BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20180155-EI

PETITION FOR APPROVAL OF REGULATORY ASSETS RELATED TO THE RETIREMENTS OF LAUDERDALE UNITS 4 AND 5 AND MARTIN UNITS 1 AND 2, BY FLORIDA POWER & LIGHT COMPANY.
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PROCEEDINGS: COMMISSION CONFERENCE AGENDA ITEM NO. 7

COMMISSIONERS PARTICIPATING:
CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, December 11, 2018

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

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P R O C E E D I N G S

CHAIRMAN GRAHAM: Okay. Let's move on to Item No. 7.

MR. ANDREWS: Good morning, Chairman, Commissioners. Matthew Andrews with Commission staff. Item 7 is staff's recommendation regarding Florida Power & Light Company's petition for approval of regulatory assets related to the early retirement of Lauderdale Units 4 and 5, and Martin Units 1 and 2.

On August 17, 2018, FPL filed a petition seeking approval to create regulatory assets and to further recovery of the regulatory assets. Currently, the anticipated retirement date for these units is December 31st, 2018.

There are no intervenors in this docket and no customers have contacted the Commission regarding this matter; however, the Office of Public Counsel filed a letter dated November 8th, 2018, in which it expressed concerns about FPL's petition.

The Sierra Club is listed as an interested person. And representatives with FP&L and OPC are available to address the Commission. And staff is prepared to answer any questions.

CHAIRMAN GRAHAM: All right. I'm going to go straight to OPC because, that way, I'll allow the utility to speak based on what OPC has got to add.

MS. CHRISTENSEN: Well, in this instance, we support staff's recommendation. We believe that staff is recommending the appropriate action and it's consistent with the issue that we raised in our letter dated November 8th, wherein we are not disputing that the company is going to retire these units, and then, as a result of the retirement, they're going to need to create new capital schedules, and there will be some costs that would, otherwise, have to be recovered.

Our issue has to do with the settlement and the deferral of creating a deferred -- or a regulatory asset to be deferred until -- for recovery until the next base-rate case. It's the deferral of recovery that's the issue for us in this case because we are under a settlement.

They have -- under the settlement, they are receiving depreciation rates, which include these assets being depreciated during the period of the settlement. And if you allow the regulatory asset, the deferral and the amortization of the deferral to be deferred until the next rate case, it's our contention that you will be allowing them to essentially double-recover for those assets and, thereby, in- -- you know, increasing their -- their bottom line during the -- the term of the settlement. And we think that that would be a breach of the settlement.

So, we are supporting staff's recommendation that they be required to start amortizing those assets currently up to, at a minimum, the amount of these assets that are already included in depreciation rates.

Thank you.

CHAIRMAN GRAHAM: Florida Power & Light?

MR. COX: Good morning, Chairman Graham, Commissioners. Good to be with you today. Appearing on behalf of FPL, I'm Will Cox. And with me is Keith Ferguson, FPL's vice president of accounting and our controller in our finance department. Thanks for the opportunity to address you today.

FPL fully supports staff's recommendation on Issue 1, in terms of approving the establishment of the regulatory assets of our prudent decision to retire these units, which we believe will result in hundreds of millions of dollars of savings for our customers.

We've noted that OPC, as they've noted today, doesn't object to the retirement of these assets. And we're unaware of any opposition to these retirements.

So, really, the -- the issue that we have is on Issue 2. FPL does not support staff's recommendation on that issue in terms of getting the amortization of the assets created by these retirements immediately when they retire; but instead, we would urge you to approve what we've put forward in our petition, which is to defer recovery of the regulatory asset to a future rate proceeding. And your -- your staff has acknowledged, I think, in their recommendation, that you have the discretion to do that.

FPL's proposal to defer recovery of these assets to our next rate proceeding is entirely consistent with Commission precedent, which was set in the 2016 Gulf Power order, cited by the staff in their recommendation; the decision to employ principles of deferral accounting and allow deferral of amortization of the regulatory asset, or the Plant Smith in the Gulf case, until the rates were next reset. And that Plant Smith order is Order No. PSC-16-0361.

We think it would be discriminatory and patently unfair if FPL doesn't receive the same accounting treatment here. And in fact, we think we have a more persuasive case for the deferral accounting in this case.

Let me -- let me explain that. In terms of the Gulf precedent, as -- in your staff's recommendation, the Gulf settlement agreement and FPL's current settlement agreement contain nearly identical provisions, addressing the depreciation and amortization accrual rates, stating specifically that these rates cannot be reset during the rate-settlement period.

So, just like Gulf, FPL can't utilize a new amortization rate for these regulatory assets under ter- -- under the terms of the current settlement agreement.

Just as Gulf has proposed, and the Commission approved in the Plant Smith order, FPL has proposed for these retirements to defer recovery of these assets until rates are reset.

Again, there's no substantive difference between your decision in the Plant Smith case and what you have before you today, but there are two differences that, I think, are instructive that --

that may help you in your decision today, between the two cases.

One is that, in Gulf, Office of the Public Counsel came back to the Commission at an agenda conference and represented the idea that deferring the amortization was discussed as a possibility during their settlement negotiations with FPL. So, they were okay with it -- I'm sorry -- with Gulf. And they were okay with it -- I apologize. Here, as you can see, based on OPC's filing, they are opposed to our very-similar request.

But second, and we think the far-more compelling difference here is that FPL is proposing to construct and install replacement facilities that will provide enormous benefits to our customers. So, rejecting our request today in terms of the amortization and starting it when our rates are reset sends the wrong message.

The right message, we think, would to be to incent utilities to develop and pursue innovative infrastructure proposals that bring substantial benefits to our customers, which is what we've brought forward to you with these proposals.

FPL will incur costs for these replacement facilities until our next rate case, during the term of the settlement agreement, and it's not permitted to seek recovery of those costs until we have that next rate case.

We think symmetry and fairness would dictate the amortization of the regulatory assets should begin at the same time, same time that rates are set. That's consistent with Commission practice.

The fact that FPL did agree in a prior transaction involving the St. Johns River Power Park to begin amortization within six months of the retirement of the assets should have no bearing on your decision today.

The facts were different. There was a buyout of a purchase power agreement. There was a termination of a joint ownership agreement. And the fact of the matter was, it was a multi-faceted settlement agreement between the parties, FPL and OPC, that involved the exchange of multiple negotiated considerations between the parties.

Under generally-accepted accounting principles, again, FPL must con- -- discontinue charging the depreciation expense for these units as soon as we retire them. We recognize that. Nothing in the settlement agreement denies you discretion to defer recovery of those regulatory assets associated with the retirements.

By exercising your discretion that you have to allow this deferral of recovery of the regulatory asset, you are providing appropriate and constructive incentive for utilities like FPL to come forward with these types of innovative proposals.

In this case, we'll save our customers, hundreds of millions of dollars, including an immediate fuel savings, estimated at more than $50 million through 2021, as a result of your acting on these retirements now.

Now, we've heard from OPC that there's an allegation of double-recovery. Commissioners, let me be very clear with you: There is no double-recovery at all in this proposal, as alleged. FPL's settlement was a black-box settlement. There was no explicit line item for revenue recovery.

The termination of the depreciation expense, again, is a non-issue because, under the settlement agreement with the four-year minimum term, there will always be increases and decreases in cost and revenues.

The only issue is whether FPL is earning outside of its Commission-authorized return on equity range, which I can represent to you today is -- clearly would not result in the retirement of these plants.

FPL will simply be afforded a reasonable opportunity to seek recovery for its prudent decision to retire and replace these plants with more-efficient technology at the time of its next base-rate proceeding.

We'll be investing hundreds of millions of dollars for the more-efficient replacement facilities during the settlement period that we will not be recovering during the settlement period.

For example, in the case of the Martin units retirements that are part of our petition, these investments in highly-efficient combustion turbine parts will be placed in service and begin depreciating prior to any future rate proceeding, without any recovery of rates, during the term of the settlement agreement.

The revenue requirement for these upgrades, through 2021, $191.7 million, estimated, significantly exceeds any non-fuel-clause savings from retiring the units, which is projected at $447.9 million, during that same time period.

So, Chairman Graham, Commissioners, we would respectfully request that you approve our petition to establish the regulatory assets because of our prudent decision to retire these units, replace them with modernized facilities and upgrades that will save our customers millions of dollars.

Consistent with your decision in the Plant Smith order, consistent with the goals of bringing in these savings to our customers, we'd ask that you fairly and reasonably allow us to defer recovery of the assets associated with these retirements until rates are reset in a future proceeding, continue to incent these types of innovative transactions that provide real and immediate value to our customers.

I thank you. And we're available for any questions that you have.

CHAIRMAN GRAHAM: Mr. Cox, next time, I'm going to have to remember to give you five minutes before you get started.

(Laughter.)

CHAIRMAN GRAHAM: Staff, the easy, simple first question: Why are we treating this different than the Gulf case?

MR. MOURING: Good morning, Commissioners.

Curt Mouring with Commission staff.

I th- -- the language included in both Gulf and FPL's settlement agreements is very, very similar, but in -- as, I think, Mr. Wilcox said, the -- the facts are a little bit different. There are -- in Gulf's case, there was an understanding that was represented by both the company and the Office of Public Counsel -- by Gulf Power Company and Office of Public Counsel about considerations made with regard to the Smith units when they would be retired early.

Also, from staff's perspective, in that -- that case, Gulf Power was earning below the mid-point of their authorized ROE at that time.

That -- those -- that is a difference between Power and Light in this -- in this instance. And I think that's what really drove staff to -- to look at this a little bit differently than -- than in the Gulf case.

CHAIRMAN GRAHAM: But, with the Gulf case, wasn't those conversations back inside the black box that everybody refers to all the time?

MR. MOURING: They -- they would have been, yes, sir.

CHAIRMAN GRAHAM: So, then, how is that

relevant to staff?

MR. MOURING: Just the representations by both parties that they had considered it and they -- they -- both parties supported deferral in that case.

CHAIRMAN GRAHAM: Commissioners.

MS. CHRISTENSEN: Commissioner, may I briefly respond?

CHAIRMAN GRAHAM: Sure.

MS. CHRISTENSEN: With regard to the Gulf case, I think that's distinctly different than the situation we have here because, in that case, you had both parties who were -- negotiated the agreement coming and saying that was contemplated as part of the agreement, which the Commission could consider in rendering its order in the Gulf case. Here, in -- and we very -- want to stress that we believe that, if a deferred asset is created, we think that that's a breach of the terms.

We don't have a similar situation here. The parties are not coming to you representing that this was represented or contemplated within the terms of -- certainly isn't explicitly stated in the terms of the agreement that any early retirements would be allowed to be deferred until later.

And, you know, our understanding is the general accounting practices that, as soon as an item is retired and a capital -- new capital structure is created, that asset, under normal accounting practices, is amortized from the date of retirement. And I can ask Mr. Willis to briefly speak to that.

And because there's no specific term within the agreement that talks about early retirement, we do not -- and -- and we are not coming -- representing as parties that this was contemplated as part of the agreement. We think, if a deferred asset is created, that would be a breach of the agreement as written.

And I would ask Mr. Willis to speak to how these types of capital retirement, early retirements, are normally treated under the rules.

MR. WILLIS: Thank you, Commissioners.

Not too much to add here, but normally, when a company comes in and asks for early retirement of something, the Commission does do what you've done in part one here, which is create a capital recovery schedule on a gain -- or not a gain, but amortize the remaining portion of the plant left to be recovered.

I think it's -- I think it's important in this case that you go back and look at the actual agreement and -- it was signed by both parties. And in this one, it says that FPL -- until FPL files its next petition to change base rates, depreciation rates and dismantled and accrual rates in effect of the implementation dates shall remain in effect until FP- -- FPL's base rates are next reset at a general base-rate proceeding.

To accomplish that portion of the agreement, then the actual amortization of the capital recovery schedule should be at least equal to depreciation rates that were in place at the time the settlement was signed. That's OPC's position at this point. And that would remain -- that would keep the settlement intact.

CHAIRMAN GRAHAM: Commissioners.

Commissioner Clark.

COMMISSIONER CLARK: Thank you, Mr. Chairman.

Do both parties acknowledge that the new plant was not contemplated in terms of the settlement?

MS. CHRISTENSEN: I don't believe there was any specific step increase for the Dania plant. I think there was a step increase for Okeechobee, but I'd have to go back and look at the actual agreement.

However, you know, as part of the negotiations, it's clear that, if you do a negotiation for a long-enough period of time -- and the company has a ten-year site plan. They always have plants that they're -- that are coming in and out of service under their ten-year site plan -- that that's part of something that the company would bring to the table as part of their negotiations.

And what they'll settle on is part of that black-box settlement and -- as well, the intervenors are aware that the company will be, you know, adding additional plant, retiring plant, underneath the amount of the black-box settlement.

And if the -- you know, and sometimes there are specific provisions to allow step increases when new plants come in. And under this one, my recollection was that the only one specifically addressed under the terms was the Okeechobee plant.

Otherwise, all other increases and decreases and expenses would have to be within the amount of the -- that was provided under the revenue requirement that was agreed upon by the parties to the settlement with -- under the certain setup increases.

I think there were multiple step increases in this settlement agreement, not only in the 2016, 2019 -- and there may be one in, I think, 2020, if I -- my recollection, but I don't have the agreement in front of me today.

COMMISSIONER CLARK: FPL, would you --

MR. COX: Sure. There -- there's nothing in the settlement agreement addressing Dania. Dania was not part of the 2016 settlement agreement. Dania is a 2022 unit, as you know, that this Commission approved recently for a need determination. The language that Mr. Willis read was the same language in Gulf and FPL. Identical language. Don't see a difference there.

You know, the Commission has typically looked in -- in rate cases and -- and tracked setting up the amortization schedule with the setting of rates. That's happened in, I think, every FPL rate case going back to 2005 that I'm aware of.

COMMISSIONER CLARK: When the -- when the new plant was under consideration, you calculated the savings that this new plant would produce. How did you look at the asset, regulatory asset, at that time, when you -- when you shared what the savings would be with the Commission?

MR. COX: I'll let Keith respond to that.

COMMISSIONER CLARK: I may be in over my head in --

MR. FERGUSON: Yeah. No.

COMMISSIONER CLARK: -- this question, so --

MR. FERGUSON: It -- it was consistent with how we petitioned it, so essentially deferral --

COMMISSIONER CLARK: You had considered it as a deferred asset at that time.

MR. FERGUSON: That's correct. And -- and again, relying on the Plant Smith order as kind of the -- the Commission precedent, the only Commission precedent, by the way, in this respect was kind of how we -- we set forth our economic analysis.

COMMISSIONER CLARK: So, you're saying that when you presented your savings last year regarding the plant, you had considered that to be a deferred regulatory asset at the time you presented those savings to this Commission. And that's the numbers we approved -- we approved the Dania Beach facility off of.

MR. FERGUSON: Oh -- sorry.

COMMISSIONER CLARK: Is that a fair statement?

MR. FERGUSON: I don't know --

CHAIRMAN GRAHAM: Fair question?

MR. FERGUSON: Will will have to -- Will will have to respond to with respect to -- to Dania. I was kind of referring to -- to -- Martin --

COMMISSIONER CLARK: Martin, I'm sorry. Martin.

MR. FERGUSON: -- was where we -- we presented it in this particular docket, but I don't know, with respect to Dania.

MR. COX: Certainly we knew that it was not part of the 2016 rate settlements that we would have to address recovery at some point. And our practice would have been to -- I think what we put forward for you today.

COMMISSIONER CLARK: One more question, Mr. Chairman. And this is for both -- both sides, the immediate effect on rates. I think I understand this, but if -- either decision the Commission makes, what are the effects on rates today and what are rate -- the effect -- the potential effect on rates when they come back in for a rate increase?

MS. CHRISTENSEN: Yes, with regards to the immediate effect on rates, because we're under a stipulation -- unless we move forward with protesting this because we think that they've breached the agreement, which is our position -- there should be no change in rates now.

But if you create a regulatory asset, that's going to -- FPL is going to seek recovery of that in any future rate case. And that, in turn, will cause rates in the future to be increased; whereas, if they start amortizing it now, which is what rates are currently contemplated to happen, then rates in the future will remain neutral. It's basically zero impact to the customers, current customers and future customers, if they're required to amortize it now.

And my recollection, since I was part of the Dania docket was -- I don't believe, as part of that, that when they presented the Dania plant at the need-determination and talked about the retirement of the plants, they discussed anything about how those retirement costs would be recovered.

Generally speaking, my recollection is, in the need determinations that I've participated in, that's not part of the discussion. When you're talking about the cost savings, you're talking about the operating expenses of running the plant, and the -- against the cost of running the retiring units.

You don't discuss how you're going to recover the depreciation cost associated with those retiring units because the Commission has a rule that says, you know, you're going to recalculate if there's -- if this plant is retired early and there's depreciation that's not been recovered, you create this capital structure and you allow that to be amortized so that the full cost of that plant is recovered.

The issue here is, if you set those costs off into the future, you're going to essentially be requiring future customers to lose the benefit of the bargain that they've made under the settlement because they're not going to be recovering for those assets like they -- like we agreed to, under the terms of the current settlement. And those are going to be pushed off and have to be collected in higher rates from future customers.

Thank you.

COMMISSIONER CLARK: Go ahead, Mr. Chairman. I'm going to think that through a minute.

MR. COX: Do --

MR. FERGUSON: Can we respond to that?

CHAIRMAN GRAHAM: Sure.

MR. COX: Yeah. First of all, I just want to make one statement and I'll let Mr. Ferguson respond, but certainly, we recognize the base-rate freeze. And the impact of this is there will be no increase to rates during the settlement period, but I'll let Mr. Ferguson elaborate on how it will play out in the future.

MR. FERGUSON: Yeah, so -- so, I agree, in terms of base rates, there is no impact on customer bills, but there absolutely is an impact of lower bills as a result of doing these re- -- replacement generation as it comes -- comes to the fuel clause, as an example, and the environmental clause. And so, that's especially the case as it relates to the Martin upgrades that we're doing.

So, you know, by -- the other thing I would address, too, with respect to base rates is we're also investing in new capital right now that will start depreciating today. I don't think OPC will allow us to go back three years and recoup the costs that we incurred on that new capital. They would just say, you know, de- -- keep depreciating it, as -- as is normal, from this point forward.

And so, you know, there is -- there is replacement generation that we're investing in, replacement capacity that we're investing in. As Mr. Cox had enumerated, that actually -- those revenue requirements are more than the -- than the revenue requirements of the deferrals.

And so, I think that should also be a consideration as we're -- as we're thinking about those investments.

MS. CHRISTENSEN: Just briefly, all we're really asking for in this case is for them to depreciate this as they normally would, to create a capital structure, and start amortizing the depreciation rates now, as normal, under the settlement agreement.

Thank you.

CHAIRMAN GRAHAM: Mr. Clark?

COMMISSIONER CLARK: Come back to me, Mr. Chair.

CHAIRMAN GRAHAM: Commissioner Polmann.

COMMISSIONER POLMANN: Thank you, Mr. Chairman.

I've thought about this quite -- quite a good deal, had discussion with staff, and I've got a number of comments, Mr. Chairman, and hopefully some questions, if I can work my way through this.

With regard to the various other cases that have been identified and discussed here, whether it's Gulf Power with the Smith plant or reference to the other FPL items and various settlements, we've identified the similarities, the differences.

And, you know, in discussions with -- with my staff and with staff in this docket, you know, we sort of have the apples and the oranges and the bananas and the grapefruits and -- you know, they -- they're all fruit, but there are differences.

So, I think it's -- it's good to have those items for discussion, but I -- I don't see that leading and -- and providing us with direction. That doesn't -- that's informative to me, but it doesn't really give us direction. It's not giving me a -- a direction. So, it's leading me back to sort of underlying accounting standards.

And the comments from OPC, I think, are -- are helpful in that regard. And my discussion with staff, I -- seeing the normal accounting standard, normal practice in the instance where -- where we have a non-producing asset that, deliberate intent, the expectation is to get that asset off the books as soon as possible.

And unless there's some particular, special circumstance that -- that's known and identified at the time that -- that the non-producing asset -- it goes into the -- you know, shifts to that non-producing state, unless you can identify that particular condition where you identify that special circumstance, you treat it in the normal fashion. So, I don't see any indication here in the record that any special such condition exists.

So, following the staff recommendation, with regard to the deferral, as has been explained to me, it should be neutral to net income. And I think that's an important aspect of it and -- as it relates to, you know, the pluses and minuses, balancing the -- when you net out with regard to the income, the earnings, everything else, it should balance.

Now, I can have staff elaborate on that if -- if there's an interest to that, but I'm -- I'm just trying to put it in my own words; whereas, the utility proposal, from what I can understand it, it doesn't demonstrate that in -- in clear fashion. It's not just not clear to me how that -- how it nets out in -- in a balanced fashion.

So, my concern is -- is that there's at least some potential on the upside. It's just not clear to me, to the benefit of the utility, at least in this short term.

Now, it -- it's admittedly very complex and it potentially is in -- in a conflict -- it's been well-established very -- for -- for quite a long time, years, where the utility is consistently earning at the top of the range.

So, I would like staff to -- to maybe help me -- just elaborate on that a little bit or clarify with -- with the utility's proposal to defer, how is that specifically different from what was discussed?

How -- how that was explained in briefing, I -- you know, this idea that -- that the staff recommendation is -- is neutral on net income and that specifically is different from what the utility is asking for -- can you --

MR. MOURING: So, I'll -- I'll take a crack at that.

COMMISSIONER POLMANN: Help me get back there.

MR. MOURING: I think "neutral" is the right word to use here. The deficiencies that the company pointed out related to additional investments that have been made during the term of the settlement agreement -- those existed before these plants would be retired early and they -- they'd still exist after.

We're really just looking at what's an equitable way of getting these retired assets off the books. And -- and I think that's what staff's recommendation has -- has done is we're trying to capture the revenue-requirement factors that were -- would have been included in the settlement agreement that are in rates today and -- and using that as kind of the target amortization for these regulatory assets to start getting them off the books as a -- as a kind of revenue-neutral or net-income-neutral solution that -- that's fair to the customers as well.

I'm not sure if that answered your question or not.

COMMISSIONER POLMANN: Is -- Ms. Christensen, are you following or -- or Mr. Willis, on this idea -- do you see this distinction that I'm trying to get to, that -- that there's a potential advantage, financially on the -- on the FPL proposal?

MS. CHRISTENSEN: Yes, I would agree with that, but I'm going to let Mr. Willis explain that a little bit further on the accounting side, why that would create a benefit to the utility in the future.

MR. WILLIS: Yeah. Commissioner Polmann, I totally agree with what Mr. Mouring said. You've got a utility here that's earning at the top of its range, unlike what was in the Gulf case. And all we're asking for here is to do exactly what you said; be completely neutral as far as the settlement goes when it comes to depreciation rates. All we're asking for is that, at least the amortization be equal to the depreciation that were in place.

And I would also point out that when utilities enter into these settlements, just like parties like Public Counsel or other intervenors, we just don't take into account the one year that's -- that's there present.

You're looking out at the term of the settlement. Companies are always looking to what they're going to be putting in as far as rate base.

There's always rate-base growth. We all know FPL has continual rate-base growth every year. That's all contemplated in these settlements. I've been involved in several of these that it's -- it's always contemplated.

So, that's not a problem where they're not getting recovery of a new plant coming in. You have to consider that that's already been contemplated in their settlement talks.

Thank you.

MR. COX: May I -- may I respond briefly, Mr. Polmann?

COMMISSIONER POLMANN: Sure.

MR. COX: Thank you.

In terms of neutral, I mean, we would not be making these investments if it weren't for these retirements. And you know, this -- the Dania unit, for example, is a 2022 unit. It's outside of the settlement period, when it would actually go into service.

So, you know, we -- again, we think the proper message for incenting us to take on these types of innovative proposals is to allow us to defer recovery so that, ultimately, when we make these types of investments, we can earn a reasonable return related to them. That -- that's all we're asking for.

And Keith -- Mr. Ferguson, did you want to elaborate any further?

MR. FERGUSON: You know, I -- I think, in terms of neutrality, we -- we demonstrated pretty clearly with discovery filed with the staff that, as we've said before, the revenue requirements on the new investments are actually higher than the savings that -- or the cost of -- of the old investments. And so, you know, in terms of neutrality, FPL is actually going to incur more revenue requirements than -- than what is being deferred.

So, you know, it's actually a negative, but -- but these are investments that we think are appropriate to deliver the savings that -- that we can get for customers. And we think it's an appropriate incentive as well.

You -- you'd hate for utilities to, then, start to consider, well, maybe I shouldn't do this today; I should do this, you know, four years from now when I go to get a -- a new rate case set because I don't want to have to eat the costs of -- of those new investments during the time of the settlement rather than, you know, doing it today and -- and providing that value today to our customers. We think that's a -- you know, that's an appropriate incentive for us to consider.

COMMISSIONER POLMANN: I -- I think my concern is, if you're operating at the top of the range of earnings and there is some potential for the treatment of this amortization and the retired asset, the non-producing asset, to not balance, then what happens if you're over-earning?

I mean, it appears to me that there is at least a potential for over-earnings, albeit, in the short term. But I don't understand the objection to handling this in -- in the standard way that staff is suggesting and OPC is supporting.

MR. COX: So, again, I think our -- our basic point, again, Commissioner Polmann, is we're making an investment and we're making a significant investment here that will result in immediate savings. And we think that the -- the reasonable opportunity to recover it through referral is consistent with the prior decision in Plant Smith.

I know you didn't want to talk about precedence, but I'm saying it is consistent with that. And we think that's a re- -- reasonable approach to incent us to continue to make these types of customer-saving transactions available.

COMMISSIONER POLMANN: Thank you, Mr. Chairman.

CHAIRMAN GRAHAM: All right. Commissioner Clark.

COMMISSIONER CLARK: Ms. Christensen, does OPC acknowledge there is a net savings, even if you -- even if you allowed the deferral?

MS. CHRISTENSEN: I think, with regard to the depreciation rates, no, there would not be, I don't believe, a net savings, but I'll let Mr. Willis speak to that.

I did want to briefly address the incentives argument that keeps being raised about how FPL needs to be incented to put in cost-efficient plants. I don't think that -- that deviating from the normal accounting treatment of an early retirement is -- is an incentive that -- that needs to be sent.

You know, we do this -- these settlements with the idea that FPL is going to be bringing in new, efficient -- more-efficient plants and retiring the older, more-inefficient plants. That's good operation and maintenance, and good for FPL's underlying business to bring in more rate base and retire less-efficient rate base. And therefore, we think that that's all contemplated when they enter talks with us and we discuss settlements.

So, I just wanted to briefly address that those types of incentives of building plants, especially when you already are a 30- or -- you know, above 20-percent reserve margin, you know, I think they're well-accomplished within the terms of the settlement.

And I will let Mr. --

COMMISSIONER CLARK: Let -- let me --

MS. CHRISTENSEN: -- Willis address that.

COMMISSIONER CLARK: -- follow up with you before you -- before we --

MS. CHRISTENSEN: Oh.

COMMISSIONER CLARK: -- go to Mr. Willis on that line. Just --

MS. CHRISTENSEN: Certainly.

COMMISSIONER CLARK: Just a thought. So, how often do we do revised settlements? Do you go back in and -- and take certain considerations in that were not contemplated and consider doing revised settlements?

MS. CHRISTENSEN: If --

COMMISSIONER CLARK: I haven't seen one since I've been here. That's why I'm asking.

MS. CHRISTENSEN: Yes. And theoretically, that is possible. And I think we've done it with some of the smaller utilities. We've done addendums to settlements; however, in this case, as, I think, it's been stated several times -- and -- and certainly, you can discuss the settlement terms if, at any time during the settlement, they are either are earning above the authorized range or below the range.

You can go in and -- and have further discussions and maybe present a new settlement with the additional conditions as it's warranted, but to the extent that they're earning at the top of their range, you know, this --

COMMISSIONER CLARK: Wouldn't that be an incentive --

MS. CHRISTENSEN: We had not contemplated --

COMMISSIONER CLARK: -- to look at a revised settlement because they're looking at -- they're at the top of their range and --

MS. CHRISTENSEN: Well --

COMMISSIONER CLARK: -- and they're looking to increase a return on equity?

MS. CHRISTENSEN: We have recently filed a petition that addresses some of those issues.

CHAIRMAN GRAHAM: Funny you mention that.

(Laughter.)

MS. CHRISTENSEN: But we're not going -- we were not discussing those today; however, under the -- under -- so, yes, theoretically, it would be possible if there was a condition that came up that would cause them to earn below their authorized range. We could have entered into negotiations to accommodate that.

That is not the circumstances here. And this certainly -- requiring them to do the normal accounting for the retirements of the Martin and the Fort Lauderdale units would not require them -- it's not going to cause them to earn outside the authorized range at this point.

And then I'll let Mr. Willis address --

COMMISSIONER CLARK: Thank you.

MR. WILLIS: As far as the net savings, I wasn't involved in that actual docket when it was brought to the Commission. I'm sure there probably was, especially when it's fuel savings, when you're taking an old plant like that and replacing it with a new one. I'm sure there's -- there's net savings in fuel.

That still doesn't address the fact that settlements contemplate additions by year. And FPL -- I just can't imagine that FPL wouldn't have known they were putting this plant in when they entered this settlement and already had taken that into account, which they're -- like I said, we're -- they're earning at the top of the range at this point in time, so...

COMMISSIONER CLARK: Can Mr. Cox respond to that?

MR. COX: Yeah, I mean --

COMMISSIONER CLARK: Or Mr. Ferguson, either one.

MR. COX: Actually, we both want to respond, but first of all, I don't think they were contemplated. We're talking about Martin unit upgrades that were just proposed this year in our ten-year site plan, I think, for the first time. And the -- the Dania project was after the 2016 settlement period as well, in terms of developing that. So, I don't think they were in that.

In terms of -- you know, we are proud that we're a well-run utility. And we -- we perform well and, you know, we don't think we should be dis-incented because we perform well from making these types of investments. We think it should be the opposite.

And I'll let Mr. Ferguson elaborate.

MR. FERGUSON: The other thing, you know, I think, to point out, which is a function of our settlement agreement, is that we have the -- the surplus depreciation mechanism, which allows to kind of governor us to stay within the authorized range.

So -- in this case, though, the facts are pretty clear. The -- the revenue requirements are higher on the replacement generation than it is on the generation that's being retired. So, it is, if anything, causing us downward pressure on -- on earnings, if you were to just take the surplus depreciation kind of aside for a moment.

It -- it actually causes, you know, decreased pressure on our ROE versus -- versus, you know, an ability to over-earn as a result of this.

CHAIRMAN GRAHAM: Well, I think it's interesting -- and maybe it's just one of those things that catches me -- I've heard two or three people now mention "at the top of your range" or "the top of the range."

Just as long as you're not over-earning -- I mean, I guess the question comes down to do you penalize them because they're at the top of the range because they're efficiently run? I mean, do you incentivize them or give them more because they're at the bottom of the range? Or just as long as they're within the range, that should just be pretty neutral, as far as we're concerned.

I mean, just as long as you're not over-earning or under-earning, then, I -- I don't see -- I see -- Ms. Christensen said it and Commissioner Polmann said it. And I just see that as being a moot argument because, just as long as you're in the range, who cares if they're towards the top or towards the bottom.

Commissioner Brown.

COMMISSIONER BROWN: Thank you.

And you know, I just want to acknowledge that we do have discretion in this regard, in the treatment of this. And I think sending a message to the utilities around the state to not modernize these plants, which are producing fuel savings to these customers, providing lower rates -- that is a -- is a dangerous path to go on as well. And I don't think this Commission wants to do that.

I do think -- I have a question for Ms. Christensen. There -- the language is almost identical in the FPL settlement to the Gulf -- and the Gulf settlement.

If -- is it your contention that, if FPL was earning less than it currently is, you would not have a problem with the tr- -- the tr- -- the way this Commission treated the plant, the retired plant, and -- for Gulf versus the plants in this case? What -- is that your contention? If --

MS. CHRISTENSEN: No, Commissioner. I think, under the terms and the plain reading of the settlement language, absent something more -- which, in the Gulf case, what you had, something more, was the parties coming in and saying, we have an understanding under the terms of the specific Gulf settlement that this was contemplated. You don't have that here.

COMMISSIONER BROWN: Because it was contemplated that -- that the plant would be retired.

MS. CHRISTENSEN: Correct. That was -- that was the parties' understanding. They both represented that to the Commission. And that is not the understanding. And under the plain language of the settlement, those depreciation rates need to stay the same during the term of the agreement.

And if this -- if a regulatory asset is created and the deferral and -- and the recovery of that is deferred, then, in effect, you're not keeping those rates -- the depreciation rates the same and, thus, we contend you would be breaching the agreement. And that would be our position here.

And if that is created, then we will be taking that forward because we do take seriously the terms of the agreement and enforcing the terms of the agreement. And it would not truly matter whether FPL is earning at the top of range or at the bottom of the range, unless you --

COMMISSIONER BROWN: You just think it's different than the Gulf case.

MS. CHRISTENSEN: Yes. It's distinctly different because we don't have the parties coming in and representing that there was an understanding. That is not the case here.

The case is, there is a plain language of the settlement, and the plain language of the settlement would not be followed if it were deferred -- if the regulatory-asset recovery were deferred.

COMMISSIONER BROWN: But to Commissioner Clark's earlier question -- and maybe for the utility -- what -- was the modernization of these projects contemplated when the settlement agreement was entered into?

MR. COX: Not that I'm aware of.

COMMISSIONER BROWN: Would FPL like to respond anything further?

MR. COX: I would say just a couple of things, just to mention, I mean, in terms of violating the settlement agreement -- we are not changing any rates by asking you to approve this deferral of reg- -- the regulatory asset. We -- we acknowledge that the depreciation rates cannot be changed during the term of the settlement. We're not disputing that at that point.

MR. FERGUSON: And -- and I think, along those lines, regulatory assets -- so, when -- when you've retired it -- and I don't think Mr. Willis will dispute this, is that when you retire it, you are required to cease depreciation. The setting up of a regulatory asset and then asking for an amortization period associated with that is kind of a different thing.

I -- I know it's kind -- well, it's the same asset, why not just keep depreciating it. Those are handled differently. We've handled them in rate cases multiple times. In fact, we've never handled them outside of rate cases, until -- until this --

COMMISSIONER BROWN: Right.

MR. FERGUSON: -- existing docket right here.

And so, in those times, we've always asked for or negotiated with other parties what the appropriate, then, time is to amortize those -- those regulatory assets. Those are handled kind of in the -- we have always done it in the context of a rate proceeding.

And so, I look at those as two very distinct things. One is, you have to stop depreciating when you retire it. You have to. And then the establishment of a regulatory asset and the amortization period is kind of a second -- second item.

COMMISSIONER BROWN: And just one last -- I know you're jumping over here.

One -- one last question, Mr. Cox, you were talking about -- that you were trying to negate

OPC's argument of the extra recovery, and I -- in your opening comments. Could you just elaborate a little bit how you believe that this is not a -- your request, at least, is not an additional, extra recovery.

MR. COX: Absolutely. Thank you.

So, my response to that was -- is we understand our settlement that we entered into with the other parties was approved by the Commission. It was a black-box settlement. There weren't specific line items for recovery, such as depreciation, that you could point to and say, that's what's being recovered.

So, when we stop recovering for the expense and when we retire, or when we stop recording -- I'm sorry -- the expense when we -- when we retire the unit, there's no one-to-one in terms of what's in the settlement.

You know, the settlement says, you can't reset the rates, right. And so, our proposal, again, is to defer recovery of these assets when rates would be reset in a future proceeding, to address that.

COMMISSIONER BROWN: Thank you.

CHAIRMAN GRAHAM: Commissioner Polmann.

COMMISSIONER POLMANN: Thank you,

Mr. Chairman.

Reflecting on the comments here a moment ago from Mr. Ferguson, I -- I do want to acknowledge, as in many other cases -- cases, the Commission does have that discretion here to first approve the regulatory asset to -- to approve the creation of the regulatory asset.

And we also have broad discretion as to the question of timing on the amortization following that. So, really are two separate questions. So, I -- I do acknowledge that and I appreciate that comment.

And with regard to the 2016 settlement agreement that, yes, it was a black-box, and recognize it was structured in a way to give the company a lot of flexibility. We're not here trying to direct how you manage any aspect of that. I think we want to retain all of the flexibility that that did provide with regard to your expenses, the capital projects, and so forth.

To the Chairman's point, and -- and reflecting on your point, operating at the top of your -- your ROE -- congratulations. Don't want to discourage the development of -- of the new and efficient projects. And as you said, there's no change in rates here. So, there's no question on any of that.

The issue is, you know, essentially on the timing and moving forward and -- it's our -- it's our job, staff's job, to be careful with monitoring and -- and surveillance and simply make sure that -- that the ratepayers are protected. I'm just trying to understand all -- as we've already talked -- the pluses and the minuses, and make sure that I --

MR. COX: I understand, thank you.

COMMISSIONER POLMANN: I'm fully informed and I know what I'm voting on, so -- so, thank you for your understanding.

And thank you, Mr. Chairman.

CHAIRMAN GRAHAM: Commissioner Fay.

COMMISSIONER FAY: Thank you, Mr. Chairman.

These types of issues, for me, are -- are the reasons lawyer hires accountants and accountants hire lawyers. Extremely complex, and I've spent a ton of time with our staff here trying to get a better understanding of all the -- the moving parts on this.

One thing that I did sort of take in over and over again, as I looked through the parameters of the Commission's decision, is that both decisions that are being discussed here today are within the Commission's authority to make those decisions. And for me, that's -- that's always the key pillar to look at with this type of decision.

I, personally, when I look at those things that are within our legal parameter, and I hear about the retirements of these plants and the potential developments of new ones and argument for the betterment of -- of all -- I -- I am -- for my perspective, I want to do everything I can to encourage that. I think that that makes a lot of sense to me.

And I think that some of these factors that are being discussed fall one way or another as it relates to that. And -- and I don't -- I don't want to, in any way, impede that. I want to be part of that, that advancement and that betterment.

And so, I think as we continue to see complex issues like this, I think that question of our legal authority and what -- what falls in our lane is really key to those types of decisions.

And so, with that, Mr. Chairman, I'm -- I'm prepared to vote if -- I don't know if anyone else has comments.

CHAIRMAN GRAHAM: We've got one more from Commissioner Clark.

COMMISSIONER CLARK: Thank you, Mr. Chairman.

I gave everybody a chance to do a revised settlement, nobody wanted to do one. So, I --

(Laughter.)

COMMISSIONER CLARK: I want to just make a brief comment in terms of -- and that's -- I'm still kind of out on this settlement thing, not understanding if I like the concept or not.

I appreciate the work that every one of the parties puts into putting settlements together, but that is part of the problem. It is a black box. And we don't get to see what goes on inside of that. And that does, at some points in time, concern me.

I think Mr. Cox's point is very valid. And what went on in there in the depreciation schedule, I guess -- I'm going to dumb this down for me. The depreciation schedule that's inside the black box kind of doesn't exist. And what we're looking at here is, this regulatory asset, if we were to allow the deferral -- normally you would take the depreciation back out of the picture, as I understand it. And that's what's not happening.

So, absent some consensus that, yeah, we would be -- FPL's part -- we would be willing -- willing to reduce our depreciation schedule for the receipt of the deferral in the future, I -- I see this as -- you know, you guys have come to an agreement.

Unless you can come to some sort of other agreement, it's a very -- very difficult case for me. Very -- very difficult to really figure out exactly where we -- where we are on this kind of thing and what kind of future precedent we're setting.

Probably didn't say a lot and didn't say that as adequately as I wanted to, Mr. Chairman.

CHAIRMAN GRAHAM: That's all right. Mr. Fay --

COMMISSIONER CLARK: I'm confused.

CHAIRMAN GRAHAM: Mr. Fay looked like he was ready to make a motion.

COMMISSIONER FAY: Thank you, Mr. Chairman.

I would move staff's recommendation with the modification to allow deferred amortization on Item 2, Mr. Chair.

COMMISSIONER BROWN: Second.

CHAIRMAN GRAHAM: Issue 2.

COMMISSIONER FAY: Issue 2, thank you.

COMMISSIONER BROWN: Second.

CHAIRMAN GRAHAM: Okay. It was moved and second -- we'll call it the Fay motion. Any further discussion on that motion?

Mr. Clark.

COMMISSIONER CLARK: I'm making sure I understand. We've got yes on one, and the change on staff rec on two.

CHAIRMAN GRAHAM: That is correct.

COMMISSIONER CLARK: Okay. And --

CHAIRMAN GRAHAM: And we are closing this docket.

COMMISSIONER CLARK: I'll move (inaudible), Mr. Chairman.

CHAIRMAN GRAHAM: Okay. If no further discussion, all in favor, say aye.

(Chorus of ayes.)

CHAIRMAN GRAHAM: Any opposed?

By your action, the motion passes.

(Agenda item concluded.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 20th day of December, 2018.

ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021