER TAX | (6) END OF YEAR FUND BALANCE | (7) REVENUE REQUIREMENT | (8) TAX ON REVENUE REQUIREMENT | (9) FUND CONTRIBUTION | (10) FUND EARNINGS AFTER TAX | (11) END OF YEAR FUND BALANCE |
|-------------|-----------------|-------------------------------|-----------------------------|--------------------------------------|---------------------------------------|-------------------------------|---|-----------------------------|---------------------------------------|--|
| 1 | 34.00% | \$17,740 | \$17,740 | \$ | \$17,740 | \$17,740 | \$6,032 | \$11,708 | \$ | \$11,708 |
| 2 | 34.00% | 17,740 | 17,740 | 1,064 | 36,544 | 17,740 | 6,032 | 11,708 | 703 | 28,119 |
| 3 | 34.00% | 17,740 | 17,740 | 2,193 | 56,476 | 17,740 | 6,032 | 11,708 | 1,447 | 37,274 |
| 4 | 34.00% | 17,740 | 17,740 | 3,389 | 77,604 | 17,740 | 6,032 | 11,708 | 2,236 | 51,218 |
| 5 | 28.00% | 17,740 | 17,740 | 4,656 | 100,000 | 17,740 | 4,968 | 12,772 | 3,074 | 67,064 |
| TOTAL | | 88,700 | 88,700 | 11,300 | 100,000 | 88,700 | 29,000 | 59,604 | 87,460 | 89,064 |

Appendix B

FLORIDA POWER & LIGHT COMPANY
QUALIFIED VS. NON-QUALIFIED
DECOMMISSIONING FUND

| | QUALIFIED DECOMMISSIONING FUND | NONQUALIFIED DECOMMISSIONING FUND |
|---|--------------------------------|-----------------------------------|
| REVENUE REQUIREMENT TAX ON REVENUE REQ. | \$ 88,700 | \$ 88,700 |
| NET CONTRIBUTION FUND EARNINGS AFTER TAX | 88,700 | (31,224) |
| FUNDS BEFORE TAX BENEFIT | 11,300 | 57,476 |
| TAX BENEFIT OF DEDUCTION | 100,000 | 7,460 |
| TOTAL FUND | 0 | 64,936 |
| DECOMMISSIONING COST | 100,000 | 40,000 |
| DIFFERENCE | 100,000 | 104,936 |
| | \$ 0 | \$ 4,936 |

| (1) YEAR | (2) TAX RATE | (3) REVENUE REQUIREMENT | (4) FUND CONTRIBUTION | (5) FUND EARNINGS AFTER TAX | (6) END OF YEAR FUND BALANCE | (7) REVENUE REQUIREMENT | (8) TAX ON REVENUE REQUIREMENT | (9) FUND CONTRIBUTION | (10) FUND EARNINGS AFTER TAX | (11) END OF YEAR FUND BALANCE |
|-------------|-----------------|-------------------------------|-----------------------------|--------------------------------------|---------------------------------------|-------------------------------|---|-----------------------------|---------------------------------------|--|
| 1 | 34.00% | \$17,740 | \$17,740 | \$ | \$17,740 | \$17,740 | \$6,032 | \$11,708 | \$ | \$11,708 |
| 2 | 34.00% | 17,740 | 17,740 | 1,064 | 36,544 | 17,740 | 6,032 | 11,708 | 703 | 34,119 |
| 3 | 34.00% | 17,740 | 17,740 | 2,193 | 56,476 | 17,740 | 6,032 | 11,708 | 1,447 | 57,274 |
| 4 | 34.00% | 17,740 | 17,740 | 3,389 | 77,604 | 17,740 | 6,032 | 11,708 | 2,236 | 81,218 |
| 5 | 40.00% | 17,740 | 17,740 | 4,656 | 100,000 | 17,740 | 7,096 | 10,644 | 3,074 | 104,936 |
| TOTAL | | \$88,700 | \$88,700 | \$ 11,300 | \$100,000 | \$88,700 | \$31,224 | \$57,476 | \$7,460 | \$104,936 |

CERTIFICATE OF SERVICE
Docket No. 870098-EI

I HEREBY CERTIFY that a true and correct copy of the Brief of Florida Power & Light Company has been furnished to the following persons by hand-delivery or by U.S. Mail on this 10th day of July, 1989:

James McGee, Esq.
Florida Power Corporation
P. O. Box 14042
Petersburg, Florida 33733

M. Robert Christ, Esq.
Division of Legal Services
Florida Public Service
Commission
101 East Gaines Street
Tallahassee, Florida 32301

Gail P. Fels, Esq.
Assistant Dade County Attorney
Metro-Dade Center, Suite 2810
111 N.W. First Street
Miami, Florida 33128-1993

By:


Matthew M. Childs, P. A.