BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 120009-EI
FLORIDA POWER & LIGHT COMPANY

IN RE: NUCLEAR POWER PLANT COST RECOVERY AMOUNT TO BE RECOVERED DURING THE PERIOD JANUARY - DECEMBER 2013

REBUTTAL TESTIMONY & EXHIBITS OF:

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REBUTTAL TESTIMONY OF TERRY DEASON

DOCKET NO. 120009-EI

July 9, 2012

Q. Please state your name and business address.

A. My name is Terry Deason. My business address is 301 S. Bronough Street, Suite 200, Tallahassee, Florida 32301.

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

A. I am employed by the law firm Radey Thomas Yon and Clark as a Special Consultant specializing in the fields of energy, telecommunications, water and wastewater, and public utilities generally.

Q. Please describe your educational background and professional experience.

A. I have thirty-five years of experience in the field of public utility regulation spanning a wide range of responsibilities and roles. I served a total of seven years as a consumer advocate in the Florida Office of Public Counsel (OPC) on two separate occasions. In that role, I testified as an expert witness in numerous rate proceedings before the Florida Public Service Commission (Commission). My tenure of service at the Florida Office of Public Counsel was interrupted by six years as Chief Advisor to Florida Public Service Commissioner Gerald L. Gunter. I left OPC as its Chief Regulatory Analyst when I was first appointed to the Commission in 1991. I served as

Commissioner on the Commission for sixteen years, serving as its chairman on two separate occasions. Since retiring from the Commission at the end of 2006, I have been providing consulting services and expert testimony on behalf of various clients, including public service commission advocacy staff and regulated utility companies, before commissions in Arkansas, Florida, Montana, New York and North Dakota. My testimony has addressed various regulatory policy matters, including: regulated income tax policy; storm cost recovery procedures; austerity adjustments; depreciation policy; subsequent year rate adjustments; appropriate capital structure ratios; and prudence determinations for proposed new generating plants and associated transmission facilities. I have also testified before various legislative committees on regulatory policy matters. I hold a Bachelor of Science Degree in Accounting, summa cum laude, and a Master of Accounting, both from Florida State University.

Q. Are you sponsoring an exhibit?

A. Yes. I am sponsoring the following rebuttal exhibit:

- TD-1, Biographical Information for Terry Deason

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to respond to certain assertions and recommendations made by OPC witnesses Jacobs and Smith concerning Florida Power & Light Company's (FPL) extended power uprate (EPU) project. I also provide a contextual background for the consideration of

certain findings and recommendations contained in the Commission Staff June 2012 Review of Project Management Internal Controls.

Q. Do witnesses Smith and Jacobs make a recommendation on how the Commission should treat certain costs of the EPU project?

A. Yes. Based on a strained analysis of the relative cost effectiveness of the Turkey Point portion of the EPU project versus the St. Lucie portion of the EPU project provided by witness Smith, witness Jacobs recommends that the Commission disallow any costs exceeding a recent forecast of the cost of the Turkey Point portion of the project. In essence, witness Jacobs is recommending an arbitrary cap on otherwise prudently incurred costs.

Q. Should the Commission accept this recommendation?

A. No, the Commission should absolutely reject this recommendation.

Q. Why should the Commission reject witness Jacobs' recommendation?

A. A close examination of this recommendation quickly reveals that it is a rehashing and repackaging of arguments that have already been considered and rejected by the Commission. In addition, this recommendation runs grossly afoul of Florida's policy to promote nuclear generation and the standards of nuclear cost recovery contained in statute and rule.

Q. What is Florida's policy concerning nuclear generation?

A. Florida's policy is to promote electric utility investment in nuclear power plants and allow for the recovery in rates of all such prudently incurred costs. This is expressly stated in Rule 25-6.0423, F.A.C.

Q. What was the impetus for the Commission's adoption of Rule 25-6.0423, F.A.C.?

A. The most direct and obvious impetus was the enactment in 2006 of Section 366.93, Florida Statutes, which directed the Commission to "establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing and construction of a nuclear power plant."

Q. What was the purpose of this directive?

A. The Legislature determined that the risks of planning, constructing, and operating new nuclear generation were great and that the traditional regulatory model was insufficient to address those risks. The traditional regulatory model, which was used in the last round of new nuclear plants constructed in the United States, resulted in the disallowance of substantial investments based on reviews being undertaken only after plants were completed and requests were made to have them included in rate base. Often these reviews entailed upwards to a decade of costs that had been incurred. This caused several problems, not the least of which was the complexity and the span of time of the reviews. Another factor was the accumulated carrying costs of the investments and their resulting impact on rates. For investors to be willing to devote their capital to the planning, construction, and operation of new nuclear plants and for the benefits of new nuclear generation to be achieved, the Legislature determined that a different regulatory approach was needed. A key component of this new approach was to provide greater certainty to the amount and timing of recovery of all prudently incurred costs. Providing

regulatory certainty for the recovery of all prudently incurred costs avoided the unacceptable risk of a prudence determination being made only after many years of construction expenditures had been incurred. Pursuant to this directive, Rule 25-6.0423, F.A.C., established annual prudence determinations with much needed finality.

Q. Did the Commission specifically address the need for annual prudency reviews and the need for finality?

A. Yes, the matter received much discussion at the Commission's December 19, 2006, Agenda Conference during which the Commission voted to propose Rule 25-6.0423, F.A.C. The Public Counsel, while acknowledging his initial opposition to an annual prudence review, stated that "it's probably a good idea for you to take an annual look at this program, a pervasive look, and enter a judgment as to whether you believe the investment undertaken to that point is prudent or not prudent..." And in response to a question on the finality of those determinations, the Commission's General Counsel stated: "I think the concept of administrative finality doesn't let you go back and revisit decisions that were made looking at the record and doing the normal course of things." And the general sentiment of the Commission was encapsulated in this statement by Commissioner Arriaga:

> *Are we leaving doors open in the middle so that the companies may not avail themselves of the rules? I think the purpose here is to make sure that nukes are built, because we need that energy. We said it over and over and over, we need nuclear energy. Ten*

years from now if we don't have it, we are going to look back and say we did not do our job as Commissioners.

Q. Why is this finality needed?

A. It is needed to avoid the same concerns I expressed earlier with prudence reviews spanning unacceptable time frames and addressing costs that have accumulated over multiple years. Without the finality of the annual prudence determinations, it is possible and perhaps likely that investments in new nuclear generation would be subject to the same risks that plagued earlier investments in nuclear generation.

Q. What is Florida's policy on the finality of prudence determinations of nuclear costs?

A. Florida's policy is to review the prudence of incurred costs annually and to disallow those costs found to be imprudent. Costs determined to be prudent are no longer subject to disallowance or further prudence review.

Q. Were there any other statutory changes in 2006 setting forth Florida's policy concerning nuclear generation?

A. Yes, there were significant additions and clarifications made to Section 403.519, Florida Statutes. These changes work in conjunction with Section 366.93, Florida Statutes, and Rule 25-6.043, F.A.C., to further delineate and implement Florida's policy to promote nuclear generation.

Q. What were the notable changes to Section 403.519, Florida Statutes?

A. Section 403.519 establishes the Commission to be the exclusive forum for a determination of need of an electrical power plant subject to the Florida

Electrical Power Plant Siting Act. The notable changes did three things. First, nuclear generation was exempted from Rule 25-22.082, F.A.C., which is commonly referred to as "the bid rule." Second, standards and procedures for the determination of imprudence were established. And third, the Commission was specifically charged to consider whether a proposed nuclear generation facility would: "Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas."

Q. Was this last item a new consideration for the Commission?

A. No, while this specific statutory language was new, the Commission had long recognized the need for fuel diversity and the need to reduce Florida's dependence on fuel oil and natural gas.

Q. What has the Commission done to promote fuel diversity?

A. The Commission recognized the need for generation from "solid fuel" plants. As early as the 1980s the Commission encouraged utilities to purchase "coal-by-wire" from the Southern Company, which had coal capacity available. As part of this initiative, the Commission instituted an "Oil Back-out Clause" to provide a more rapid recovery of costs and thus to promote the use of coal generation. In 2005, FPL's and Progress Energy's contracts with the Southern Company came up for renewal and the Commission approved them.

The Commission also expressed concern over the increasing reliance on natural gas as a base-load generation fuel. As part of its review of 2004 Ten

Year Site Plans, the Commission stated, "based on current fuel mix and fuel price projections, Florida's utilities should explore the feasibility of adding solid fuel generation as part of future capacity additions."

Q. What was the response from the utilities?

A. The result was the inclusion of seven new coal plants in the reporting utilities' 2005 Ten Year Site Plans. JEA, Gainesville Regional Utilities and Seminole Electric Cooperative, Inc. each proposed to build new coal-fired generating units. The Florida Municipal Power Agency, JEA, Reedy Creek, and City of Tallahassee proposed joint ownership in a new coal-fired project. The Orlando Utilities Commission planned to build an integrated coal gasification combined cycle unit. And FPL planned to build two new coal-fired units.

Q. Were any of these planned units ever constructed?

A. No.

Q. What were the circumstances concerning FPL's two planned coal-fired units?

A. In response to the Commission's concerns over a lack of fuel diversity, FPL committed to file a feasibility study of coal-fired alternatives, which was filed in 2005. In 2006, in emphasizing its concern of a lack of fuel diversity, the Commission further stated that utilities should not assume the automatic approval of gas-fired plants in future need determination proceedings. In response to the Commission's direction, FPL then proposed building two ultra-supercritical pulverized coal units in Glades County to come on line in 2012 and 2013. These units were referred to as the Florida Glades Power

Park and were the subject of a proposed need determination before the Commission in 2007. While the project had attractive economics and significant reliability benefits, it was not approved by the Commission. The Commission cited concerns with the risks associated with new coal generation in light of anticipated greenhouse gas emissions regulations. FPL then found itself in a situation of meeting its need reliably and cost effectively and providing greater fuel diversity while minimizing greenhouse gas emissions. As a result, FPL proposed the EPU project on an expedited basis in order to meet these needs. The Commission issued an order approving FPL's need determination request in 2008.

Q. Why did the Commission encourage utilities to pursue solid fuel generation?

A. The Commission had two primary reasons. First was a desire to maintain the reliability of Florida's electric generation. Second was a desire to mitigate the impact of the volatility of natural gas prices and the resulting impact on customers.

Q. Why was the Commission concerned with the reliability of Florida's electric generation?

A. During the time the Commission was encouraging the pursuit of solid fuel generation, the Commission was particularly concerned with two fundamental facts impacting Florida's electric generation reliability, facts which continue to this day.

First is the fact that Florida is a peninsula with limited electric power import capability. In the early 1990s, the Commission attempted to address this constraint. Studies were performed to determine the feasibility of constructing additional transmission lines that would increase the import capability of coal-fired generation from the north. Cost effectiveness considerations, local opposition to construction, and ambiguity in wholesale pricing policies all led to the project not being constructed. And in subsequent years, the amount of coal-fired generation available for import declined.

The second fundamental fact is that Florida was then becoming and continues now to be increasingly dependent on gas fired generation to meet base-load requirements. This fact, coupled with Florida's dependency on two main natural gas pipelines into the state, added to the urgency.

Q. Are there instances when these concerns actually manifested themselves?

A. Yes, there are at least two. First, was an incident involving the Florida Gas Transmission line. In 1998, when natural gas supplied approximately only 15 percent of Florida's needs, a lightning strike and subsequent explosion at a compressor station near Perry, Florida, significantly reduced the pressurization and pumping capability in the pipeline. This in turn reduced the amount of gas fired generation available for dispatch and jeopardized the integrity of the grid. The Florida Department of Environmental Protection declared a thirty day state of emergency and stated: "The Department finds that the explosion has created a state of emergency threatening the public

health, safety, and welfare throughout portions of the state that are adversely affected by the curtailment of natural gas supply to various power plants in these areas." Resulting environmental waivers to allow increased output from non-gas generating units and the extensive use of load control programs were necessary to maintain integrity and prevent a large scale black-out. And then in 2005, Hurricanes Katrina and Rita shut down natural gas production in the Gulf of Mexico. As a result, gas importation into Florida was curtailed and utilities had to make public appeals for conservation and had to seek environmental waivers allowing them to burn back-up fuels such as oil.

Q. In response to previous questions you indicated that the Commission was also concerned with the price volatility of natural gas and its impact on customers. Could you explain?

A. While the price of natural gas is low at present, it still remains volatile and difficult to predict. This exposes utilities and their customers to the potential for large under-recoveries of fuel costs. This was particularly evident during the years 2001 through 2005. The Commission's Review of 2007 Ten-Year Site Plans addressed this and at page 10 stated:

> *Starting in 2001, natural gas prices began to increase nationwide despite electric utility forecasts of flat prices with moderate growth rates. For example, the actual cost of natural gas for FPL more than doubled between 2002 and 2006, rising from approximately $4.06 per MMBtu in 2002 to $8.81 per MMBtu in 2006. In 2005, hurricanes and tropical storms in the Gulf of Mexico caused short-*

term spikes as high as $12 per MMBtu due to gas supply disruptions. The effects of higher volatile gas prices can be dramatic on customer bills. Between 2003 and 2005, Florida's IOUs experienced record fuel cost under-recoveries compared to forecasts. Under-recoveries of fuel costs totaled approximately $670 million in 2003, $353 million in 2004, and $1.564 billion in 2005. The three years of higher than predicted fuel costs alone are approximately the same as the capital cost of a new coal-fired plant.

Q. How does the Commission's encouragement of solid fuel generation relate to FPL's EPU project?

A. All of the concerns earlier expressed by the Commission arising from an increasing reliance on natural gas continue today. Coal no longer appears to be an available means to increase solid fuel generation in Florida, primarily due to concerns with air emission impacts. Nuclear generation remains a cost-effective means to increase solid fuel generation without air emission impacts. The policy of the State of Florida recognizes this and encourages the development of additional nuclear generation. Relying on this policy and the procedures provided in law and rule, FPL has taken on the higher risk of constructing additional nuclear generation to comply with this policy and to address the Commission's long held concerns.

Q. Given Florida's policy of promoting nuclear and the procedures in law and rule, why is nuclear a higher risk option?

A. As a general rule, a higher capital cost and lower fuel cost alternative is a more risky choice than a lower capital cost and higher fuel cost alternative. This risk differential is further amplified in the case of nuclear construction and the unique challenges it brings. This is clearly stated by Commission Staff in its February 1, 2007, recommendation to the Commission to adopt new Rule 25-6.0423, F.A.C., which the Commission did by Order No. PSC-07-0240-FOF-EI:

> *No new nuclear power plants have been built in the United States in several decades. This is in part due to the extraordinary obstacles faced by electric utilities wishing to construct new nuclear power plants that are not present for other types of generation like coal and natural gas. These obstacles include the requirement of an intensive federal application, permitting, and review process, including oversight by the federal Nuclear Regulatory Commission; an extremely long permitting and construction period; and a public perception of nuclear generation which can pose significant challenges. The clear intent of the 2006 Florida Legislation is to promote new nuclear generation in Florida by providing Florida utilities the incentives needed to overcome these obstacles; the Legislature was clearly concerned that without these incentives, Florida utilities will continue to build natural gas and coal fired generation to meet Florida's growing energy needs. The provisions of the rule which staff is*

recommending for adoption were designed to address the intent of the statute and these concerns, which are unique to construction of nuclear power plants.

Q. In answer to a previous question, you stated that Section 403.519, Florida Statutes, was revised in 2006 to establish standards and procedures for the determination of prudence or imprudence. What is the standard in making these determinations?

A. After a new nuclear project has received a determination of need, the associated costs are not subject to challenge unless and only to the extent the Commission finds, based on a preponderance of the evidence adduced at a hearing, that certain costs were imprudently incurred. In addition, imprudence shall not include any cost increases due to events beyond the utility's control. Further, a decision to proceed with construction after a determination of need is granted "shall not constitute or be evidence of imprudence." This standard is contained in Section 403.519(4)(e), Florida Statutes, and is specifically referenced by Rule 25-6.0423, F.A.C.

Q. Is witness Jacobs' recommendation consistent with this standard?

A. It is not. Witness Jacobs' recommendation presents at least three inconsistencies with this standard. First, witness Jacobs' recommendation is not based on evidence that certain costs were imprudently incurred. Rather, his recommendation is based on an arbitrary cap on otherwise prudently incurred costs. Second, he ignores the statutory requirement that any costs incurred due to events beyond the utility's control are not subject to a finding

of imprudence. His arbitrary and still yet to be determined amount of disallowance is based upon the potential for costs to escalate beyond a recent forecast. It is possible that future cost escalations will be due to events beyond FPL's control. However, witness Jacobs would have the Commission ignore this possibility and impose an arbitrary cap with no determination of costs that were beyond the utility's control. And third, witness Jacobs' recommendation could effectively penalize FPL for proceeding with construction after a determination of need has been granted by the Commission. His recommendation that FPL be "put on notice" is tantamount to a warning that proceeding with construction may result in a disallowance of otherwise prudently incurred costs. This and the other inconsistencies I have identified puts witness Jacobs' recommendation in direct contravention of Florida's policy and standards to promote nuclear power.

Q. Are there other provisions contained in Section 403.519, Florida Statutes, which witness Jacobs' recommendation ignores?

A. Yes, there are at least two. Section 403.519(4)(a) recognizes that the estimate of costs of a nuclear power plant presented as part of a need determination is nonbinding. This provision recognizes that the same challenges, which make the construction of new nuclear power difficult and in need of policies to overcome them, also make the estimation of costs difficult. Thus it is clearly set forth in statute that the cost estimates are nonbinding. This same acknowledgement and rationale would logically extend to subsequent cost estimates. However, witness Jacobs' recommendation would have the

Commission make a recent cost estimate binding on FPL. And second, Section 403.519(4)(c) declares that no provision of Rule 25-22.082, F.A.C., shall be applicable to a nuclear power plant, including provisions for cost recovery. This provision recognizes that the many challenges of constructing nuclear power, such as the high capital costs, the many permits and licenses required, the length of construction, and the difficulty of estimating costs, make the bidding and cost control provisions of Rule 25-22.082, F.A.C., inapplicable. Yet witness Jacobs' recommendation ignores this and would impose a strict cost cap on the EPU project. It should also be noted that even Rule 25-22.082, F.A.C., when applied to conventional power plants allows a public utility an opportunity to demonstrate that costs over those identified in the need determination are prudently incurred. The provisions of Rule 25-6.043, F.A.C., specifically recognize the need for this and provide for annual prudence determinations of costs incurred. FPL has been demonstrating the prudency of costs annually since the inception of the EPU project. However, witness Jacobs' recommendation would violate this basic opportunity to show costs to be prudent and declare that costs in excess of a recent forecast will be assumed imprudent and denied recovery.

Q. In response to a previous question, you stated that witness Jacobs' recommendation is a rehashing and repackaging of previous recommendations that have been rejected by the Commission. Please explain.

A. Witness Jacobs' recommendation to impose a cost cap on the Turkey Point portion of the EPU project is basically a repackaging of two arguments that have previously been considered and rejected by the Commission.

Q. What is the first argument that has been presented and rejected by the Commission?

A. The first argument is that a risk sharing mechanism should be adopted for the recovery of nuclear project costs.

Q. How does witness Jacobs' recommendation constitute a risk sharing mechanism?

A. Whether called a "risk sharing" mechanism or a "cost cap," both approaches attempt to accomplish the same outcome of denying FPL the opportunity to recover all prudently incurred costs. As I explained earlier, the cost cap based on a recent projected cost of the Turkey Point portion of the EPU project does not attempt to determine the prudence of costs and thus is in conflict with the statutory and rule provisions encouraging nuclear projects. In Order No. 11-0095-FOF-EI, the Commission found that a risk sharing mechanism would not be consistent with the clear statutory requirement that all prudently incurred costs are recoverable. The Commission stated:

> *In conclusion, based upon the analysis above, we find that we do not have the authority under the existing statutory framework to require a utility to implement a risk sharing mechanism that would preclude a utility from recovering all prudently incurred costs resulting from the siting, design, licensing, and construction of a*

nuclear power plant. To do so would limit the scope and effect of a specific statute, and an agency may not modify, limit, or enlarge the authority it derives from the statute.

This same rationale would equally apply to witness Jacobs' current recommendation. Accordingly, his recommendation should be rejected.

Q. What is the second argument that has been presented and rejected by the Commission?

A. The second argument that has been rejected is that a break-even analysis should be used to cap otherwise prudently incurred costs. This argument was presented by witness Jacobs last year in Docket No. 110009-EI. Like his current recommendation, his break-even recommendation was premised on establishing a level of costs beyond which cost recovery would be denied.

Q. Did the Commission accept witness Jacobs' break-even recommendation?

A. No, the Commission rejected it. In Order No. PSC-11-0547-EI, the Commission specifically addressed the break-even recommendation and stated:

Based on the above analysis, we find that, as asserted by various FPL rebuttal witnesses, the methodology recommended by OPC witnesses Jacobs and Smith may result in hindsight review of prudence by use of future facts and assumptions to determine the extent of current or past prudently incurred costs. Moreover, the evolving nature of OPC's proposal, the possibility of inappropriate use of long-term planning, and the possibility of limiting FPL's

ability to recover costs previously deemed to be prudently incurred, are aspects that lead us to question the adequacy of record evidence in support of adopting the proposal. Accordingly, we reject the proposal of the OPC witnesses.

This same rationale would equally apply to witness Jacobs' current recommendation. Accordingly his recommendation should be rejected.

Q. If actual costs were ultimately to be higher than current projections, would those costs be unreasonable or imprudent?

A. Not necessarily. As I testified last year, and as recognized by the Commission in its 2011 NCRC order (Order No. PSC-11-0547-FOF-EI, p. 55), "there is nothing so magical" about a particular cost estimate (or a breakeven point) that would render costs incurred above that estimate unreasonable or imprudent, as witnesses Jacobs and Smith imply. Rather, it is the nature of the costs themselves and whether the costs have been prudently incurred that determines their recoverability.

Q. You have indicated that witness Jacobs' current recommendation is inconsistent with Commission precedent. Is his recommendation consistent with good regulatory policy?

A. No, it is not. Consistent with good regulatory policy, the Commission has the responsibility to balance the needs of investors and customers. Customers have the reasonable expectation to receive safe, reliable and efficient services and the responsibility to pay the cost of providing those services. Investors have the reasonable expectation that capital deployed to provide services to

customers will earn a reasonable return and will be eventually repaid in the form of depreciation allowances. In balancing these interests, the Commission should protect customers from imprudent costs and yet ensure that all prudent costs are recovered. Witness Jacobs' recommendation does not do this and would not be consistent with good regulatory policy.

Q. Do you have any other concerns with the recommendation to institute a cost cap as recommended by witness Jacobs?

A. Yes, I do. Aside from the fact that the Commission has found the rationale for a cost cap to be statutorily impermissible, and that it constitutes bad regulatory policy, I am concerned that adopting such an approach would have severe negative implications for future generation expansion plans in Florida.

Q. How so?

A. I believe good regulatory policy should encourage utilities to consider all cost-effective options for new generation. Having a full array of viable options can only serve to provide benefits to customers in terms of reliability, cost and fuel diversity. I fear that capping cost recovery at projected costs, as contemplated by witness Jacobs, will lead to only the lower-risk options being considered. In today's environment, this would mean an even greater reliance upon gas-fired generation. Of course, a potential over reliance on natural gas is one of the things the Legislature and Commission are attempting to mitigate by encouraging additional nuclear generation.

Q. Have you reviewed the Review of Florida Power & Light Company's Project Management Internal Controls for Nuclear Plant Uprate and

Construction Projects issued by the Commission's Office of Auditing and Performance Analysis and the recommendations to disallow costs associated with a Siemens work stoppage at St. Lucie Unit 2?

A. Yes, I have.

Q. Why does audit staff recommend a disallowance?

A. Audit staff believes the "costs specific to this event do not represent prudently incurred costs."

Q. Has the Commission established a standard for determining prudence?

A. Yes, the Commission's standard is well documented. It is:

> *The applicable standard for determining prudence is consideration of what a reasonable utility manager would have done in light of conditions and circumstances which were known or reasonably should have been known at the time decisions were made.*

Thus for matters that are within the control of utility management the standard is one of reasonableness, i.e., "what a reasonable utility manager would have done."

Q. Do you agree with audit staff's recommendation to disallow costs associated with the Siemens work stoppage?

A. I neither agree nor disagree. The acceptance or rejection of this recommendation hinges on some critical factual determinations and the Commission's interpretation of those facts. There also are policy implications associated with this recommendation. However, I do have some concerns which may be helpful in this determination.

Q. Please explain.

A. In stark contrast to witness Jacobs' recommendation to disallow costs based on an arbitrary cost cap in contravention of Florida's policy to promote nuclear power, audit staff engaged in a review of specific costs to judge their reasonableness and ultimately their prudency. Therefore, my criticisms of witness Jacobs' recommendation as being contrary to Florida's policy do not apply to audit staff's approach. Nevertheless, I have a concern that the audit staff's recommendation is not entirely consistent with the Commission's reasonableness standard and Commission case precedent.

Q. How is the recommendation not consistent with Commission case precedent?

A. Whether the recommendation is consistent or inconsistent with Commission case precedent depends on the ultimate facts. However, my review of the facts in the Review of Project Management Internal Controls raises some doubt.

Q. What is the Commission case precedent to which you refer?

A. I am referring to *Florida Power Corp. v. Public Service Commission, 456 So.2d 451 (Fla. 1984).*

Q. What were the circumstances of this Florida Supreme Court Case?

A. At issue was whether Florida Power Corporation (predecessor to Progress Energy of Florida) should have to bear the cost of delay in service due to a damaged fuel assembly caused by a dropped test weight at its Crystal River Unit 3 nuclear power plant. The Commission found imprudence because

Florida Power Corporation had failed to adequately plan and supervise the move of the test weight device based on a lack of various procedures which might have been employed. The Court reversed the Commission's finding of imprudence. The Court ruled that a statement by an employee concerning the adequacy of internal procedures cannot properly be used as evidence of imprudence, because it was made in response to questions concerning the deficiencies in Florida Power Corporation's safety-related procedure regarding the labeling of hooks. The Court continued by stating:

> *The lack of procedures which might have prevented the accident, suggested by the PSC, amounts to an application of the 20-20 vision of hindsight. The PSC has not shown the FPC management acted unreasonably at the time.*

Q. How does this case relate to the disallowance recommended for the Siemens work stoppage?

A. Both the dropped test weight disallowance and the recommended Siemens work stoppage disallowance are based on a review of post incident reports and the reasonableness of management actions based upon that backward looking review. In addition, they both are based upon a finding of a lack of procedures that may have prevented the incidents.

Q. How does the use of post incident reports impact a determination of imprudence?

A. The Supreme Court expressed misgivings about doing so. In its initial opinion in the dropped test weight case in *Florida Power Corporation v. Public Service Commission, 424 So. 2d 745 (Fla. 1982)*, the Court stated:

> *After a careful review of the record and of the PSC's order no. 9775, we believe that the PSC relied excessively on the NGRC report and the NRC notice of violation. While these documents are undoubtedly useful for numerous purposes, they should not serve as the primary source of evidence in a fault-finding determination. Such use of these documents would be analogous to using evidence of subsequent repairs and design modifications for the purpose of showing that the original design was faulty. This would clearly violate Florida's strong public policy in favor of post accident investigations.*

Q. Does a finding of a lack of procedures necessarily mean that management has been imprudent?

A. No, the Supreme Court addressed this and found that a lack of procedures does not necessarily mean that management has been imprudent. It all falls to a judgment of what was reasonable for management to have foreseen as being a possible incident and what procedures management should have adopted before the incident ever took place. And the use of post incident reports which recommend the adoption of new procedures to prevent similar occurrences should not be the only evidence to make an ultimate determination of imprudence.

Q. In response to an earlier question you indicated that the recommendation to disallow costs associated with the Siemens work stoppage also had policy implications. Could you explain?

A. Any recommended disallowance needs to be considered in light of Florida's policy of encouraging nuclear generation. While clearly imprudent costs should be rejected for cost recovery, the disallowance of all costs associated with a third party vendor based on a hindsight review of an incident report, needs close scrutiny and judicious application of the reasonableness standard applied by the Commission.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

Terry Deason*

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- Office of the Public Counsel, Chief Regulatory Analyst, 1987 – 1991
- Florida Public Service Commission, Executive Assistant to the Commissioner, 1981 – 1987
- Office of the Public Counsel, Legislative Analyst II and III, 1979 - 1981
- Ben Johnson Associates, Inc., Research Analyst, 1978 – 1979
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- National Association of Regulatory Utility Commissioners (NARUC) 2002 *Member, Rights-of-Way Study*
- Nuclear Waste Strategy Coalition, 2000 – 2006, *Board Member*
- Federal Energy Regulatory Commission (FERC) South Joint Board on Security Constrained Economic Dispatch, 2005 – 2006, *Member*
- Southeastern Association of Regulatory Utility Commissioners, 1991 – 2006, *Member*
- Florida Energy 20/20 Study Commission, 2000 – 2001, *Member*
- FCC Federal/State Joint Conference on Accounting, 2003 – 2005, *Member*
- Joint NARUC/Department of Energy Study Commission on Tax and Rate Treatment of Renewable Energy Projects, 1993, *Member*
- Bonbright Utilities Center at the University of Georgia, 2001, *Bonbright Distinguished Service Award Recipient*
- Eastern NARUC Utility Rate School - Faculty Member