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May 27, 2008

-VIA HAND DELIVERY -

Ms. Ann Cole, Director
Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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Re: Docket No. 080001-EI

Dear Ms. Cole:

I am enclosing for filing in the above docket the original and fifteen (15) copies of Florida Power & Light Company's prefiled rebuttal testimony of witnesses W. E. Avera and K. M. Dubin.

If there are any questions regarding this transmittal, please contact me at 561-304-5639.

Sincerely,

John T. Butler

OMP _____

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CFR _____

ECR 8 Enclosure

COL 1 cc: Counsel for Parties of Record (w/encl.)

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04472 MAY 27 08

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

Docket No. 080001-EI

I HEREBY CERTIFY that a true and correct copy of the Florida Power & Light Company's prefiled rebuttal testimony of W. E. Avera and K. M. Dubin was served by hand delivery (*) or United States mail on this 27th day of May 2008, to the following persons:

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By: 
John T. Butler

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 080001-EI
FLORIDA POWER & LIGHT COMPANY**

MAY 27, 2008

**IN RE: LEVELIZED FUEL COST RECOVERY
AND CAPACITY COST RECOVERY**

**REBUTTAL TESTIMONY OF:
W.E. AVERA
K.M. DUBIN**

DOCUMENT NUMBER-DATE

04472 MAY 27 8

FPSC-COMMISSION CLERK

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF WILLIAM E. AVERA**

4 **DOCKET NO. 080001-EI**

5 **May 27, 2008**

6 **Q. Please state your name and business address.**

7 A. William E. Avera, 3907 Red River, Austin, Texas, 78751.

8 **Q. By whom are you employed and in what capacity?**

9 A. I am a principal in Financial Concepts and Applications, Inc. ("FINCAP"), a
10 firm engaged in financial, economic, and policy consulting to business and
11 government.

12 **Q. Please describe your educational background and professional
13 experience.**

14 A. I received a B.A. degree with a major in economics from Emory University
15 and a Ph.D in economics and finance from the University of North Carolina at
16 Chapel Hill. I have held the Chartered Financial Analyst (CFA[®]) designation
17 for 30 years. Upon receiving my Ph.D., I joined the faculty at the University of
18 North Carolina and taught finance in the Graduate School of Business. I
19 subsequently accepted a position at the University of Texas at Austin where I
20 taught courses in financial management and investment analysis.

21
22 In 1977, I joined the staff of the Public Utility Commission of Texas ("PUCT")
23 as Director of the Economic Research Division. During my tenure at the
24 PUCT, I managed a division responsible for financial analysis, cost allocation
25 and rate design, economic and financial research, and data processing

1 systems, and I testified in cases on a variety of financial and economic
2 issues. Since leaving the PUCT I have been engaged as a consultant. I
3 have participated in a wide range of assignments involving utility-related
4 matters on behalf of utilities, industrial customers, municipalities, and
5 regulatory commissions. I have previously testified before the Federal
6 Energy Regulatory Commission ("FERC"), as well as the Federal
7 Communications Commission ("FCC"), the Surface Transportation Board
8 (and its predecessor, the Interstate Commerce Commission), the Canadian
9 Radio-Television and Telecommunications Commission, and regulatory
10 agencies, courts, and legislative committees in 39 states. I have testified in
11 over 260 regulatory cases, including several before the Florida Public Service
12 Commission ("FPSC" or "the Commission").

13
14 In 1995, I was appointed by the PUCT, with the approval of the Governor, to
15 the Synchronous Interconnection Committee to advise the Texas legislature
16 on the costs and benefits of connecting Texas to the national electric
17 transmission grid. In addition, I served as an outside director of Georgia
18 System Operations Corporation, the system operator for electric cooperatives
19 in Georgia.

20
21 I have served as Lecturer in the Finance Department at the University of
22 Texas at Austin and taught in the evening graduate program at St. Edward's
23 University for twenty years. In addition, I have lectured on economic and
24 regulatory topics in programs sponsored by universities and industry groups.

1 I have taught in hundreds of educational programs for financial analysts in
2 programs sponsored by the Association for Investment Management and
3 Research (now the CFA Institute), the Financial Analysts Review, and local
4 financial analysts societies. These programs have been presented in Asia,
5 Europe, and North America, including the Financial Analysts Seminar at
6 Northwestern University. I was elected Vice Chairman of the National
7 Association of Regulatory Commissioners ("NARUC") Subcommittee on
8 Economics and appointed to NARUC's Technical Subcommittee on the
9 National Energy Act. I have also served as an officer of various other
10 professional organizations and societies.

11

12 I have extensive experience with issues of fuel and purchased power
13 recovery, having led the PUCT staff review of the fuel adjustment clauses in
14 Texas. Since leaving PUCT I have been involved in a variety of issues
15 relating to fuel and purchased power recovery as a consultant and expert
16 witness for regulatory agencies, consumer groups, and utilities.

17 **Q. What is the purpose of your rebuttal testimony?**

18 A. The purpose of my testimony is to respond to the direct testimony of Mr. Hugh
19 Larkin, Jr., on behalf of the Office of Public Counsel ("OPC"). Mr. Larkin
20 recommends that Florida Power & Light Company ("FPL" or "the Company")
21 not be authorized to recover from customers \$6,163,000 of replacement
22 power costs due to an outage at Turkey Point Unit 3. He asserts that those
23 costs are not "fair, just and reasonable," as that term is used in Section
24 366.06(1) of the Florida Statutes and claims that FPL and its investors are
25 compensated for the risk of not recovering those costs by the return on equity

1 ("ROE") that this Commission authorizes FPL to earn. Mr. Larkin also asserts
2 that disallowing recovery of those costs would not be a disincentive for FPL
3 and other utilities to invest in low fuel-cost generating resources.

4 **Q. Please summarize the conclusions of your rebuttal testimony.**

5 A. My rebuttal testimony demonstrates that Mr. Larkin's recommendation would
6 represent a dramatic change in regulatory policy in Florida; one that would be
7 inconsistent with both established regulatory principles and investor
8 expectations. Mr. Larkin's recommendation would result in significantly
9 increased regulatory risk and create perverse incentives against investment
10 in generating resources with low energy costs, such as nuclear, wind and
11 solar. This would ultimately harm customers and the economy of the state. I
12 also show that Mr. Larkin's recommendation would have an adverse impact
13 on FPL's ability to earn a fair rate of return on equity ("ROE") and would
14 impair FPL's ability to attract capital.

15 **Q. Are there established regulatory policies related to FPL's ability to**
16 **recover replacement power costs?**

17 A. Yes. A fundamental tenet of the regulatory compact is that the utility is
18 entitled to an opportunity to recover from customers all reasonable and
19 necessary costs prudently incurred in providing service. In addition, it is
20 common to make a distinction between the regulatory policies for the
21 recovery of costs associated with fuel and purchased power from the other
22 costs of a utility. Regulatory policy in Florida recognizes this distinction, as an
23 OPC witness recently stated:

24 There is typically a distinction between base rates and fuel
25 rates. Base rates are set to recover a utility's non-fuel

1 operating costs plus a reasonable return on used and useful
2 utility investment....Fuel rates are established so that the utility
3 recovers its *actual prudently incurred costs no more and no*
4 *less.* (Rebuttal Testimony of Dan Lawton, Docket No. 060658-
5 EL, March 6, 2007, p. 3, emphasis added)

6 Under regulatory policy in Florida (as in most state and federal jurisdictions) a
7 utility is allowed to recover prudently incurred fuel and purchased power costs
8 without profit or loss.

9 **Q. Mr. Larkin proposes that FPL not recover its Turkey Point replacement**
10 **power costs because they are not “fair, just and reasonable,” even if**
11 **there has been no determination that those costs resulted from any**
12 **imprudence on FPL’s part. In your experience, where utilities recover**
13 **their fuel and purchased power costs through an actual-cost recovery**
14 **fuel adjustment clause like the one that is used in Florida, are costs**
15 **disallowed for recovery in the absence of a finding of imprudence?**

16 A. No. I believe it would be both unfair and very poor regulatory policy to do so.

17 **Q. Please explain why Mr. Larkin’s proposal would be unfair.**

18 A. Under Florida’s fuel adjustment clause, a utility never has an opportunity to
19 recover more than its actual fuel costs. In other words, there are never
20 “winnings” from a “good hand” in the recovery of fuel and purchased power
21 costs. The best outcome for the utility is that the dollars it has paid are fully
22 recovered from customers. If some of the utility’s expenditures are deemed
23 to have been imprudent, then those costs are not recovered from customers.
24 However, Mr. Larkin would have the Commission change the rules of the

1 game unfairly and retroactively, preventing FPL from recovering the actual
2 money paid for replacement power costs due the Turkey Point outage even if
3 FPL's actions were prudent. This would change the "game" of fuel and
4 purchased power recovery to one with no possibility of winning and an ever-
5 present potential for losing, even when the underlying causes of costs are not
6 due to imprudent actions of the utility. Under Mr. Larkin's proposed regulatory
7 policy, if forces beyond the reasonable control of the utility caused extra
8 costs, the utility would have to pay out money with no hope of recovering it
9 from customers. He points to nothing that would compensate utility investors
10 for participating in such a one-sided wager. This would be a fundamental and
11 ill-advised shift in regulatory policy.

12 **Q. What are the economic implications of a policy that prevents utilities**
13 **from recovering prudently incurred replacement power costs?**

14 A. The rational economic response by utilities would be to avoid situations
15 where high replacement power costs are possible. In other words, utilities
16 would have a major disincentive to employ any generation technology where
17 the energy component of costs is very low relative to the generation
18 resources that would provide replacement power (typically fossil fuel plants).
19 Therefore, Mr. Larkin's proposed new regulatory policy would create a
20 disincentive for nuclear power because nuclear fuel costs are low compared
21 to fossil fuel plants. It would likewise create economic biases against wind,
22 solar, or any other generating resource with low energy costs. This
23 disincentive would thwart the development and utilization of low fuel cost
24 generating sources and undermine the environmental imperative of seeking
25 low-emission alternatives to fossil fuels. If utilities respond to the perverse

1 signal implied by Mr. Larkin's recommendation by taking the rational response
2 of avoiding low fuel cost generating sources, utility customers in Florida will
3 pay more than necessary for utility service. The Florida economy would not
4 only suffer from electric costs that are higher than necessary, but the
5 environmental impact could harm the quality of life and limit the potential for
6 economic growth in the state as well.

7 **Q. Has the FPSC recognized the importance of the economic incentives**
8 **inherent in fuel and purchased power recovery?**

9 A. Yes. This Commission has been a national leader in recognizing that the
10 rules for fuel and purchased power recovery create economic incentives for
11 utility behavior. In 1979 when I was leading an effort at the PUCT to
12 introduce incentives into the fuel and purchased power mechanism, I visited
13 with senior staff and commissioners in Florida to learn from the policies
14 implemented here. The FPSC has continued to be a leader in mobilizing
15 incentives. Mr. Larkin would have this Commission adopt a policy on
16 replacement power that runs counter to Florida regulatory policy, creates a
17 perverse incentive that would encourage utilities to avoid generating sources
18 that have lower fuel costs, and distorts the economic and environmental
19 imperatives that would otherwise support alternatives to fossil fuels.

20 **Q. Do you agree with Mr. Larkin's contention that the disincentive resulting**
21 **from the risk of not recovering prudently incurred fuel costs will not**
22 **influence utility decisions on low fuel-cost generating alternatives?**

23 A. No. First of all, his contention directly contradicts the longstanding Florida
24 regulatory policy on incentives that I just described. Furthermore, he is
25 focusing narrowly on one factor that influences utility decision-making, while

1 ignoring another important factor. I would agree in principle with Mr. Larkin
2 that, all things being equal, a utility would want to choose generating
3 alternatives that minimize its cost of electricity. If Mr. Larkin's proposal were
4 adopted, however, all things most assuredly would not be equal. The lower
5 the fuel cost for a proposed generating unit relative to the fuel cost of a
6 utility's other generating resources, the more the utility would have at risk for
7 disallowance of replacement power costs whenever the proposed unit is
8 unexpectedly out of service. Under Mr. Larkin's proposal, the utility could not
9 protect itself against this risk by operating the unit prudently, because
10 replacement power costs might be disallowed even in the absence of
11 imprudence. While well-managed utilities such as FPL are always interested
12 in taking actions that help control the cost of electricity, their management
13 also must consider the financial risk that the investment community perceives
14 in those actions. If investing in low fuel-cost generating alternatives will be
15 perceived as increasing a utility's perceived financial risk because of the risk
16 of replacement power costs being disallowed, management cannot ignore
17 that perception. By significantly increasing that perceived risk, Mr. Larkin's
18 proposal will tip the balance away from investment in low fuel-cost generating
19 alternatives.

20 **Q. Mr. Larkin argues that his proposal is not really a change in the**
21 **Commission's policy on disallowance of replacement power costs,**
22 **because "[t]he Commission's history has been to examine each case**
23 **individually for reasonableness. That history would not suddenly**
24 **vanish simply because the Commission decides to disallow**
25 **unreasonable costs under one specific set of facts." Do you agree?**

1 A. No. As I discussed earlier, the Commission's consistent policy has been to
2 disallow replacement power costs only where they are the result of the utility's
3 imprudent actions. Mr. Larkin does not suggest, much less provide any
4 evidence, that the Turkey Point outage was the result of imprudence on FPL's
5 part. For the Commission to disallow replacement power costs without a
6 finding of imprudence would be a major change in policy, whether it was
7 implemented on a case-by-case basis or across the board.

8 **Q. Are FPL's investors currently being compensated for bearing the risks**
9 **associated with disallowance of prudently incurred fuel and purchased**
10 **power expenses?**

11 A. No. Regulators routinely shield utilities and their investors from exposure to
12 cost increases resulting from unforeseen events, including factors over which
13 they have no control, with respect to costs such as fuel and purchased power
14 that are recovered through pass-through adjustment clauses. Investors'
15 required rates of return for utilities are premised on this regulatory compact
16 that allows the utility an opportunity to recover reasonable and necessary
17 costs. And by sheltering utilities from exposure to extraordinary or
18 catastrophic events that are beyond the control of management, customers
19 benefit from lower capital costs than they would otherwise bear. Of course,
20 the corollary is also true – shifting the burden of extraordinary risks to
21 shareholders would have the effect of considerably increasing investors'
22 required rate of return on FPL securities.

23

24 There is no indication that shareholders included exposure to the costs of
25 replacement power from events beyond the reasonable control of the utility in

1 their assessment of FPL's investment risks or their required rate of return.
2 Rather, investors expect that FPL will be able to recover its fuel and
3 purchased power costs unless they are shown to be imprudent. Investors
4 rely on established regulatory policies in deciding whether or not to commit
5 capital to utilities, and in Florida the policy supporting recovery of all prudently
6 incurred fuel and purchased power expenses is well-established. For
7 example, OPC witness Todd F. Bohrmann testified in Docket No. 060658-EI:

8 Accordingly, the Commission structured a program in which
9 early collections could occur, but in which the Commission
10 would retain the ability to review prudence and reasonableness
11 until all facts had been presented and fully adjudicated. The
12 Commission initially established the principles of the
13 contemporary fuel clause in Order No. 12645, in Docket No.
14 830001, issued November 3, 1983 (Order No. 12645).
15 (Rebuttal Testimony of Todd F. Bohrmann, Docket No. 060658-
16 EI, March 6, 2007, page 3).

17 **Q. How would investors likely react to the change in FPSC policy proposed**
18 **by Mr. Larkin?**

19 A. Mr. Larkin's policy would add an open-ended risk to stock and bond
20 investments in FPL. For example, while FPL's nuclear program is universally
21 regarded as exemplary, mandated shutdowns in response to security threats
22 or a catastrophic event elsewhere in the U.S. would impose significant
23 reliance on wholesale power markets to meet energy shortfalls. FPL's
24 reliance on purchased power for a significant portion of its power
25 requirements also imposes increased vulnerability to supply disruptions,

1 especially in light of its relative geographic isolation on the Florida peninsula.
2 At present, investors understand that if FPL management acts imprudently,
3 the resulting replacement power costs cannot be recovered. But Mr. Larkin
4 would introduce a new risk – the inability to recover costs even if they were
5 prudently incurred. Given the size of FPL's nuclear program and purchased
6 power commitments, the magnitude of the new risk could be huge—having
7 implications for the cost and availability of capital urgently needed to meet
8 growth and environmental challenges facing FPL. Moreover, the effect of this
9 new policy would likely spill over to other utilities operating under the
10 jurisdiction of the FPSC since Mr. Larkin does not limit the applicability of his
11 new regulatory policy to FPL.

12 **Q. Mr. Larkin seems to suggest that, since the recommended disallowance**
13 **is relatively small, it would be “self defeating” for utilities not to seek**
14 **“cost-effective” generating alternatives (pp. 5-6). Is his argument**
15 **consistent with economic logic?**

16 **A.** Not at all. Mr. Larkin's argument ignores the forward-looking nature of
17 economic decisions. Utilities (and investors) would recognize this
18 disallowance as a signal that the Commission had changed its long-standing
19 policy of allowing recovery of replacement power costs unless there has been
20 a finding of imprudent acts. The relative size of the disallowance in this case
21 would not change the perception that there had been a fundamental shift in
22 regulatory policy in Florida. It would be economically rational and reasonable
23 for utilities and their investors to regard this change in policy as applying (or
24 potentially applying) to any and all future outages where there is no finding of
25 imprudent behavior. As a result, a utility making a significant commitment to

1 generating resources with low fuel costs would become exposed to
2 disallowances that could become huge, even if the utility did nothing
3 improper. Such unlimited exposure would represent a significant new risk to
4 investors in utilities under the jurisdiction of the Commission. Moreover, this
5 new policy would be a disincentive for FPL and other utilities under the
6 jurisdiction of the Commission to pursue generation alternatives that are
7 clearly in the long-term interest of customers, Florida, and the global
8 environment.

9 **Q. Should regulators and customers be concerned about investors'**
10 **perceptions?**

11 A. Absolutely. Investors' assessment of regulatory support and risk has a direct
12 impact on FPL's financial strength and ability to attract capital. FPL faces a
13 number of potential challenges that might require the relatively swift
14 commitment of considerable capital resources in order to maintain the high
15 level of service to which its customers have become accustomed. Ultimately,
16 it is customers and the service area economy that enjoy the rewards that
17 come from ensuring that the utility has the financial wherewithal to take
18 whatever actions are required to ensure a reliable energy supply.

19 **Q. Does this conclude your rebuttal testimony?**

20 A. Yes.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
FLORIDA POWER & LIGHT COMPANY
REBUTTAL TESTIMONY OF KOREL M. DUBIN
DOCKET NO. 080001-EI
May 27, 2008

Q. Please state your name and business address.

A. My name is Korel M. Dubin and my business address is 9250 West Flagler Street, Miami, Florida 33174.

Q. By whom are you employed and what is your position?

A. I am employed by Florida Power & Light Company (“FPL” or “the Company”) as Senior Manager of Purchased Power in the Resource Assessment and Planning Department.

Q. Have you previously testified in this docket?

A. Yes, I have.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to rebut the testimony of the Office of Public Counsel (OPC) witness Hugh Larkin, which opposes FPL’s recovery through the Fuel Cost Recovery (FCR) Clause of replacement power costs associated with the Turkey Point Unit 3 Outage Extension due to the Pressurizer Piping incident. My rebuttal testimony, together with that of FPL witness Avera, shows that Mr. Larkin’s rationale for opposing recovery of these replacement power costs is completely inconsistent with the Commission’s established

1 practice for applying the FCR and would provide no mechanism for
2 recovery of prudently incurred fuel costs. As discussed in my
3 testimony and that of FPL witness Avera, such a change in PSC
4 practice would be harmful to customers and the Company because it
5 would be a disincentive to investment in low energy cost generation
6 and would send inappropriate signals to the financial community that
7 could ultimately increase FPL's cost of capital and costs to
8 customers.

9 **Q. Mr. Larkin's testimony argues that FPL should not be allowed to**
10 **recover the \$6,163,000 in replacement power costs due to the**
11 **outage at Turkey Point Unit 3 because "[i]t is the position of the**
12 **Public Counsel and myself that the purchase power costs**
13 **resulting from the vandalism is not a normal fuel and purchase**
14 **power cost which should be recovered through the Fuel**
15 **Adjustment Clause." Is his argument consistent with**
16 **Commission practice concerning application of the FCR?**

17 **A.** No. The Commission has consistently based replacement power
18 cost recovery determinations on whether a utility's actions were
19 prudent in whatever circumstances led to the need for replacement
20 power. These prudence determinations essentially look to whether a
21 utility acted reasonably based on the information available to it at the
22 time, without the benefit of hindsight. So long as a utility's actions are
23 prudent by this measure, utilities have been permitted to recover the
24 replacement power costs. In my direct testimony, I presented two

1 examples (the 1984 St. Lucie Thermal Shield case and the 1996
2 review of an act of vandalism when a vehicle was lodged in one of
3 the discharge pipes) in which the Commission has evaluated actions
4 that led to outages and allowed recovery of the resulting replacement
5 power costs where the utility was found to have acted prudently.
6 There have been many other instances where the Commission has
7 evaluated the recovery of fuel and purchased power costs and the
8 standard for recovery has always been the same – prudence, where
9 a utility acted reasonably based on the information available to it at
10 the time, without the benefit of hindsight.

11
12 For example, in Docket No. 880001-EI, an intervenor, Occidental
13 Chemical Corporation (OCC) took the position that Florida Power
14 Corporation's (FPC's) final true-up amount should be reduced
15 because FPC allegedly had followed imprudent fuel procurement
16 practices, in that the utility did not act as quickly as it should have to
17 obtain necessary contracts to switch from oil to gas at its Suwannee
18 plant. In response the Commission rejected OCC's hindsight-based
19 assertion stating:

20 "Having reviewed the testimony on the gas contract issue, we
21 are unable to conclude, as OCC's witness urged, that FPC
22 was imprudent in negotiating its direct supply and
23 transportation contracts with South Georgia and its affiliates.
24 While the clear vision of hindsight suggests that it is possible

1 that FPC could have acted more expeditiously in concluding
2 the contract and that some benefit might have derived from it,
3 we are unable to find that the delays were so unreasonable,
4 or the potential benefit so clear, that the utility's actions rise to
5 the level of imprudence. In short, we will not here substitute
6 our judgment for that of FPC's management in conducting
7 negotiations with the utility's gas supplier nor in evaluating the
8 risks inherent in choosing the fuel supply for the Suwannee
9 plant. We, therefore, find that the \$2,340,058 adjustment to
10 FPC's final true-up amounts for the period April through
11 September 1987, should not be made, and we approve the
12 \$14,587,854 underrecovery proposed by FPC and agreed to
13 by Staff with the approval of Public Counsel."

14 Order No. 19042.

15
16 This case again demonstrates that the standard consistently used by
17 the Commission in determining cost recovery is prudence. Absent a
18 finding of imprudence, the Commission refused to disallow recovery
19 of fuel costs the utility had actually incurred to serve its customers.
20 Additionally, it is interesting to note that OPC approved of the actions
21 taken in this case supporting the Commission's practice.

22
23 Another example of the prudence standard is illustrated in Order No.
24 23232 in Docket No. 900001-EI where an outage at FPL's Turkey

1 Point Plant was being evaluated. In that case, OPC requested that
2 the Commission rule on OPC's proposed Findings of Facts, one of
3 which asserted: "there is no evidence in the record from which the
4 Commission can discern that FPL was prudent in failing to have
5 functional containment pressure switches in inventory." In response,
6 the Commission stated:

7 "We reject this finding. It is misleading as stated, in that the
8 Commission must focus on whether the utility was imprudent.
9 Further, we believe that the record supports a finding that the
10 failure to have containment pressure switches was not
11 imprudent under the circumstances."

12 This case again demonstrates the Commission's unwillingness to
13 disallow recovery of fuel costs absent a finding that the utility acted
14 imprudently.

15
16 Finally, the Commission affirmed its commitment to the prudence
17 standard in Order No. PSC -01-1665-PAA-EI in Docket No. 010001-
18 EI, which memorialized the process for midcourse corrections:

19 "The history of mid-course corrections made subsequent to
20 Order No. 13694 shows that this Commission has not chosen
21 to conduct evidentiary hearings on petitions for mid-course
22 corrections. Instead, we have granted or denied such
23 petitions through informal proceedings after testing the
24 reasonableness of actual and revised projected data

1 supporting a utility's petition for a midcourse correction. *In*
2 *each instance, we have recognized that a more thorough*
3 *prudence review can occur at the next regularly scheduled*
4 *hearing in the fuel clause docket. Thus, we retain jurisdiction*
5 *over the incremental (decremental) amounts collected*
6 *(refunded) as a result of the mid-course correction. If any*
7 *collected amounts are found after an evidentiary hearing to*
8 *have been incurred imprudently, we may require a utility to*
9 *refund such amounts, with interest, to the utility's ratepayers."*

10 (Emphasis added.)

11 **Q. Has the Florida Supreme Court opined regarding the issue of the**
12 **prudence standard and hindsight review?**

13 **A. Yes. In *Florida Power Corp. v. PSC*, 424 So.2d 745 (Fla. 1982)**
14 **(commonly referred to as the dropped test weight case), the Supreme**
15 **Court stated:**

16 "We are mindful of the NRC's notice of violation which
17 criticized plant procedures for the labeling and testing of
18 hooks, and of the report of FPC's nuclear general review
19 committee, (NGRC), which concluded that the repair work at
20 CR3 was safety-related. However, the NRC's notice and the
21 NGRC's report were both issued after the accident had
22 occurred. Hindsight should not serve as the basis for liability
23 in this instance...The purpose of the NGRC is to suggest
24 improvements in procedures after an accident occurs. Its

1 purpose is not to find fault. After careful review of the record
2 and of PSC's order no. 9775, we believe that the PSC relied
3 excessively on the NGRC report and the NRC notice of
4 violation. While these documents are undoubtedly useful for
5 numerous purposes, they should not serve as the primary
6 source of evidence in a fault-finding determination."

7 Furthermore, in *Florida Power Corp. v. PSC*, 456 So.2d 451 (Fla
8 1984), the Supreme Court stated:

9 "The lack of procedures which might have prevented the
10 accident, suggested by the PSC, amounts to an application of
11 the 20-20 vision of hindsight. The PSC has not shown that
12 FPC management acted unreasonably at the time. In short,
13 the PSC's findings are unsupported by competent substantial
14 evidence."

15 **Q. In addition to conflicting with PSC and Florida Supreme Court**
16 **precedent, does Mr. Larkin's testimony also conflict with other**
17 **OPC testimony in fuel related dockets?**

18 **A. Yes. In my direct testimony, I have already described OPC's support**
19 **for the prudence standard in the 1984 review of FPL's St. Lucie**
20 **thermal shield outage. And, earlier in my rebuttal testimony, I**
21 **referenced OPC's support for the prudence standard in the 1988**
22 **OCC case against FPC. More recently, in 2007, OPC's witness Dan**
23 **Lawton filed testimony in the coal cost recovery case involving**
24 **Progress Energy (Docket No. 060658-EI), which argued that:**

1 “No utility or investor can reasonably expect that imprudent
2 expenditures be reimbursed by customers. All parties in this
3 case agree that imprudent expenditures should not be passed
4 on to customers. Moreover, the investment community does
5 not expect imprudent expenditures to be passed on to the
6 customers...*First, the appropriate standard in this case is*
7 *prudence.*”

8 (Emphasis added).

9 **Q. Does OPC’s witness Larkin assert that FPL’s outage regarding**
10 **the Pressurizer Piping incident was imprudent?**

11 A. No. When asked if FPL was imprudent, he states that “[i]t is difficult to
12 assess specific responsibility or fault”. Moreover, he does not even
13 try to refute the detailed testimony of FPL witness Jones concerning
14 the actions that FPL took to protect against an event such as the
15 Pressurizer Piping incident or the prompt actions FPL took once that
16 incident was discovered. FPL witness Jones explains that FPL’s
17 actions at each step in this outage process were unquestionably
18 reasonable and prudent. FPL complied fully with NRC requirements
19 and industry standards in order to prevent improper access and
20 deliberate criminal acts, and took extensive actions to swiftly and
21 effectively investigate and inspect both Turkey Unit 3 and Unit 4 after
22 the drilled hole in the pressurizer piping was discovered, enabling
23 FPL to expeditiously return the plant to service with minimal
24 disruption in production.

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In view of the strong evidence from FPL that it performed prudently and the absence of evidence from OPC or any other party that FPL did not, what Mr. Larkin is asking the Commission to do is as troublesome as it is extraordinary: disallow recovery of actual, legitimately incurred replacement power costs to a utility that demonstrably has done nothing wrong.

Q. Mr. Larkin states that “FPL, to my knowledge, has chosen not to sue either the responsible person or the contractor who engaged the person responsible for the vandalism. In my mind, this raises serious questions as to why not?” Please comment on this statement.

A. Mr. Larkin ignores the direct testimony of FPL witness Jones that states:

“The FBI’s and NRC’s decisions not to pursue actions against the individual, coupled with the FBI’s unwillingness to release its final investigative report to FPL, has hindered our ability to evaluate potential claims arising out of the incident. FPL understands that the FBI has provided the NRC a copy of its report. FPL has requested the NRC, under the Freedom of Information Act, to disclose the report to FPL. If FPL is able to obtain the FBI's investigative report, an evaluation will be performed to determine whether the information it contains gives FPL a basis for recourse in connection with this

1 incident.”

2 In the event that FPL is able to recover any of the replacement power
3 costs, it will credit that recovery to customers through the FCR. This
4 is the same approach FPL took in the two cases referenced in my
5 direct testimony (the 1984 thermal shield outage and the 1996 outage
6 involving the submerged vehicle).

7 **Q. In Mr. Larkin’s testimony, he is asked “Are you, or the Public
8 Counsel, recommending a change in Commission Policy?” His
9 answer is “No....We are recommending that costs associated
10 with damage to the Company’s property which resulted from an
11 act of vandalism is a risk to be borne by stockholders.
12 Therefore, these costs should be disallowed.” Do you agree that
13 Mr. Larkin’s testimony is not requesting a change to
14 Commission policy?**

15 **A.** No. His position would be a clear, substantial and troublesome
16 change to Commission policy. Regardless of the cause of the outage
17 -- whether due to an act of vandalism such as a vehicle in the
18 discharge canal or a thermal shield repair -- the Commission policy
19 has always been to evaluate actions that led to outages, without the
20 benefit of hindsight, and allow recovery of the resulting replacement
21 power costs if the utility were found to have acted prudently. Mr.
22 Larkin’s testimony misses the point – the standard for recovery is
23 prudence. To deny recovery of actual replacement power costs even
24 where a utility has acted prudently would be completely inconsistent

1 with Commission policy, the purpose of the FCR Clause, and with
2 fundamental principles of ratemaking.

3 **Q. Do you agree with Mr. Larkin's contention that his proposed**
4 **change of Commission policy would not discourage utilities**
5 **from pursuing low fuel-cost generating alternatives such as**
6 **nuclear and renewable energy?**

7 A. No. He is simply ignoring reality. Such a change in Commission
8 policy would create a major disincentive to investments in any
9 technology that has very low energy costs, including solar and wind
10 as well as nuclear generation because companies investing in low
11 energy cost generation risk disallowance of replacement power costs
12 irrespective of whether such costs were the product of actions within
13 the utility's control. Investments in low energy cost generation are
14 important to helping achieve Florida's energy security, fuel diversity
15 and environmental (including climate change) goals.

16 **Q. Does this conclude your testimony?**

17 A. Yes, it does.