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FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. | DOCKET NO. 140001-EI<br>ORDER NO. PSC-14-0667-PHO-EI<br>ISSUED: November 21, 2014 |
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Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on November 6, 2014, in Tallahassee, Florida, before Commissioner Julie I. Brown, as Prehearing Officer.

APPEARANCES:

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**PREHEARING ORDER REGARDING**
**FLORIDA POWER & LIGHT COMPANY'S DEFERRED ISSUES**

## I. CASE BACKGROUND

As part of the continuing fuel and purchased power adjustment and generating performance incentive clause proceedings, an administrative hearing on Florida Power & Light's Petition to recover oil and gas exploration and production costs via the fuel clause filed June 25, 2014, will be held by the Florida Public Service Commission (Commission) on December 1st and 2nd, 2014. The Commission will address those issues listed in this prehearing order. The Commission has the option to render a bench decision on any or all of the issues listed below.

## II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

## III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

## IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

While it is the policy of this Commission for all Commission hearings to be open to the public at all times, the Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary Staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

## V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand, which shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

## VI. ORDER OF WITNESSES

| Witness | Proffered By | Issues # |
|---|---|---|
| Direct | | |
| Sam Forrest | FPL | 1, 2, 3, 4, 5, 6, 7 ,8 |
| Kim Ousdahl | FPL | 1, 2, 3, 8 |
| Dr. Tim Taylor | FPL | 1 |
| Donna Ramas | OPC | 1, 2, 3 |
| Daniel J. Lawton | OPC | 1, 2, 3, 4 |
| Jeff Pollock | FIPUG | 1, 2, 3, 4, 5 |
| Rebuttal | | |
| Sam Forrest | FPL | 1, 2, 3, 4, 5, 6, 7 |
| Kim Ousdahl | FPL | 1, 2, 3 |
| Dr. Tim Taylor | FPL | 1 |
| J. Terry Deason | FPL | 1, 3, 4, 5, 6, 7 |

## VII. BASIC POSITIONS

**FPL:** In recent years, FPL has made significant investments in clean, fuel-efficient natural gas generation and transportation. FPL currently supplies 62% of the electricity consumed in Florida, with approximately 65% of this coming from natural gas fired generation. FPL's investments in natural gas have saved customers more than $6.5 billion in fuel costs since 2001, and these investments will continue to provide customer savings for decades. With such a large demand for natural gas, establishing a predictable, reliable, and low cost fuel supply is imperative for FPL and its customers. FPL now looks to continue its efforts to ensure a reliable and stable source of delivery of clean electricity for its customers by making targeted investments in natural gas production.

As a means to achieve this goal, FPL is seeking a Commission determination that the Woodford Gas Reserves Project, a joint venture with PetroQuest Energy, Inc. ("PetroQuest") to invest in gas production in the Woodford Shale region is prudent and that the revenue requirements associated with this investment may be recovered through the fuel cost recovery clause ("Fuel Clause"). The project

provides significant benefits to customers as both a hedge against volatile natural gas prices and through expected cost savings. It will be referred to herein as the "Woodford Project" or the "PetroQuest joint venture."

Furthermore, in order to ensure that the benefits of potential future gas reserves projects can be secured for customers, FPL is requesting that the Commission approve Guidelines for acquiring future gas reserves such that the revenue requirements associated with investments meeting these requirements would be eligible for cost recovery through the Fuel Clause, subject to the usual review of the prudence of fuel-related transactions that the Commission conducts in Fuel Clause proceedings. Without such Guidelines FPL will not be in a position to take advantage of the substantial opportunities to provide for customer savings through gas production. Gas production in today's shale gas markets is a fast moving business. Counterparties are generally unwilling to wait for standard regulatory approval timing in order to execute an agreement. FPL cannot depend on having USG or any other entity stand in until the regulatory review is completed. Additionally, because of the volatile nature of the gas markets, the start date of a transaction can have significant impacts on the value as viewed by the counterparty, as well as the benefit to FPL's customers. A several month delay in executing an agreement in today's gas markets could result in millions of dollars of savings lost for FPL's customers. By allowing FPL to move forward on future projects without the need for prior approval, the Commission would facilitate FPL's ability to take advantage of additional opportunities to achieve lower and more gas prices for customers, while maintaining the Commission's ability to review those projects in the same manner that it reviews other fuel related transactions.

The Woodford Project offers FPL and its customers an excellent opportunity to obtain a portion of FPL's gas requirements at a stable, lower cost. By disassociating a portion of FPL's natural gas purchases from market prices that historically have been volatile and instead obtaining that gas at a stable cost of production, the Woodford Project will help mitigate volatility in market prices and ensure more stable prices for the gas FPL burns in its power plants. Ownership of interests in gas reserves such as the Woodford Project thus would operate as a long-term physical hedge against market volatility.

The Woodford Project also is expected to produce significant volumes of gas over multiple decades, all of which would be provided *at the cost of production* rather than market prices. FPL's revenue requirements for the Woodford Project are projected to be lower than the market price of natural gas on a dollars per MMBtu basis even in the early years, and then far lower over the remaining 30 plus year life of the project as market prices for natural gas increase (as expected) while FPL's cost of production remains steady and low. FPL customers are projected to save approximately $107 million on a net present value ("NPV") basis over the life of the project, based on FPL's forecast of natural gas prices. If, for any

reason, market prices were to fall lower than the cost of production, of course, FPL's customers would benefit enormously in the aggregate through such lower prices, far offsetting the cost of this physical hedge.

There are at least two bases for recovery of the Woodford Project costs through the Fuel Clause. First, the Commission has a long-standing practice of including capital projects in the Fuel Clause when they are undertaken in order to reduce the delivered cost of fossil fuels that customers must pay. This practice was initially established in Order No. 14546. As noted in Order No. PSC-11-0080-PAA-EI, Attachment A, Fuel Clause recovery for this sort of capital project has been permitted in a number of subsequent Commission decisions. The Woodford Project meets the requirements of these orders, because it is projected to result in $107 million in NPV savings on the cost of natural gas that customers pay. Second, the Commission also has authorized the recovery of natural gas hedging costs through the Fuel Clause. Order No. PSC-02-1484-FOF-EI, issued on October 30, 2002 in Docket No. 011605-EI; Order No. PSC-08-0667-PAA-EI, issued on October 8, 2008 in Docket No. 080001-EI. The Woodford Project and other gas reserves projects that FPL may undertake pursuant to the proposed Guidelines are longer-term physical hedges of natural gas that would be an effective complement to FPL's existing program of short-term hedges in mitigating the volatility of natural gas prices. Therefore, gas reserves projects are properly recoverable under the Fuel Clause as a hedging cost.

The Office of Public Counsel ("OPC") and Florida Industrial Power Users Group ("FIPUG") oppose FPL's requests. Their opposition is both ill-founded and puzzling. They argue that the gas reserves projects would be beneficial for shareholders but too risky for customers, that FPL has not properly projected costs, and, astonishingly, that the Commission wouldn't have the tools to effectively regulate FPL's investment. On every one of these arguments, OPC and FIPUG are simply wrong. The arguments are premised upon erroneous facts and calculations as well as a fundamental lack of understanding of the oil and gas industry. But, interestingly, even the intervenors' flawed calculations show projected savings for customers that would make their recommended rejection of FPL's proposal nonsensical and at odds with the interests of the very customers they ostensibly seek to protect.

In contrast, FPL has supported its gas reserves petition with detailed analyses and actual industry expertise. The facts are clear: FPL's projections show substantial benefits for customers over a wide range of assumptions. And if the intervenors are correct that there is a high degree of uncertainty about future natural gas prices, then the price stability that gas reserves projects provide will be especially valuable to FPL and its customers. FPL's investment in the Woodford Project is prudent, and recovery through the fuel clause is appropriate. Furthermore, FPL's proposed Guidelines will provide the framework necessary for substantial future

savings in fuel costs for customers. For these reasons, the Commission should approve FPL's requests.

**<u>OPC</u>:** Florida Power & Light, Inc.'s ("FPL" or "Company")'s June 25, 2014 Petition ("Petition") can be summed up as a new way to decouple shareholder risks from shareholder profits. Under FPL's proposal, FPL will shift all risks of investing in gas reserves to the customers in exchange for promises of potential customer fuel savings and guaranteed trued-up profits (or returns) for shareholders. OPC is not opposed to *guarantee* fuel cost savings to customers; however, FPL cannot guarantee those savings to customers over the next 40-50 years. Thus, for the reasons stated herein, FPL should not be permitted to spend the customers' money on the faint promises of speculative fuel savings on investments in gas reserves transactions based on faint promises of speculative fuel savings.

*Regarding the threshold jurisdictional issue*
On August 22, 2014, OPC filed a Motion to Dismiss FPL Petition for Lack of Subject Matter Jurisdiction on the grounds that the Florida Public Service Commission ("Commission") lacks jurisdiction to approve the following: (1) FPL's June 25, 2014 Petition (Petition) and the Woodford Gas Reserves Project ("Woodford Project"); (2) FPL's proposed gas reserves guidelines ("Guidelines"); and (3) recovery of those costs from ratepayers through the annual fuel adjustment recovery clause ("Fuel Clause").

OPC moved for an order dismissing the Petition, which describes FPL's ambition to enter the highly competitive business of exploring for, drilling, and producing natural gas in shale formations, over which enterprise the Commission has no jurisdiction. FPL's request, which is to establish capital investments in the unregulated, competitive natural gas production industry as a component of its utility rate base and to collect a guaranteed return on such investments through its fuel cost recovery clause, is therefore beyond the regulatory purview of the Commission, and the Commission has no authority to grant FPL's petition.

As evidence to support OPC's argument, the Commission has no authority to audit PetroQuest's activities or production costs for prudency or reasonableness, much less disallow any of its production costs. In addition, the Commission has no jurisdiction over PetroQuest's marketing and disposition of the gas. Inasmuch as the Commission has no jurisdiction over FPL's USG affiliate or its contractual arrangements in the joint venture with PetroQuest, and because the FPL subsidiary's posture in the joint venture following an assignment would be identical to that of USG, it follows necessarily that the Commission would also have no jurisdiction over the FPL subsidiary's participation in the joint venture with PetroQuest. Capital investments and ventures in a competitive business undertaken to make profits from the production and sales of fuel are not regulated by the Commission. Therefore, these investments in unregulated ventures do not qualify as a public utility's "property used and useful in serving the public."

Section 366.06(1), Florida Statutes ("F.S."). Further, the Commission has stated, and FPL has agreed, that public utilities subject to the Commission's jurisdiction are not allowed to make a profit on fuel costs flowed through the fuel cost recovery clause. This principle derives from, and is consistent with, the statutory definition of utility-related activities and the corresponding limits of the Commission's jurisdiction. FPL's proposal would violate this requirement that regulated utilities are not allowed to make a profit on fuel.

OPC submits that the non-jurisdictional nature of the proposed enterprise is evident on the face of FPL's request, and that Florida Statutes and applicable precedents require the Commission to dismiss the petition for lack of subject matter jurisdiction.

Furthermore, a comprehensive review of Chapters 350 and 366, F.S., reveals the Legislature has not expressly or impliedly authorized Commission jurisdiction over these proposed gas reserves transactions. Further, FPL admits *in testimony* that it also lacks the expertise to perform the specialized accounting associated with oil and gas transactions and, like OPC, FPL had to hire Dr. Taylor as well as an independent, outside third-party to review its proposed Woodford Project. This lack of core expertise related to these highly complex and complicated transactions and investments further buttresses OPC's argument that the Commission does not have jurisdiction over these proposed transactions.

For these additional reasons, FPL's request to invest in gas reserves projects and collect a guaranteed return on such investments through the Fuel Clause is beyond the regulatory purview of the Commission. This threshold question is scheduled to be addressed by the Commission on November 25, 2014.

*All risks of gas reserves investments placed on ratepayers*
Under FPL's proposal to partner with PetroQuest in the Woodford Project, all the extraordinary risks associated with the gas exploration, drilling (including fracking) and development activities would be placed squarely on the backs of FPL's 4.5 million customers, while FPL's shareholders would reap guaranteed, trued-up profits from these investments.

Under the Woodford Project, FPL may be less cautious when deciding whether to consent to drill whether or not it is economic to do so. While another partner with PetroQuest may decline to consent to drill when it is not economical (i.e., it is too risky for its owners), FPL bears no such risk when it gives consent (and may be encouraged to do so) because its shareholders would earn a return on every dollar invested in a well – whether or not the well produces any gas. As such, FPL would have an incentive to not withhold consent to additional wells, even when such undertaking would be uneconomic (too risky) for other partners. This same logic applies to FPL's investments in gas reserves under the proposed Guidelines.

In summary, the conclusion of net fuel savings resulting from the Woodford Project is built on speculative and unsupported assumptions regarding the future market price of gas for the next 40-50 years. Under its Petition, FPL would be assured recovery of all of its costs, plus a profit or return on the Woodford Project investment. FPL would bear zero risk; and all risks of FPL's participation in the gas exploration, drilling (including drilling in shale formations) and production business would be shifted to its customers. FPL's customers would effectively be required to become investors in a risky, unregulated industry. Because of the "true up" feature of the fuel cost recovery clause, these project investment amounts would be guaranteed recovery for FPL, ensuring that FPL's shareholders earn a guaranteed return/profit on these gas reserves investments while the customers receive no such guarantee of benefit.

*Gas reserves investments are not long-term physical hedges*
In its rebuttal testimony, FPL now asserts more prominently than it did in the petition and supporting direct testimony that the proposed Woodford Project is similar to a long-term physical hedge. This contention is misplaced. The proposed Woodford Project is a speculative investment in an Oklahoma gas reserve. FPL is speculating that the Woodford Project will produce an estimated annual gas quantity at a forecasted per-unit cost level (where forecasted costs are based on numerous FPL assumptions, forecasts, and estimates) that is lower than FPL's estimate of future natural gas market prices.

A long-term physical hedge typically involves a contractual quantity of gas at a fixed price to be delivered at some agreed future period. The physical hedge contract attempts to eliminate all unknown variables in the long-term future price of gas, and to apportion the risks between the buyer and the seller. The buyer is protected from future fluctuations in natural gas prices and the seller is obligated to deliver the natural gas regardless of the current market price. If the seller defaults, the buyer has contractual remedies.

Unlike a true, long-term physical hedge, the Woodford Project estimates are not fixed, but rather estimated and subject to change. There is no hedge or assurance that these estimates will be accurate, both in terms of the amount of gas that can be delivered or the costs of the delivered gas. If one assumes that FPL's assumptions regarding expected investment levels, expected annual output levels, expected annual operating cost levels, and expected market price alternatives are correct (or if FPL was willing to make a guarantee) for the Woodford Project, then one can assume that a hedge is in place. However, this is not the case and the Woodford Project cannot be considered a physical hedge. Further, instead of apportioning risks between FPL and PetroQuest (or its other potential gas reserves partners under the Guidelines), FPL's proposal would require its customers to assume all of FPL's shareholders' risks regardless of the success or failure of its proposed natural gas reserves investments.

Likewise, FPL's proposed investments in gas reserves under the Guidelines do not fit within the definition of long-term physical hedges.

*Regarding the Woodford Project*
FPL's claim that the Woodford Project venture with PetroQuest will generate customer savings necessarily stems from its assumption that the price that FPL pays its subsidiary for the Woodford gas will be less than the market price of gas. However, recent historical data for the years 2010 through 2013 on the relationship between the cost of production in the Woodford area and the market price of gas shows that the cost of Woodford gas has exceeded the market price of gas – and this difference has been material.

FPL's gas industry partner/project operator, PetroQuest, admits in its public documents and Securities Exchange Commission ("SEC") filings that it does not know what will happen to the market price of natural gas over time. Yet, in support of its Petition, FPL purports to accurately project the market price of gas over a 50-year period. FPL's assumptions of early increases in the market price of gas relative to the cost of production for Woodford gas: (1) are unreasonable; (2) bias the analysis in favor of the Woodford project; and (3) render FPL's conclusions unreliable.

Thus, FPL's claim that the market price of gas will be higher than its subsidiary's costs of production plus FPL's return on investment bears no relationship to recent past experience or current reality as evidenced by the actions of competitive oil and gas exploration and drilling firms.

FPL's conclusions of potential benefits to customers also remain highly vulnerable to sensitivity analyses. Under reasonable – and even conservative – changes in the assumptions of Woodford production and the rate of change of market prices, customers could realize either a loss of the majority of FPL's estimated savings, or even negative project savings (in the form of higher fuel cost recovery charges) relative to the market price of gas.

*Regarding the proposed Guidelines*
For the same reasons discussed above, the Commission should also reject FPL's proposed guidelines for future gas reserves investments. There is almost no risk of disallowance of any costs unless the investment is determined to be outside the requirements of the Guidelines.

For the foreseeable future, FPL proposes to secure up to 25% of its average daily burn for natural gas through its gas reserves investments. To achieve this goal, FPL will always be chasing its tail to continue investing in gas reserves to keep up with its proposal to secure 25% of its average daily burn through these gas reserves investments. And, with each investment, FPL would be guaranteed a trued-up return of 10.5% for its shareholders on every dollar it invests. This

remains true for each investment whether (1) the investments are sound and produce the necessary volumes of natural gas expected; or (2) the gas produced is above the market price of gas over the 40-50 year horizon associated with investing in each gas reserves project.

Since under the Guidelines FPL's shareholders bears no risk whatsoever associated with investing in the oil and natural gas exploration, drilling, and development activities that its investment partners face, FPL would be free and willing to wager the ratepayers' money that the gas ventures will produce gas and that the future market price for the gas produced from those ventures will be higher than the cost to produce natural gas. Regardless of whether FPL wagers well or poorly, FPL's shareholders would be guaranteed a trued-up return on its investment – or profit – on every dollar invested in these projects, whether or not the gas wells produce one molecule of gas.

The severely skewed nature of the risk/reward aspects of FPL's Petition come clearly into focus only when FPL's proposed Guidelines are scrutinized. FPL proposes to spend as much as $750 million annually on gas reserves ventures in future years – which is equivalent to adding half of a large combined cycle unit to rate base every year. Under the Guidelines, FPL's partnerships with the gas exploration industry would be effectively pre-approved, as FPL is requesting presumptive recovery for costs associated with these future gas reserves investments. Importantly, this $750 million is only an annual spending limit, and not a total cap.[1] Therefore, in as little as ten years, FPL could earn hundreds of millions of dollars in guaranteed shareholder profits from gas exploration joint ventures while requiring its customers to shoulder 100% of the risk of those ventures.

For these reasons, along with the positions taken below and the evidence to be adduced at the hearing, FPL's request for approval of its June 25, 2014 Petition should be denied.

**FIPUG:** FIPUG opposes FPL's efforts to have ratepayers fund oil and gas exploration and production ventures in Oklahoma. FPL's proposal places the risk of future natural gas market prices squarely on the backs of ratepayers. Ironically, FPL has avoided this very same risk for years, as fuel costs are passed through annually to ratepayers in this proceeding. FPL's ratepayers do not want to accept this natural gas fuel cost risk, and it should not be forced upon them. FPL's request to increase its rate base by up to $750 million dollars per year for oil and gas exploration and production costs, and to earn a return on those monies, will help

[1] Each year, under its proposed Guidelines, FPL could layer another $750 million of capital investments in the gas industry on top of previous years. Each such annual outlay of $750 million would yield approximately $47 million of after-tax profits annually. This amount is calculated employing a 10.5% equity return and a 59.6% equity ratio or (10.5% * 59.6%) = 6.258% weighted cost of equity. The $47 million is calculated by multiplying this weighted cost of equity times the $750 million annual investment cap per the Guidelines.

FPL annually bolster its rate base and unquestionably benefits FPL's shareholders. Potential benefits to FPL's ratepayers are uncertain and speculative. The question FPL presents, namely, whether FPL should be able to enter the oil and gas exploration and production business using up to $750 million dollars per year of ratepayer monies, has significant public policy ramifications. When confronted with significant public policy questions such like this one, the Commission should defer to the Legislature for guidance. Put simply, as a branch of the Legislature, the PSC should leave the question of whether a regulated Florida utility is empowered to venture into the risky oil and gas exploration and production business to the Legislature. As OPC points out in its Motion to Dismiss for Lack of Subject Matter Jurisdiction, there is no indication that the Florida Legislature contemplated ratepayer dollars being used to fund oil and gas exploration and production in Oklahoma. The Commission should not venture into the Legislature's public policy arena unless and until the Legislature expressly authorizes Florida utilities to engage in the exploration and production of natural gas outside of Florida.

Finally, FIPUG entered into a Stipulation and Settlement Agreement ("Agreement") with FPL which called for a base rate freeze through December of 2016. The Agreement stated in pertinent part that: "It is the intent of the Parties in this Paragraph 6 that FPL not be allowed to recover through cost recovery clauses increases in the magnitude of costs of types or categories (including but not limited to, for example, investment in and maintenance of transmission assets) that have been and traditionally, historically and ordinarily would be recovered in base rates." The type of costs FPL seeks to recover, capital and operational expense associated with oil and gas exploration and production, are the type of costs which are more appropriately characterized as base rate costs, if recoverable, and thus precluded by the terms of the parties' Agreement.

For the reasons set forth above, the Commission should deny FPL's Petition.

**FRF**: All of the investor-owned electric utilities bear the burden of proving the reasonableness and prudence of their expenditures for which they seek recovery through their Fuel and Purchased Power Cost Recovery Charges.

**STAFF**: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

**ISSUE 1:** **Should the Commission approve Florida Power & Light Company's (FPL) request to recover the amounts it would pay to its subsidiary for gas obtained from the PetroQuest joint venture through the fuel cost recovery clause on the basis and in the manner proposed by FPL in the June 25 Petition?**

**POSITIONS**

**FPL:** Yes. FPL's investment in the PetroQuest joint venture is prudent. FPL's investment in the PetroQuest joint venture is projected to provide for $107 million in customer fuel savings over the life of the project. In addition, the PetroQuest joint venture will provide for fuel price stability, effectively acting as a long-term hedge. Because it is designed to reduce the delivered price of fossil fuel (natural gas) and the costs for the PetroQuest joint venture were not recognized or anticipated in the cost levels used to determine FPL's current base rates, the costs associated with the PetroQuest joint venture are appropriate for recovery through the Fuel Clause. Moreover, the PetroQuest joint venture provides a longer-term physical hedge to complement FPL's existing program of short-term financial hedges and it is properly recoverable through the Fuel Clause as a hedging cost. (Forrest, Ousdahl, Taylor, Deason)

**OPC:** No. The Commission should not approve the recovery of costs associated with the Woodford Project for the reasons discussed above under OPC's basic position. The Woodford Project does not satisfy the criteria for Fuel Clause recovery because its costs are not capital costs normally recovered through base rates. These proposed costs do not meet the requirements for the narrow exception allowed by Commission Order No. 14546 in Docket No. 850001-EI-B. What FPL is proposing in this docket is beyond the policy adopted by the Commission for dealing with fossil fuel-related costs normally recovered through base rates that will result in fuel savings to customers.

Further, the Commission prohibits utilities from profiting (or earning a return) on fuel purchases recovered through the Fuel Clause. Under FPL's proposal, FPL would "purchase" (or acquire) fuel from the Woodford Project at production costs, and would then allow FPL shareholders to profit (earn a return) on the gas that the Company acquires at production costs. However, the Commission neither allows utilities to profit (earn a return) on the fuel they purchase at market cost, nor does the Commission allow utilities to profit (earn a return) on the fuel acquired through their short-term hedging programs. Fuel acquired at market cost or from a financial hedge is a cost to the utility that must be expensed. The Commission should continue to protect customers by prohibiting utilities from recovering the cost of fuel with a profit or return added on to those costs. (Ramas, Lawton)

**FIPUG**: No. The costs FPL seeks to recover should not be recoverable through the fuel clause as a matter of law or Commission policy.

**FRF**: Agree with OPC.

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

**ISSUE 2**: **If the Commission answers Issue 1 in the negative, what standard should the Commission apply to a request by FPL to recover the price that FPL pays to its subsidiary/affiliate for gas obtained through the joint venture with PetroQuest?**

**POSITIONS**

**FPL**: Although FPL has agreed to the inclusion of this issue in the Prehearing Statement, it is effectively moot. If the Commission rejects FPL's Petition, FPL will not pursue the PetroQuest joint venture. Instead, FPL's unregulated affiliate, USG Properties Woodford I, LLC will retain all of the rights, benefits and responsibilities of the PetroQuest joint venture. Therefore, the question of what Commission standards would apply to recovery for the PetroQuest joint venture in the event of Commission rejection is purely hypothetical and need not be addressed. (Forrest, Ousdahl)

**OPC**: If the Commission denies FPL's Petition and answers Issue 1 in the negative, consistent with the Commission's prior findings related to the acquisition from affiliated entities of fossil fuels for which a competitive market exists, the Commission should make it abundantly clear in this case that if FPL purchases gas from the proposed joint venture between PetroQuest and FPL's yet-unnamed subsidiary (or even if it directly enters into the joint venture with PetroQuest), and from other potential future joint ventures, the amount to be recovered from customers through the fuel cost recovery clause will be limited to, and will not exceed, the market price of gas. The market price of natural gas is readily available to the Commission and its staff. (Ramas, Lawton)

**FIPUG**: The Commission should apply its policy regarding affiliate transactions to ensure that ratepayers are not charged more than market prices for gas obtained through the proposed joint venture with PetroQuest.

**FRF**: Agree with OPC.

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

**ISSUE 3:** **What amount, if any, associated with the transactions proposed in FPL's June 25 Petition should be included for recovery through FPL's 2015 fuel cost recovery factor?**

**POSITIONS**

**FPL:** For 2015, the amount to be recovered is projected to be $45,473,295, which is based on FPL's share of the costs to be incurred in 2015 for the PetroQuest joint venture. The recovery amount will be adjusted through the normal Fuel Clause true-up mechanism as actual 2015 costs are known. (Forrest, Ousdahl, Deason)

**OPC:** No amount should be included for recovery through FPL's 2015 fuel cost recovery factor. Nevertheless, if FPL's subsidiary goes forward with the transaction, then any natural gas obtained by FPL from such subsidiary should be recovered through FPL's 2015 fuel cost recovery factor based on the market price of gas, consistent with how with fossil fuel costs obtained from affiliated entities are recovered. However, if the Commission finds that the transaction falls within its regulatory jurisdiction, despite OPC's strong contention that it does not have such authority, then the amount recovered through the 2015 fuel cost recovery factor should be based on the lower of cost or market for the gas obtained from the subsidiary. (Ramas, Lawton)

**FIPUG:** No amount should be recovered for the FPL-PetroQuest Oklahoma oil and gas exploration and production project. FPL acknowledges that its affiliated corporate interests find the PetroQuest deal quite attractive and acceptable. Conversely, consumer interests (Office of Public Counsel, FIPUG, Florida Retail Federation and PCS Phosphate) do not find the PetroQuest oil and gas deal attractive and acceptable. Thus, rather than forcing a deal upon ratepayers that ratepayers find unwanted and speculative, the Commission should permit FPL's non-regulated corporate interests to profit, possibly, from the announced PetroQuest deal.

**FRF:** Agree with OPC.

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

**ISSUE 4:** **Do FPL's proposed guidelines for future capital investments in natural gas exploration and drilling joint ventures satisfy the Commission's criteria for consideration in the fuel cost recovery clause proceeding?**

**POSITIONS**

**FPL:** Yes. FPL's proposed Guidelines would govern investments in gas reserve projects. Because the Guidelines require that such investments are projected to produce savings in the cost of fossil fuel (natural gas) for FPL's customers and the

investments also would provide a longer-term physical hedge against natural gas price volatility, they are appropriate criteria to determine eligibility for the Fuel Clause. (Forrest, Deason)

**OPC:** No. Similar to OPC's position on Issue 1, FPL's proposed Guidelines do not satisfy the criteria for Fuel Clause recovery because gas reserves investment costs are not capital costs normally recovered through base rates. These proposed costs do not meet the requirements for the narrow exception allowed by Commission Order No. 14546 in Docket No. 850001-EI-B. Item 10, at issue in this docket, reads as follows:

> Fossil fuel-related costs normally recovered through base rates but which were not recognized or anticipated in the cost levels used to determine current base rates and which, if expended, will result in fuel savings to customers. Recovery of such costs should be made on a case by case basis after Commission approval.

What FPL is proposing in this docket (as well as its interpretation of Item 10 in Order No. 14546) is beyond the policy adopted by the Commission for dealing with fossil fuel-related costs normally recovered through base rates that will result in fuel savings to customers.

Moreover, seeking pre-approval for the recovery of costs associated with gas reserves investment transactions consistent with the proposed Guidelines violates the spirit and the letter of the requirement in Item 10 that "Recovery of such costs should be made on a *case by case basis* after Commission approval." (emphasis added). This provision contemplated that the Commission review and approve each item on a case-by-case basis *before* a utility is allowed to recover costs associated with a project. However, in this docket FPL proposes the exact opposite, which would be to seek presumptive pre-prudence approval of any investments that satisfy FPL's Guidelines.

Further, the Commission prohibits utilities from profiting (or earning a return) on fuel purchases recovered through the Fuel Clause. The proposed Guidelines would allow FPL to "purchase" (or acquire) fuel ostensibly at production costs, and would then allow FPL shareholders to profit (earn a return) on the gas that the Company acquires at production costs. However, the Commission neither allows utilities to profit (earn a return) on the fuel they purchase at market cost, nor does the Commission allow utilities to profit (earn a return) on the fuel acquired through their short-term hedging programs. Fuel acquired at market cost or from a financial hedge is a cost to the utility that must be expensed. There is no compelling reason to depart from this Commission practice of allowing utilities to recover the cost of fuel without any profit or return added on to those costs. (Lawton)

**FIPUG:** No.

**FRF:** Agree with OPC.

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

**ISSUE 5: If the Commission answers Issue 4 in the affirmative, should the Commission approve FPL's proposed criteria?**

**POSITIONS**

**FPL:** Yes. FPL's proposed Guidelines provide an effective and appropriate framework to 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 Commission approval process that likely would foreclose FPL from participating in many potentially valuable gas reserves projects. The Guidelines are effectively 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 to FPL and its customers. Specifically, 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. They also describe how the deals will be evaluated against FPL's then-current forecast of natural gas prices. Finally, the Guidelines discuss the composition of gas reserves that FPL can pursue. The adoption of the Guidelines would be consistent with how the Commission has administered the short-term hedging program. These parameters will provide the framework FPL needs to secure the benefits of investment in natural gas production for customers, while maintaining the Commission's ability to review those projects in the same manner that it reviews other fuel-related transactions. (Forrest, Deason)

**OPC:** No. OPC's position is that the Commission lacks jurisdiction to approve any gas reserves investments or criteria for Guidelines.

**FIPUG:** No. Consistent with section 120.54, Florida Statutes, the Commission should engage in rulemaking to adopt any policy statements regarding the exploration and production of oil and natural gas.

**FRF:** Agree with OPC.

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

**ISSUE 6:** **Is FPL contractually precluded by paragraph 6 of the Stipulation and Settlement Agreement dated December 12, 2012, and approved by the Commission in Order No. PSC-13-0023-S-EI from seeking to increase rates as it proposes?**

**POSITIONS**

**FPL:** It is FPL's position that Issue 6 is subsumed by Issue 1. Moreover, the premise of this issue is that the PetroQuest joint venture would increase rates, whereas FPL's testimony demonstrates that there is a high probability that it would reduce rates because of the fuel savings that it would make possible. Regardless of where Issue 6 is addressed, FPL's position on this issue is "no." The first sentence of paragraph 6 in the Stipulation and Settlement Agreement provides expressly that "[n]othing shall preclude the Company from requesting the Commission to approve the recovery of costs (a) that are of a type which traditionally and historically would be, have been, or are presently recovered through cost recovery clauses or surcharges …." FPL's request to recover costs associated with the PetroQuest joint venture through the Fuel Clause is fully consistent with the Commission's traditional and historical practices under Order No. 14546 (fuel-saving measures) and Order Nos. PSC-02-1484-FOF-EI and PSC-08-0667-PAA-EI (hedging), because it is projected to provide net savings for customers and would serve as a valuable longer term physical hedge. (Forrest, Ousdahl, Deason)

**OPC:** Order No. PSC-13-0023-S-EI speaks for itself. OPC submits that this issue is contingent on the resolution of OPC's Motion to Dismiss. This is another threshold issue that should be addressed separately by the Commission at the November 25, 2014 Agenda, in conjunction with the Commission's decision on OPC's Motion to Dismiss. If OPC's Motion to Dismiss is denied, then to the extent the application of Order No. PSC-13-0023-S-EI is a legal issue, OPC reserves the right to brief this issue.

**FIPUG:** Yes. The parties to the December 12, 2013 Stipulation and Settlement Agreement negotiated a resolution to a litigated rate case that provided rate stability and predictability for the duration of the Settlement. Language was included in the Agreement to prevent "end runs" around the Agreement, and the associated rate stability and predictability. FPL's petition seeks to recover up to $750 million dollars per year in oil and gas exploration and production costs through the fuel clause. These type costs, if they were to be recovered, are more analogous to base rate type expenditures that would be "ordinarily" recovered in base rates. Accordingly, the following provision contained within the Agreement prevents the recovery of these costs through the fuel clause, at least until the term of the Settlement Agreement expires: "It is the intent of the Parties in this Paragraph 6 that FPL not be allowed to recover through cost recovery clauses increases in the magnitude of costs of types or categories (including but not limited to, for

example, investment in and maintenance of transmission assets) that have been and traditionally, historically and ordinarily would be recovered in base rates."

**FRF**: Agree with OPC.

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

**ISSUE 7**: **If the Commission concludes that FPL's petition has merit, should the Commission engage in rulemaking pursuant to section 120.54, Florida Statutes, and adopt rules addressing gas reserve guidelines and operations rather than adopting the Gas Reserves Guidelines as proposed by FPL?**

**POSITIONS**

**FPL**: No. The Commission should not engage in rulemaking rather than adopting the Gas Reserves Guidelines as proposed by FPL. Florida Statutes 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.…" (s. 120.52(16), F.S.). If approved by the Commission, FPL's proposed Gas Reserves Guidelines would not be a statement of general applicability. Only FPL has requested approval of an investment in gas reserves. No other electric utility in Florida has made a similar request and there is no evidence presented to indicate that gas reserve guidelines would be generally applicable to other public utilities. To adopt a rule for one electric utility would be improper. Furthermore, FPL needs the Gas Reserves Guidelines in place in time to act on them to save customers money as soon as possible. Rulemaking can take six months to a year or more. Such a delay would come at the cost of customers and would serve no legitimate purpose. Finally, the Commission has the ability to thoroughly review the proposed Gas Reserves Guidelines in this proceeding and does not need a separate proceeding to do so. (Forrest, Deason)

**OPC**: OPC's position is that the Commission lacks jurisdiction to approve any gas reserves investments or criteria for Guidelines. Similarly, it is OPC's position that the Commission lacks any express authority to engage in rulemaking to establish guidelines for gas reserves investments by investor owned utilities.

If, however, the Commission grants FPL's Petition as it relates to the Woodford Project, then rulemaking may be appropriate to establish guidelines applicable to all utilities for investing in gas reserves. It is OPC's position that an order in this docket cannot serve as a rule of general applicability for all regulated utilities. Prior to opening a rulemaking docket, the Commission should point to its express statutory authority to engage in rulemaking for gas reserves guidelines.

Like OPC's Motion to Dismiss and Issue 6 regarding the applicability of Order No. PSC-13-0023-S-EI to bar this Petition, this is a threshold issue as it relates to FPL's proposed Guidelines, and should be decided in conjunction with the Motion to Dismiss. If the Commission decides that it has jurisdiction over allowing FPL to invest in gas reserves, rulemaking is an available remedy but the OPC submits that the record in this case is compelling for the Petition to be denied and rulemaking not pursued.

**FIPUG:** Yes. Florida Statutes provides that statements of policy should be adopted through rulemaking. Rulemaking affords affected parties notice and the opportunity to participate in the development of any oil and gas exploration and production policy that would be applied prospectively. Such wide-ranging policy pronouncements should be put in place through rulemaking. FPL's "guidelines" are tantamount to proposed rules and should be considered in an appropriately noticed proceeding in accord with chapter 120, Florida Statutes.

**FRF:** Agree with OPC.

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

**ISSUE 8:** **What effect, if any, does the Commission's decision on Issue 3 have on the fuel cost recovery factor and GPIF targets/ranges for the period January 2015 through December 2015?**

**POSITIONS**

**FPL:** If the Commission approves recovery of costs associated with the PetroQuest joint venture through the Fuel Clause, FPL does not propose to revise the fuel cost recovery factors for the period January 2015 through December 2015. Rather, FPL would reflect both the costs and fuel savings associated with the PetroQuest joint venture in the actual/estimated and final true-ups for 2015. The GPIF targets/ranges table that was approved by stipulation at the October 22, 2014 hearing in this docket would change slightly as a consequence of approving cost recovery for the PetroQuest joint venture. As revised, the proper values for FPL in the table would be as follows:

GPIF TARGET AND RANGE SUMMARY
JANUARY THROUGH DECEMBER, 2015

| *Company (Exhibit)* | *Plant/Unit* | *EAF* | | | *ANOHR* | | | *Total Projected Max Fuel Savings ($000's)* |
|---|---|---|---|---|---|---|---|---|
| | | *Target* | *Maximum* | | *Target* | *Maximum* | | |
| | | *EAF ( % )* | *EAF ( % )* | *Savings ($000's)* | *ANOHR BTU/KWH* | *ANOHR BTU/KWH* | *Savings ($000's)* | |
| *FPL* | *Ft. Myers 2* | *84.1* | *86.6* | 4,621 | *7,197* | *7,064* | 3,193 | 7,814 |
| *(JCB-2)* | *Martin 8* | *84.7* | *87.2* | 5,003 | *6,922* | *6,789* | 3,875 | 8,878 |
| | *Manatee 3* | *90.3* | *92.8* | 4,322 | *6,921* | *6,804* | 2,802 | 7,124 |
| | *St. Lucie 1* | *83.5* | *86.5* | 10,302 | *10,405* | *10,277* | 4,324 | 14,626 |
| | *St. Lucie 2* | *84.8* | *87.8* | 8,486 | *10,288* | *10,142* | 4,019 | 12,505 |
| | *Turkey Point 3* | *83.2* | *86.2* | 8,459 | *11,143* | *10,972* | 4,506 | 12,965 |
| | *Turkey Point 4* | *93.6* | *96.6* | 9,317 | *11,002* | *10,821* | 5,305 | 14,622 |
| | *Turkey Point 5* | *91.1* | *93.6* | 5,530 | *7,011* | *6,861* | 2,862 | 8,392 |
| | *West County 1* | *89.8* | *92.3* | 5,343 | *6,794* | *6,648* | 5,234 | 10,577 |
| | *West County 2* | *78.8* | *81.8* | 5,692 | *6,866* | *6,726* | 4,367 | 10,059 |
| | *West County 3* | *90.0* | *92.0* | 3,955 | *6,703* | *6,568* | 4,388 | 8,343 |
| | *Total* | | | 71,030 | | | 44,875 | 115,905 |

(Ousdahl)- fuel cost recovery factors, Forrest-GPIF targets/ranges

**OPC**: No position at this time.

**FIPUG**: As the Commission should not permit recovery of oil and gas exploration and production costs to be recovered through the fuel clause, the Commission's decision to disallow such recovery should have no effect on the fuel cost recovery factor.

**FRF**: Agree with OPC.

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

**ISSUE 9**: **Should this docket be closed?**

**POSITIONS**

**FPL**: This docket should be closed after issuance of the final order approving the proposed PetroQuest joint venture for recovery through the Fuel Clause and approving FPL's proposed Guidelines.

**OPC**: Depends on the outcome of other issues to be decided in this proceeding and whether or not the Commission opens another docket to address those matters.

**FIPUG:** Yes.

**FRF:** Agree with OPC.

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

## IX. EXHIBIT LIST

| Witness | Proffered By | | Description |
|---|---|---|---|
| Direct | | | |
| Sam Forrest | FPL | SF-1 | Map of FPL's Existing Natural Gas Transportation |
| Sam Forrest | FPL | SF-2 | Map of U.S. Natural Gas Transportation Pipelines |
| Sam Forrest | FPL | SF-3 | Map of U.S. Shale Gas and Oil Production Locations |
| Sam Forrest | FPL | SF-4 | Drilling and Development Agreement (CONFIDENTIAL) |
| Sam Forrest | FPL | SF-5 | Tax Partnership Agreement (CONFIDENTIAL) |
| Sam Forrest | FPL | SF-6 | Petro Quest Agreement term Sheet (CONFIDENTIAL) |
| Sam Forrest | FPL | SF-7 | PetroQuest Transaction Production Profile |
| Sam Forrest | FPL | SF-8 | Results of FPL's Economic Evaluation (CONFIDENTIAL) |
| Sam Forrest | FPL | SF-9 | Proposed Transactional Guidelines (CONFIDENTIAL) |
| Kim Ousdahl | FPL | KO-1 | Memorandum of Understanding |
| Kim Ousdahl | FPL | KO-2 | Estimated Transfer price Calculation |
| Kim Ousdahl | FPL | KO-3 | Purchase Accounting Entry (Estimated) |
| Kim Ousdahl | FPL | KO-4 | Example Joint Interest Billing Statement ("JIB") |

| Witness | Proffered By | | Description |
|---|---|---|---|
| Kim Ousdahl | FPL | KO-5 | Year One Proforma Financial Statements |
| Kim Ousdahl | FPL | KO-6 | Sample of Supplemental Schedule Fuel Projection Filing |
| Kim Ousdahl | FPL | KO-7 | Condensed Chart of Accounts |
| Tim Taylor | FPL | TT-1 | Resume of Dr. Timothy D. Taylor |
| Tim Taylor | FPL | TT-2 | Difference Between Conventional and Unconventional Natural Gas Deposits |
| Tim Taylor | FPL | TT-3 | Historic and Projected Growth of Shale Gas Volumes |
| Tim Taylor | FPL | TT-4 | "Behind-Pipe" Zones |
| Tim Taylor | FPL | TT-5 | Map of the Woodford Shale |
| Tim Taylor | FPL | TT-6 | Location Map of the PetroQuest Acreage |
| Tim Taylor | FPL | TT-7 | EUR Type Curve Map |
| Tim Taylor | FPL | TT-8 | Projected Drill Schedule Map |
| Tim Taylor | FPL | TT-9 | Volume Forecast for FPL (CONFIDENTIAL) |
| Tim Taylor | FPL | TT-10 | Forrest A. Garb & Associates Report (CONFIDENTIAL) |
| D. Ramas | OPC | DMR-1 | Qualifications of Donna Ramas |
| D. Lawton | OPC | DJL-1 | Résumé of Daniel J. Lawton |
| D. Lawton | OPC | DJL-2 | Market Price Sensitivity* |
| D. Lawton | OPC | DJL-3 | Results, FPL's High Output/Reduced Market Price Case* |
| D. Lawton | OPC | DJL-4 | Woodford Results, 3.7% Annual Market Price Assumption* |
| D. Lawton | OPC | DJL-5 | NGI's 2014 North American Shale & Resource Plays Factbook (Excerpt) |

| Witness | Proffered By | | Description |
|---|---|---|---|
| Jeff Pollock | FIPUG | JP-1 | FPL Base Production Cost/Benefit Analysis with Escalated Production and Transportation Costs |
| Jeff Pollock | FIPUG | JP-2 | FPL Comparison of Projected Natural Gas Prices |
| Jeff Pollock | FIPUG | JP-3 | FPL Base Production Cost/Benefit Analysis Gas Price Forecast |
| Jeff Pollock | FIPUG | JP-4 | NorthWestern Energy Press Release |
| Rebuttal | | | |
| Sam Forrest | FPL | SF-10 | Customer Savings under FPL and Intervenor Gas Price Forecasts |
| Sam Forrest | FPL | SF-11 | Total Volume Traded on NYMEX in 2014 |
| Tim Taylor | FPL | TT-11 | Type Curve 1: 5.3 Bcf Estimated Ultimate Recovery (“EUR”) |
| Tim Taylor | FPL | TT-12 | Type Curve 2: 7.4 Bcf EUR |
| Kim Ousdahl | FPL | KO-8 | Environmental Clause Sample Form 42-4P |
| Terry Deason | FPL | JTD-1 | Curriculum vita |

*Indicates the exhibit contains information designated as Confidential.

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

## X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

## XI. PENDING MOTIONS

| Motion Document No. | Date | Description |
|---|---|---|
| 04702-14 | August 22, 2014 | OPC's Motion to Dismiss FPL's 6/25/14 Petition for Lack of Subject Matter Jurisdiction |
| 04713-14 | August 22, 2014 | OPC's request for Oral Argument on Motion to Dismiss FPL's 6/25/14 Petition for Lack of Subject Matter Jurisdiction |

## XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

## XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

## XIV. RULINGS

Florida Power & Light Company shall be allowed 10 minutes for opening statements. Intervenors shall have 20 minutes for opening statements to be divided as mutually agreed upon by the parties.

At the Prehearing Conference, FIPUG requested that the following issue be added for resolution in these proceedings: "Does FPL have a fiduciary duty to its ratepayers when pursuing the Woodford project and other similar oil and gas exploration and production projects?" The proposed issue is subsumed in the determination of the whether FPL's petition should be granted and FPL be allowed to recover the costs of the Woodford project through the fuel clause; thus, FIPUG's request to include this issue is denied.

It is therefore, hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 21st day of November, 2014.

JULIE I. BROWN
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.