STATE OF FLORIDA

OFFICE OF COMMISSION CLERK
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Public Service Commission

August 13, 2015

John A. Tomasino, Clerk
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Re: Citizens of the State of Florida, through the Florida Office of Public Counsel vs. Florida Public Service Commission, PSC Docket No. 150001-EI

Dear Mr. Tomasino:

Enclosed please find a certified copy of a Notice of Administrative Appeal, which was filed with the Public Service Commission on August 12, 2015, along with its attachment, Order No. PSC-15-0284-FOF-EI. This appeal was filed on behalf of the Citizens of the State of Florida.

Please do not hesitate to contact me should you have any questions concerning this matter.

Sincerely,

Carlotta S. Stauffer

Carlotta S. Stauffer
Commission Clerk

CSS: amc
Enclosure

cc: John J. Truitt, Associate Public Counsel
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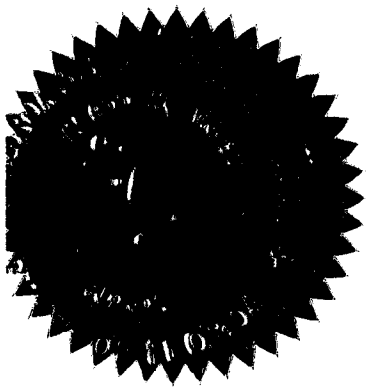
CITIZENS OF THE STATE OF FLORIDA, THROUGH THE FLORIDA OFFICE OF PUBLIC COUNSEL,	**IN THE FLORIDA PUBLIC SERVICE COMMISSION**
Appellants,	
v.	**DOCKET NO. 150001-EI**
FLORIDA PUBLIC SERVICE COMMISSION,	**NOTICE OF ADMINISTRATIVE APPEAL**
Appellee.	

NOTICE IS GIVEN that the Citizens of the State of Florida, Appellants, through the Office of Public Counsel, appeal to the Supreme Court of the State of Florida the order of the Florida Public Service Commission, Order No. PSC-15-0284-FOF-EI, rendered on July 14, 2015. A copy of Order No. PSC-15-0284-FOF-EI is attached to this NOTICE OF ADMINISTRATIVE APPEAL as Exhibit "A." The nature of the order is a Final Order Approving Modified Gas Reserve Guidelines.



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Attorneys for Citizens of
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE OF ADMINISTRATIVE APPEAL** has been furnished by electronic mail on this 12th day of August, 2015, to the following:

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CITIZENS OF THE STATE OF FLORIDA, THROUGH THE FLORIDA OFFICE OF PUBLIC COUNSEL,	)	**IN THE FLORIDA PUBLIC SERVICE COMMISSION**
Appellants,	)	**DOCKET NO. 150001-EI**
v.	)	
FLORIDA PUBLIC SERVICE COMMISSION	)	**NOTICE OF ADMINISTRATIVE APPEAL**
Appellee.	)	

EXHIBIT "A"

FLORIDA PUBLIC SERVICE COMMISSION
ORDER NO. PSC-15-0284-FOF-EI, ISSUED July 14, 2015

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 150001-EI ORDER NO. PSC-15-0284-FOF-EI ISSUED: July 14, 2015

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
JULIE I. BROWN
JIMMY PATRONIS

FINAL ORDER APPROVING MODIFIED GAS RESERVE GUIDELINES

APPEARANCES:

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On behalf of the Florida Public Service Commission (Staff)

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Advisor to the Florida Public Service Commission

BY THE COMMISSION:

Background

On June 25, 2014, Florida Power & Light Company (FPL or Company) petitioned the Commission for our determination that it is prudent for FPL to acquire an interest in a natural gas reserve project (the Woodford Project) and that the revenue requirement associated with investing in and operating the gas reserve project is eligible for recovery through the Fuel and Purchase Power Cost Recovery Clause (Petition). FPL further requested that we establish Guidelines (Proposed Guidelines) under which FPL could participate in future gas reserve projects without our prior approval and recover the costs through the Fuel Clause, subject to our established process for reviewing fuel-related transactions. FPL requested that we consider its Petition at the October 22-24, 2014 Fuel Clause hearing.

On August 22, 2014, by Order No. PSC-14-0439-PCO-EI, the gas reserve issues were bifurcated from the Fuel Clause proceeding.[1] The gas reserve issues were scheduled to be heard at a separate hearing on December 1-2, 2014.

On August 22, 2014, the Office of Public Counsel (OPC) filed its Motion to Dismiss FPL's Petition on the grounds that we do not have subject matter jurisdiction. On August 29, 2014, FPL filed its response in opposition. We heard oral argument at the Commission Conference on November 25, 2014. On December 17, 2014, we issued Order No. PSC-14-0697-PCO-EI denying OPC's Motion.[2]

The hearing was held on December 1-2, 2014, at which FPL, OPC, the Florida Industrial Power Users Group (FIPUG), and the Florida Retail Federation (FRF) participated. At the conclusion of the hearing, we scheduled the issues related to the Woodford Project for consideration at the December 18, 2014 Commission Conference. We deferred consideration of the remaining issues related to FPL's request for approval of investment Guidelines to a future Commission Conference.

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[1] See Order No. PSC-14-0439-PCO-EI, issued August 22, 2014, in Docket No. 140001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.
[2] See Order No. PSC-14-0697-PCO-EI, issued December 17, 2014, in Docket No. 140001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

We voted on the Woodford Project issues at the December 18, 2014 Commission Conference. By Order No. PSC-15-0038-FOF-EI issued January 12, 2015, we found the Woodford Project in the public interest and the costs recoverable through the Fuel Clause.[3]

On January 15, 2015, OPC filed a Notice of Appeal in the Florida Supreme Court of Commission Order No. PSC-14-0697-PCO-EI, denying OPC's Motion to Dismiss for lack of subject matter jurisdiction (Florida Supreme Court Case No. SC15-95). On January 20, 2015, OPC filed a Notice of Appeal in the Florida Supreme Court of Commission Order No. PSC-15-0038-FOF-EI, approving the Woodford Project for cost recovery through the Fuel Clause (Florida Supreme Court Case No. SC15-113). Also on January 20, 2015, OPC filed a Notice of Appeal in the Florida Supreme Court of Commission Order No. PSC-14-0701-FOF-EI, approving the fuel and purchased power cost recovery factors for all Florida investor-owned electric utilities, including FPL (Florida Supreme Court Case No. SC15-115).[4] On February 10, 2015, FIPUG filed a Notice of Appeal in the Florida Supreme Court of Commission Order No. PSC-15-0038-FOF-EI, approving the Woodford Project (Florida Supreme Court Case No. SC15-274). On March 30, 2015, the Florida Supreme Court consolidated OPC's three appeals and the FIPUG appeal into a single case (Florida Supreme Court Case No. SC15-95). Also on March 30, the Florida Supreme Court dismissed OPC's petition for a writ of prohibition seeking to restrain us from proceeding on FPL's petition to establish Guidelines for FPL's participation in future gas reserve projects, and granted our motion to relinquish jurisdiction authorizing us to continue proceedings on the remaining issues in FPL's Petition.

The parties' posthearing briefs addressing the remaining issues were filed on January 12, 2015. This Order addresses the issues related to FPL's Proposed Guidelines, rulemaking requirements, and recovery through the Fuel Clause of investments made pursuant to the proposed guidelines.

We have jurisdiction over this subject matter pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, and 366.06, F.S.

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[3] See Order No. PSC-15-0038-FOF-EI, issued January 12, 2015, in Docket No. 150001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

[4] See Order No. PSC-14-0701-FOF-EI, issued December 19, 2014, in Docket No. 140001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. Order No. PSC-14-0701-FOF-EI addresses issues not related to the Woodford Project or the Proposed Guidelines.

Decision

Whether Rulemaking is Required

We address whether adoption of FPL's Proposed Guidelines are applicable to all other investor-owned utilities (IOUs) and, if so, whether we are required to engage in rulemaking to adopt the Guidelines.

In its petition, FPL proposed a detailed set of Guidelines FPL asserts are designed to establish a framework whereby FPL can participate in future gas reserve projects and recover its costs through the Fuel Clause without prior Commission approval. FPL takes the position that no rules are required to adopt its Guidelines. In support, FPL relies on Order No. PSC-14-0665-PCO-EI, where the Prehearing Officer denied FIPUG's motion to strike FPL's request to establish Guidelines because cost recovery clauses are exempt from rulemaking under Section 120.80(13)(a), F.S. [5]

OPC admits that we are exempt from "some aspect of rulemaking" but that certain Commission orders, such as the order setting hedging Guidelines[6] are "de facto or surrogate rules."[7] OPC argues that Section 366.06(1), F.S.,[8] provides that all applications for changes in rates shall be made under rules and regulations as prescribed by us, and this language controls over the rulemaking exemption in Section 120.80(13)(a), F.S. In support, OPC cites a recommendation[9] where staff proposed the promulgation of Rule 25-6.0424, F.A.C., setting requirements for filing a petition for mid-course correction for fuel factors set in fuel clause proceedings. OPC contends that requesting approval for the Guidelines is de facto a pre-application for changes in customer rates on an automatic, going-forward basis for gas projects that meet the Guidelines. Therefore, OPC argues, we violate the mandate of Section 366.06(1), F.S., if we adopt the FPL Guidelines without promulgating rules.

FIPUG takes the position that we should engage in rulemaking because FPL's Proposed Guidelines are tantamount to proposed rules and should only be considered in an appropriately noticed proceeding in accord with Chapter 120, F.S. FIPUG argues that rulemaking affords affected parties notice and the opportunity to participate in the development of a prospective application of a policy regarding the issues raised by FPL's petition. FIPUG recommends that we pursue rulemaking either directly or through incipient policy on a case-by-case approach.

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[5] Order No. PSC-14-0665-PCO-EI, issued on November 17, 2014, in Docket No. 140001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

[6] Order No. PSC-08-0667-PAA-EI, issued October 8, 2008, in Docket No. 080001-EI, In re Fuel and purchased power cost recovery clause with generating performance incentive factor.

[7] The term "de facto" or "surrogate rule" is not found in any provision of Chapter 120, F.S.

[8] ". . . All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. . . ." Section 366.06(1), F.S.

[9] Document No. 03779-10, filed May 6, 2010, Revised Recommendation for May 13, 2010 Agenda. Staff notes that language in a staff recommendation does not constitute Commission action. Order No. PSC-10-0332-NOR-EI, issued May 25, 2010, in Docket No. 100084-EI, In re: Initiation of rulemaking to adopt Rule 25-6.0424, F.A.C., Petition for Mid-Course Correction, does not address this portion of the staff's recommendation.

FIPUG also argues that such wide-ranging policy pronouncements should be put in place through legislative enactment. FIPUG further states that the adoption of FPL's Guidelines will establish precedent for other utilities to request approval of projects similar to FPL's gas reserves project.

We first consider whether FPL's Proposed Guidelines, if adopted, are rules. Section 120.52(7), F.S., defines a rule as an "agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule."

When deciding whether a challenged action constitutes a rule, a court analyzes the action's general applicability, requirement of compliance, or direct and consistent effect of law. Fla. Dep't of Fin. Servs. v. Capital Collateral Reg'l Counsel-Middle Region, 969 So. 2d 527, 530 (Fla. 1st DCA 2007). The analysis is predicated on whether the action has a direct effect on the other regulated utilities, adversely affects any substantive right, constitutes a denial or withdrawal of a right, imposes any new or additional requirements, or has the direct and consistent effect of law. Volusia County Sch. Bd. v. Volusia Home Builders Ass'n, Inc., 946 So. 2d 1084, 1089 (Fla. 5th DCA 2006).

In Florida Public Service Com. v. Central Corp., 551 So. 2d 568, 569 (Fla. 1st DCA 1989), the court held that a Commission interim rate order imposing a temporary "hold subject to refund" requirement was an invalid unpromulgated rule because the order specifically stated that the requirement applied to all alternate service providers furnishing operator-assisted long distance telecommunications services, not just Central Corporation. The court determined that the order was a rule as it imposed an immediate requirement not otherwise required by statute or existing rule because the providers either had to change previously approved rates to match those charged by local exchange companies, or set monies aside to cover the potential refund obligation.

Unlike our order at issue in Central Corp. or the order establishing the hedging Guidelines,[10] the FPL Proposed Guidelines, if adopted, affect only FPL. The Guidelines neither have a direct effect on the other electric utilities that are parties in the fuel clause proceedings, adversely affect any of their substantive rights, impose any new or additional requirements, nor have the direct and consistent effect of law. Thus, we find the Guidelines are not a statement of general applicability and do not rise to the level of a rule under the provisions of Section 120.52(7), F.S.

In 1991, the Florida Legislature enacted Section 120.54(1)(a), F.S., which provides that rulemaking is not a matter of agency discretion and requires each agency statement defined as a rule by Section 120.52 to be adopted by the rulemaking procedure provided in Chapter 120, F.S., as soon as feasible and practicable. See Department of Highway Safety and Motor Vehicles v.

[10] Order No. PSC-08-0667-PAA-EI, issued October 8, 2008, in Docket No. 080001-EI, In re Fuel and purchased power cost recovery clause with generating performance incentive factor.

Schluter, 705 So. 2d 81 (Fla. 1st DCA 1997). However, Section 120.80(13)(a), F.S., specifically exempts the Commission from the mandatory rulemaking requirements of Section 120.54(1)(a), F.S. The exemption applies to any Commission statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to Chapter 366, F.S., relating to public utilities. We have, in the past, established guidelines and procedures for fuel clause proceedings that have general applicability through Commission orders without promulgating rules.[11] We specifically addressed the Section 120.80(13)(a), F.S., exemption in Order No. PSC-99-1741-PAA-EI when we ruled that, despite containing agency statements of widespread applicability, an order issued as part of the fuel and purchased power cost recovery clause is exempt from the rulemaking requirements of Chapter 120, F.S.[12]

We find OPC's argument that Section 120.80(13)(a), F.S., does not control because the petition for approval of the Guidelines "is de facto a pre-application for changes in customer rates" under Section 366.01, F.S., is inapposite to the issue at hand and misapprehends the statutory interpretation of the relevant statutory sections.[13] Rule 25-6.0424, F.A.C., setting requirements for petitions for mid-course correction involves petitions for change in rates. The petition to adopt Guidelines is clearly not an application for a change in rates. Adopting OPC's argument, we would be required to promulgate rules to implement *all* Commission orders setting procedures, factors or mechanisms in cost-recovery clauses and renders the provisions of Section 120.80(13)(a), F.S., meaningless. A basic rule of statutory construction is that the Legislature does not intend to enact useless provisions, and courts avoid readings that would render part of a statute meaningless. American Home Assurance Co. v. Plaza Materials Corp., 908 So. 2d 360, 366 (Fla. 2005); Kasischke v. State, 991 So. 2d 803, 808 (Fla. 2008) (holding that a court must avoid interpreting a statute so as to render the statute meaningless).

In conclusion, we find that we are not required to engage in rulemaking. First, the Guidelines are not rules under the definition in Section 120.52(7), F.S. Second, we are exempt from rulemaking under the provisions of Section 120.80(13)(a), F.S., applicable to cost-recovery clauses, factors, or mechanisms.

Modifications to the Proposed Guidelines

FPL's Proposed Guidelines outline the parameters under which FPL proposes to enter future agreements for gas reserve projects. The Guidelines include provisions that describe the limits to FPL's participation in projects. Namely, the provisions specify the percentage of average daily burn the aggregate output from the projects may represent, the composition of the natural gas (percentage of methane versus natural gas liquids) that FPL can pursue, and the maximum annual capital expenditure FPL may invest in these projects. The Guidelines specify

[11] Order No. PSC-08-0667-PAA-EI, issued October 8, 2008, in Docket No. 080001-EI, In re Fuel and purchased power cost recovery clause with generating performance incentive factor.
[12] Order No. PSC-99-1741-PAA-EI, issued September 3, 1999, in Docket No. 990771-EI, In re: Petition by Florida Power Corporation for approval of regulatory treatment associated with the sale of replacement capacity and energy to the City of Tallahassee.
[13] Section 366.06(1), F.S. does not address "pre-applications" for a change in rates.

the terms under which we would evaluate any agreements FPL enters into to determine if the investments are consistent with the Guidelines.

FPL argued that its Proposed Guidelines appropriately balance FPL's desire to secure low-cost, stable fuel sources for customers, the need to make prompt decisions in a competitive market, and the need to maintain regulatory oversight for the ongoing protection of customers. FPL stated that the Guidelines allow FPL to consummate a transaction when an agreement has been reached that meets the Guidelines, without having to wait on the normal several month-long approval process that likely would foreclose FPL from participating in many potentially valuable gas reserves projects. FPL argued that its Guidelines are appropriately structured to limit the total dollar amount of FPL's gas reserves investments and to ensure both that the investments are projected to produce fuel savings for customers and that they are for the types of reserves that are most useful for FPL's customers. Specifically, FPL asserted the Guidelines cover the scope of FPL's project participation as a percentage of average daily burn, as well as on an annual capital expenditure basis, and how the deals will be evaluated against FPL's then-current forecast of natural gas prices. Finally, FPL argued the Guidelines discuss the composition of gas reserves that FPL can pursue. While FPL believes the parameters it proposes are reasonable, the Company would not object to modifications by us so long as the approved guidelines satisfy the these objectives.

FPL witness Forest testified that the Woodford Project approved by Order No. PSC-15-0038-FOF-EI represents an example of just one agreement in a broad market. He testified that the Proposed Guidelines will enable FPL to act in real time to secure gas reserve projects for the benefit of FPL customers. He stated that the drilling and production sector of the natural gas industry is not accustomed to waiting months for a potential counter-party to obtain regulatory approval to decide whether to close on a transaction. Due to the amount of the investment and the length of the commitments required, witness Forest testified FPL must have a presumption of prudence from the Commission before proceeding. Without our assurance that we concur with FPL's approach, FPL cannot justify making such significant financial commitments.

Forest further testified that adoption of guidelines would be consistent with how we have administered FPL's financial hedging program. He noted how we worked with FPL and the other IOUs in a collaborative effort to develop and implement a process and eventually guidelines for what should and should not be part of the financial hedging programs. Similar to the guidelines adopted for financial hedging programs, he suggested we could establish a framework whereby the Company could enter into several transactions that were within a range of predetermined guidelines. Finally, witness Forest testified that, similar to the guidelines set forth for the financial hedging programs, "the Commission should acknowledge that there are potential drilling/production risks with pursuing gas assets and as long as the transaction was within the guidelines, it cannot be deemed imprudent based on the results."

In its brief, FPL argued that it would not object in principle if we, in our discretion, prefer to "test the waters" by initially adopting Guidelines that scale down the size of the allowed transactions or narrowed the scope of eligible investments. However, FPL argued that approval

of Guidelines is essential in order for the Company to deliver the benefits to customers FPL believes are available through its proposed program of investment in gas reserve projects.

OPC argued that the Proposed Guidelines are one-sided, completely favor FPL and its shareholders at the expense of FPL's 4.5 million customers, and should be rejected outright. OPC further argued that approval of the Proposed Guidelines would impermissibly shift the investment risks from FPL's shareholders to its customers and would represent a new way of reducing shareholder risk and enhancing shareholder returns.

OPC witness Lawson testified that FPL's proposal reflects FPL's decision to diversify into a separate, non-regulated industry. The Company is requesting that we expand the traditional Fuel Clause so that FPL can import investments in gas reserve projects and require customers bear the investment risk associated with natural gas drilling and production. Witness Lawson testified that the end result of FPL's proposal would be that the risk of natural gas drilling and production typically borne by market participants such as PetroQuest Energy, Inc. (PetroQuest), would be shifted by PetroQuest through FPL and/or its non-regulated affiliate directly to FPL's customers.

Witness Lawson testified that FPL's Proposed Guidelines are one-sided to the benefit of FPL and are not fair or equitable to its customers. He noted that FPL's Proposed Guidelines only require the projection of fuel savings for customers at a point in time, but does not guarantee any savings. He pointed out that in contrast, if FPL's Proposed Guidelines and the presumption of prudence that would attach are approved, the Company would be assured of earning its midpoint return on equity (ROE) on these investments regardless of the outcome of the investment or whether any fuel savings actually materialized as long as the Company demonstrated that the investment complied with the Guidelines at the time the investment was entered.

With respect to FPL's testimony regarding the need for the Company to have the ability to act quickly to take advantage of these investment opportunities, witness Lawson testified that we should take caution from FPL's claim. He posited that "if gas reserve market participants must act within a month or two window as market prices fluctuate, why would this Commission or any other regulator consider the Woodford Project or any future gas reserve investment where the economic viability rests primarily on a 50-year forecast of market prices, and more than a two-month delay may change the economics of the deal?"

Finally, witness Lawson testified that the true purpose of FPL's proposed gas reserve investment program is a new earnings platform for the Company and NextEra Energy, Inc. If the Proposed Guidelines are approved as filed, he argued that FPL would be able to grow rate base and earnings through the Fuel Clause without regard to whether the customers received any benefit from the investments. In conclusion, witness Lawson recommended that FPL's Proposed Guidelines be denied and that any future gas reserve projects be addressed on a case-by-case basis.

In its brief, FIPUG stated that it opposes FPL's efforts to have its customers fund natural gas drilling and production ventures as contemplated in FPL's Proposed Guidelines. FIPUG

argued that policy is set by the Legislature and that we should not implement policy by adopting guidelines. FIPUG recommended that we not act on FPL's Proposed Guidelines but instead hold workshops or other proceedings with wider participation before implementing "policies governing future investor-owned utility proposed and ratepayer-funded oil and gas exploration/drilling/production ventures."

FIPUG witness Pollock testified that we should reject FPL's Proposed Guidelines. He stated that FPL's Proposed Guidelines do not address the sharing of risk between FPL and its customers nor do they impose any obligation on FPL to demonstrate that its customers have benefitted from investments in gas reserve projects. If FPL's Proposed Guidelines are approved as filed, witness Pollock testified, FPL would recover its investment and earn its mid-point ROE irrespective of whether FPL's customers receive any benefit.

We have carefully examined FPL's Proposed Guidelines, reviewed the record in this proceeding, and considered the parties' arguments. We focus on balancing FPL's innovative attempt to secure low-cost, stable fuel while ensuring there is a net benefit to its customers and that proper customer protections are in place. The factors we consider are, in essence, reducing fuel price volatility while limiting risk for the benefit of the customers. Taking these factors into consideration, we modify FPL's Proposed Guidelines as stated herein.

Section I, Scope of Reserve Project Participation

With respect to Guideline I.A. FPL has proposed maximum percentages of average daily burn of 15 percent, 20 percent, and 25 percent for 2015, 2016, and 2017, respectively. FPL will be developing more wells and producing more gas and our goal is to encourage these types of investment in production while limiting risk. We find that modifications to the burn rate percentages are in keeping with our intent to limit risk for customers. Thus, Guideline I.A shall be modified as follows:

Year	Maximum Volume as a Percentage of Average Daily Burn
2015	5%
2016	10%
2017	15%
2018	20%

Guideline I.B shall be clarified to require FPL to inform this Commission on an annual basis, as part of its Risk Management Plan filed in early August each year with the Estimated/Actual Testimony filing, the relative percentage of average daily burn the aggregate output of all gas reserve projects represent of the relative percentage of average daily burn and to cap the maximum volume of a percentage of average daily burn at 20 percent.

In Guideline I.D., FPL proposed to set an annual cap of $750 million. In order to limit risk, yet allow FPL to invest in additional projects, we reduce the cap to $500 million per calendar year.

Section II, Customer Savings

Section II of FPL's Proposed Guidelines is titled Customer Savings. OPC raised concerns that FPL's proposed program for investing in gas reserve projects is designed more for the benefit of FPL and NextEra shareholders than for FPL customers. NextEra, through its non-regulated subsidiary USG, has been investing in gas reserve projects since 2010. FPL witness Taylor testified that the Woodford Project became available to FPL because USG had already reached its budget limit for investments for the period. However, the Guidelines proposed by FPL are silent on how it will be decided which future gas reserve projects will be recorded on the books of USG and which projects will be recorded on FPL's books. Thus, we modify Section II to add a guideline that ensures transparency in FPL's investment methodology and demonstrates that FPL's customers are receiving the greatest opportunity for fuel savings associated with investments in gas reserve projects by requiring additional reporting mechanisms.

To provide additional protections in our determination of the prudence of the proposed project, Guideline II.A shall be modified to require additional information be provided by FPL in its Risk Management Plan. In our approval of the Woodford project, we required that the audits of the associated transactions be performed by an independent third party auditor, involve Commission staff in the development of the scope of the audit, and the creation of subaccounts under the FERC system of accounting. The same audit requirements will be added to Section II of the Guidelines.

Section III, Supply Diversity

Section III of FPL's Proposed Guidelines is titled Supply Diversity. To minimize counterparty risk, the Guideline shall be modified to provide that FPL will only transact with producers that are also producers for existing gas reserve projects held by one or more NextEra affiliates or subsidiaries. We find that customers are protected by limiting FPL to the type of wells in areas with a proven history of gas production. Guideline III.A shall be modified to require FPL to only enter into transactions for onshore gas reserve projects, located in areas with reserves that have a well-established history of gas production. Florida does not meet these criteria. In addition, FPL shall only enter into transactions for gas reserve projects that involve wells classified as "Proved Reserves" or "Probable Reserves" as defined by the Securities and Exchange Commission for public company reporting. Because one of the primary purposes of gas reserve projects is a physical source of supply to serve its natural gas needs, FPL will not enter into transactions for gas reserve projects that involve wells classified as "Possible Reserves."

Further Modifications

The Proposed Guidelines allow FPL to propose modifications to these guidelines in its annual update and seek Fuel Clause recovery for a project that deviates from one or more of the guidelines upon a showing that the project nonetheless is expected to benefit FPL customers. In order to provide due process to all parties, the guidelines shall be modified to require that any

proposed modifications to the Guidelines be filed in August, and the proposed modifications will be the subject of the hearing in the following year's Fuel Clause proceeding. To be considered in the current year's Fuel Clause hearing, any proposed modifications to the guidelines must be filed by March 1. Eligibility for Fuel Clause recovery of any gas reserve project that deviates from one or more of the guidelines will be considered on a case-by-case basis. Such projects must be filed with the Commission by March 1 to be considered in that year's Fuel Clause proceeding. The evaluation of any projects presented for review on a case-by-case basis will be conducted consistent with the standard set forth in Guideline II.B.

For the reasons stated in the body of this Order, FPL's Proposed Guidelines, as modified and renumbered in Attachment A to this Order, shall be approved.

Further Review

We recognize that there is relatively little experience with these types of projects. In keeping with the principle of allowing innovation to proceed while limiting risk, we find that it is reasonable for this Commission to review the Guidelines approved in this Order no earlier than three years and no later than 5 years from the date of the issuance of this Order. The approved Guidelines will continue in effect until we decide, as a result of our review, whether to continue, modify, or terminate the Guidelines. There will be no reconsideration of the prudence of any projects entered into prior to our post-review decision, and we will evaluate projects filed during our review under the existing guidelines.

Recovery through the Fuel Clause Proceedings

We next consider whether the Proposed Guidelines for future capital investments in natural gas exploration and drilling joint ventures satisfy our criteria for consideration through the Fuel Clause.

FPL argued that the investment should be recoverable through the Fuel Clause. In support, FPL stated that we have historically allowed hedging costs to be recovered through the fuel clause. Additionally, FPL, argued, its Proposed Guidelines require that gas reserves investments be projected to produce fuel savings for FPL's customers. We have a long history of allowing cost recovery through the fuel clause for investments that result in fuel savings.

OPC argued against recovery through the Fuel Clause on the basis that the Proposed Guidelines violate the guiding principles and policy decisions announced by this Commission in Order No. 14546 and its progeny, and violates the "case-by-case" prudence review required by these orders by requesting presumptive eligibility for recovery and prudence of every project that purports to "satisfy" the Guidelines. OPC argued that FPL is attempting to increase its rate base in unregulated, non-jurisdictional investments, outside the traditional rate-regulated electric monopoly utility functions of "generation, transmission, and distribution" expressly recognized in statute. If we approve the Proposed Guidelines, OPC argued that the door would be open for every other investor-owned utility to seek a risk-free way to expand rate base without a determination of need and without much scrutiny. Further, OPC reiterated the arguments it made in regard to the

Woodford Project stating that FPL's proposed investments in gas reserves projects: (1) is not hedging; (2) does not satisfy the definition of hedging as established by the our hedging orders and hedging policy; and (3) will not reduce fuel price volatility to the benefit of FPL's customers. OPC further stated that any fuel price volatility experienced by the customers is already, and effectively, mitigated by the annual resetting of the fuel factor in the Fuel Clause and that irrefutable fact belies the truth of FPL's assertion that fuel price volatility is something that must be mitigated through speculative, and risky natural gas reserves investments.

By Order No. PSC-15-0038-FOF-EI, we found that an investment in a working interest in a natural gas reserve project (the Woodford Project), in the manner described in FPL's Petition and evidence on the record, is expected to produce customer benefits and is in the public interest.[14] We also found that the revenue requirement associated with the investment in the Woodford Project is eligible for recovery through the Fuel Clause.

FPL's Proposed Guidelines do not represent an actual cost that would be requested for recovery through the Fuel Clause. Instead, evidence in the record indicates that the Proposed Guidelines are a set of parameters by which other, similar projects will be evaluated and assessed for consideration as possible candidates for future investment. We found that the revenue requirement associated with the Woodford Project is eligible for recovery through the Fuel Clause. Consistent with that decision, we find that FPL's request for recovery of costs for similar investments satisfy the criteria for consideration in the fuel cost recovery clause proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition of Florida Power & Light Company to establish guidelines for participation in gas reserve investment projects is hereby approved as modified in Attachment A of this Order. It is further

ORDERED that a review of the Guidelines shall be conducted within 3 to 5 years as provided in the body of this Order. It is further

ORDERED that the docket shall remain open.

[14] See Order No. PSC-15-0038-FOF-EI, issued January 12, 2015, in Docket No. 150001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, p. 6.

By ORDER of the Florida Public Service Commission this 14th day of July, 2015.

Carlotta S. Stauffer

CARLOTTA S. STAUFFER
Commission Clerk
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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.

MFB

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Attachment A

FPL GAS RESERVES GUIDELINES

I. SCOPE OF GAS RESERVE PROJECT PARTICIPATION

- Gas reserve projects will help reduce the overall portfolio price volatility and supply risk. The transactions will lessen the impact to customers if gas prices spike or rise and stay high for an extended period of time. Even though each transaction individually will represent a very small percentage of the Company's supply portfolio, collectively these transactions would help dampen the effects of price volatility.

- Guideline I.A: Overall, the estimated aggregate output of all gas reserve projects will not exceed the following percentages of FPL's projected average daily natural gas burn:

Year	Maximum Volume as a Percentage of Average Daily Burn
2015	5%
2016	10%
2017	15%
2018	20%

- Guideline I.B: FPL will provide an annual update informing the Commission of the relative percentage of average daily burn the aggregate output of all gas reserve projects represent as part of its Risk Management Plan filed in early August each year with the Estimated/Actual Testimony filing. The maximum volume as a percentage of average daily burn will be capped at 20 percent until such time the Commission considers this Guideline in a future proceeding.

- Guideline I.C: Because gas reserve transactions provide a hedging benefit for FPL and its customers, the estimated aggregate volumes of natural gas from all gas reserve transactions in each calendar year will be netted against the amounts that FPL forecasts to hedge pursuant to FPL's annual Risk Management Plan. FPL will hedge the net amount as prescribed in the Risk Management Plan.

- Guideline I.D: FPL will not obligate itself to invest more than $500 MM in the aggregate on gas reserve projects over the course of any one calendar year.

II. CUSTOMER SAVINGS

- Investment in gas reserve projects can offer significant price stability for the volumes produced, while also providing customer savings in a market of rising gas prices. A benefit of a well-managed gas reserves investment program is secure low-cost natural gas for our customers for years into the future that delivers an expected pricing discount relative to the forward curve. Since typical wells produce

for 40 to 60 years, gas production joint ventures can provide stable pricing for decades to come, thus helping to achieve the Commission's stated goal for hedging to reduce price volatility for customers.

- Transactions of this type can result in lost opportunities for savings in the fuel costs to be paid by customers if fuel prices actually settle at lower levels than at the time the gas reserves investments were made. However, since only a portion of FPL's fuel requirements is procured through gas reserves investments, FPL maintains the ability to purchase low priced fuel when the opportunity arises. Moreover, in some projects it may be possible to delay the drilling plan and/or reduce the production volume from existing wells in the event of unexpected price declines. Conversely, when fuel prices settle at higher levels than at the time the gas reserves investments were made, increased customer savings are a direct result of the gas production joint venture.

- Guideline II.A: To ensure transparency and to demonstrate that FPL's customers are receiving the greatest opportunity for fuel savings associated with investments in gas reserve projects, FPL will provide an annual detailed comparison of all gas reserve projects entered into on behalf of FPL, USG, and/or any other affiliate or subsidiary of NextEra Energy as part of its Risk Management Plan filed in early August each year with the Estimated/Actual Testimony filing. This annual filing will provide the same information for each gas reserve project entered into by any affiliate or subsidiary of NextEra Energy that was used to support or justify the appropriateness of each gas reserve project entered into by FPL during the reporting period. In particular, this filing will show all material assumptions relied upon to support each gas reserve project including the capital investment amount, will calculate the associated revenue requirement for each gas reserve project, and will provide the net present value savings for each gas reserve project entered into by any affiliate or subsidiary of NextEra Energy.

- Guideline II.B: Evaluation of the prudence of FPL's having entered into a new gas reserve project will be based on a showing that the project is estimated to generate savings for customers on a net present value basis, relying solely on information relative to these Guidelines available to FPL at the time the transaction was entered, as well as any information FPL should have known at the time, including the use of an independent third party reserve engineering report and FPL's standard fuel price forecasting methodology. As part of the annual filing to the Risk Management Plan discussed above, FPL will provide the same showing of results (gains or losses) for every gas reserve project entered and/or held by any affiliate or subsidiary of NextEra Energy. The results for all gas reserve projects will be evaluated using the same forecast of natural gas prices used to project customer fuel savings for FPL gas reserve projects.

- Guideline II.C: For any gas reserve projects secured pursuant to these Guidelines, FPL will use an independent third party auditor in performing the audits of the associated transactions. FPL will work with Commission staff to develop the scope

of these audits. In addition, FPL will use the necessary subaccounts, under the FERC system of accounting, which will correspond on a one-on-one basis with the oil and gas system of accounts used by the Gas Reserve Company set up to record FPL's investments in gas reserve projects.

III. SUPPLY DIVERSITY

- Gas reserve projects will provide beneficial geographic diversity of fuel supply. Catastrophic events, such as hurricanes, affect FPL's ability to procure and deliver fuel. Investments in multiple gas reserves across various regions will reduce the impact of a single event disrupting FPL's entire fuel supply.

- Gas reserve projects also will increase the diversity of FPL's supply from a physical perspective, as well as a financial one. The longer time frame of these investments offers diversity when compared to the current financial and physical contract lengths in the existing hedging program.

- FPL intends over time to transact with a wide range of suppliers so as to minimize concentration of supply with any one producer. This will allow FPL to transact in multiple regions and will also provide for reduced credit exposure to any one entity. To minimize counterparty risk, FPL will only transact with producers that are also producers for existing gas reserve projects held by one or more NextEra Energy affiliates or subsidiaries.

- Guideline III.A: FPL will only enter into transactions for onshore gas reserve projects, located in areas with reserves that have a well-established history of gas production. Florida does not meet these criteria. In addition, FPL will only enter into transactions for gas reserve projects that involve wells classified as "Proved Reserves" or "Probable Reserves" as defined by the Securities and Exchange Commission for public company reporting. Because one of the primary purposes of gas reserve projects is a physical source of supply to serve its natural gas needs, at least 50 percent of the wells in each gas reserve project must be classified as "Proved Reserves." FPL will not enter into transactions for gas reserve projects that involve wells classified as "Possible Reserves."

- Guideline III.B: Because one of the primary purposes of gas reserve projects is a physical source of supply to serve its substantial gas needs, FPL will only enter into a transaction if there is a transportation path available to deliver the gas produced from that project to FPL's service territory. Texas, Louisiana, Oklahoma, Arkansas, Mississippi, Alabama, West Virginia, Ohio, and Pennsylvania currently meet this criterion. FPL will make use of its transportation portfolio, along with considering new physical paths. The costs of any new transportation needed to deliver gas from a gas reserve project will be taken into consideration when analyzing the economics of that project.

IV. CHARACTERISTICS OF GAS RESERVES

- Natural gas production consists of a combination of hydrocarbons, which can include methane, natural gas liquids ("NGLs"), and oil. The composition of natural gas production varies region by region and within individual regions.

- FPL's natural gas plants burn primarily methane and can accommodate only a very small percentage of other hydrocarbons. However, there are active third party markets for purchase and sale of NGLs and oil.

- There are a range of designations for reserves denoting the degree of certainty that the predicted quantity of gas is commercially recoverable from the well under current conditions: Proved, Probable, and Possible. FPL's gas reserve portfolio would appropriately be comprised of a range of projects in the proved and probable categories.

- Guideline IV.A: Although there is significant customer value in the production and sale of NGLs and oil, the purpose of FPL's gas reserves program is to provide a source of physical supply of natural gas to serve its power plants. For that reason, FPL will only enter into a transaction for a gas reserve project if the estimated output of the wells in the project contains at least 50% from methane by volume.

- Guideline IV.B: All NGLs and oil produced from a gas reserve project will be sold at market prices and the resulting revenues will be credited to the Fuel Clause to offset the production costs for which customers are responsible, thus lowering the effective cost of natural gas. The projected revenues from NGLs and oil produced from a gas reserve project will be taken into consideration when analyzing the economics of that project.

- Flexibility to respond to market opportunities is in the best interest of FPL and its customers. Therefore, it is understood that FPL may (i) propose modifications to these Guidelines in the annual update provided pursuant to Guideline I.B above, and (ii) seek Fuel Clause recovery for a project that deviates from one or more of the Guidelines upon a showing that the project nonetheless is expected to benefit FPL customers. In order to provide due process to all parties, any proposed modifications to these Guidelines filed in August will be the subject of the hearing in the following year's Fuel Clause proceeding. To be considered in the current year's Fuel Clause hearing, any proposed modifications to the Guidelines must be filed by March 1. Eligibility for Fuel Clause recovery of any gas reserve project that deviates from one or more of the Guidelines will be considered on a case-by-case basis. Such projects must be filed with the Commission by March 1 to be considered in that year's Fuel Clause proceeding. The evaluation of any projects presented for review on a case-by-case basis will be conducted consistent with the standard set forth in Guideline II.A.