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July 5, 2013

**VIA HAND DELIVERY**

Ms. Ann Cole  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
Betty Easley Conference Center  
2540 Shumard Oak Boulevard, Room 110  
Tallahassee, FL 32399-0850

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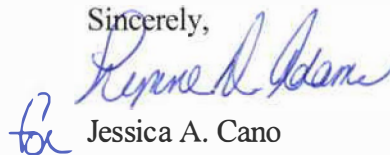
Re: Docket No. 130009-EI; Nuclear Cost Recovery Clause

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are an original and seven (7) copies of its Prehearing Statement in the above referenced docket. Also included in this filing is a compact disc containing FPL's Prehearing Statement in Microsoft Word format.

Please contact me if there are any questions regarding this filing.

Sincerely,

  
Jessica A. Cano

Enclosure  
cc: Parties of Record

COM \_\_\_\_\_  
AFD 1  
APA 1  
ECO \_\_\_\_\_  
ENG 1  
GCL 1  
IDM 3+cb  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Cost    )  
Recovery Clause    )

Docket No. 130009-EI  
Filed: July 5, 2013

**FLORIDA POWER & LIGHT COMPANY'S PREHEARING STATEMENT**

Florida Power & Light Company ("FPL" or the "Company"), pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code, hereby files with the Florida Public Service Commission ("FPSC" or "Commission") its Prehearing Statement in connection with its Petition For Approval of Nuclear Power Plant Cost Recovery True-Up for the Period Ending December 2012, filed March 1, 2013, and its Petition For Approval of Nuclear Power Plant Cost Recovery Amount for the Year 2014, filed May 1, 2013, and states:

**I. FPL WITNESSES**

**A. Direct Testimony**

| <b>Witness</b>             | <b>Subject Matter</b>   | <b>Issues</b>                |
|----------------------------|---|------------------------------|
| Steven D. Scroggs<br>FPL   | Describes the deliberate, step-wise process FPL is employing in the development of the Turkey Point 6 & 7 project ("Turkey Point 6 & 7"); provides a description of key project management decisions and internal project budget, schedule, and cost controls; supports the prudence of actual costs incurred for the project during 2012, and the reasonableness of FPL's actual/estimated costs in 2013 and projected costs for 2014. | 4, 5, 5A, 5B, 6, 7, 8, 9, 10 |
| Nils Diaz<br>The ND2 Group | Determines that FPL's continued pursuit of a Combined Operating License (COL) for Turkey Point 6 & 7 was prudent in 2012 in light of certain nuclear industry and project-specific considerations.  | 8                            |

|  |  |  |
|--|--|--|
| Terry O. Jones<br>FPL                                  | Summarizes the successful completion of the Extended Power Uprate (“EPU”) project and the many benefits the EPU project is providing for customers; presents and explains the key management decisions and EPU project activities, challenges encountered, and costs incurred in 2012 and 2013; provides a description of key project management decisions and internal project budget, schedule, and cost controls; supports the prudence of actual costs incurred for the project during 2012, and the reasonableness of FPL’s actual/estimated costs in 2013. | 13, 14, 15, 16                           |
| Albert M. Ferrer<br>Burns and Roe<br>Enterprises, Inc. | Conducts an independent review of the execution of the EPU related project activities; concludes that FPL’s project management actions during 2012 were prudent.   | 13, 14                                   |
| John J. Reed<br>Concentric Energy<br>Advisors, Inc.    | Presents his review of FPL’s system of internal controls as it relates to the Turkey Point 6 & 7 project in 2012 and the EPU project in 2012; concludes that FPL’s costs were prudently incurred.  | 7, 8, 13, 14                             |
| Winnie Powers<br>FPL                                   | Explains FPL’s compliance with Rule 25-6.0423, F.A.C.; discusses the accounting controls FPL relies upon to help ensure only correct costs are appropriately charged to the projects; computes and presents FPL’s total request for recovery during the January-December 2014 period.  | 6, 7, 8, 9, 10,<br>13, 14, 15, 16,<br>17 |
| Steven R. Sim<br>FPL                                   | Demonstrates the continued long-term economic feasibility of the Turkey Point 6 & 7 project; describes the analytical approach used for the long-term economic feasibility analysis including updated assumptions and forecasted ranges of projected fuel costs and environmental compliance costs; describes the customer benefits projected to be provided by Turkey Point 6 & 7 and currently being provided by the completed EPU project.  | 5  |

**B. Rebuttal Testimony**

| <b>Witness</b>        | <b>Subject Matter</b>  | <b>Issues</b> |
|-----------------------|--|---------------|
| Terry O. Jones<br>FPL | Rebuts OPC’s claims that FPL understated its April 27, 2012 EPU costs and understated EPU project costs at the time of the 2012 hearing; demonstrates the \$163 million in errors in Office of Public Counsel (“OPC”) witness Jacobs’s \$214.9 million claim; emphasizes that the total EPU project cost forecast remained within the filed non-binding cost estimate range at the time of the hearing; reiterates | 11            |

|   |   |    |
|---|---|----|
|   | why it is wrong to attempt to examine the Turkey Point portion of the EPU project in isolation from the rest of the EPU project that was approved by the Commission to meet customers' capacity and energy needs.   |    |
| Steven R. Sim<br>FPL                                | Explains the many problems with OPC witness Jacobs's attempted economic analysis, including that the Turkey Point 6 & 7 "breakeven cost" cannot be used to draw any meaningful conclusion about the cost effectiveness of a portion of the EPU project.   | 11 |
| John J. Reed<br>Concentric Energy<br>Advisors, Inc. | Rebuts OPC witness Jacobs's recommended disallowance by explaining that it would violate the prudence standard by disallowing costs not caused by any imprudent action or decision by FPL.  | 11 |
| Terry Deason<br>Radey Thomas Yon<br>and Clark       | Explains that OPC witness Jacobs's recommended penalty is contrary to the policy considerations underlying the NCR statute and rule; explains that each argument and assertion made by witness Jacobs is a repackaging of prior arguments and assertions rejected by the Commission; demonstrates that FPL would be owed a bonus of \$470 million for the St. Lucie portion of the EPU project if witness Jacobs's recommendation were to be applied symmetrically. | 11 |

## II. EXHIBITS

### A. Direct

| Exhibits | Witness                            | Sponsor | Description  |
|----------|------------------------------------|---------|--|
| SDS-1    | Steven D. Scroggs<br>Winnie Powers | FPL     | T- Schedules, Turkey Point 6 & 7 Site Selection and Pre-Construction Costs |
| SDS-2    | Steven D. Scroggs                  | FPL     | Turkey Point 6&7 Licenses, Permits and Approvals                           |
| SDS-3    | Steven D. Scroggs                  | FPL     | Turkey Point 6 & 7 Procedures and Work Instructions                        |
| SDS-4    | Steven D. Scroggs                  | FPL     | Turkey Point 6 & 7 Reports   |
| SDS-5    | Steven D. Scroggs                  | FPL     | Turkey Point 6 & 7 Project Instructions and Forms                          |
| SDS-6    | Steven D. Scroggs                  | FPL     | Turkey Point 6 & 7 Summary Tables of the 2012 Expenditures                 |

|        |                                    |     |   |
|--------|------------------------------------|-----|---|
| SDS-7  | Steven D. Scroggs                  | FPL | Turkey Point 6 & 7 Site Selection and Pre-construction NFRs |
| SDS-8  | Steven D. Scroggs<br>Winnie Powers | FPL | Turkey Point 6 & 7 Expenditure Summary Tables               |
| SDS-9  | Steven D. Scroggs                  | FPL | Turkey Point 6 & 7 Project Benefits at a Glance             |
| SDS-10 | Steven D. Scroggs                  | FPL | New Nuclear Energy Timeline                                 |
| NJD-1  | Nils J. Diaz                       | FPL | Summary Resume of Nils J. Diaz, PhD                         |
| TOJ-1  | Terry O. Jones<br>Winnie Powers    | FPL | 2012 EPU Construction Costs                                 |
| TOJ-2  | Terry O. Jones                     | FPL | EPU Workforce Investment Summary and Cost Recovery Summary  |
| TOJ-3  | Terry O. Jones                     | FPL | St. Lucie and Turkey Point Plant Photographs                |
| TOJ-4  | Terry O. Jones                     | FPL | Illustration of Modifications by Unit                       |
| TOJ-5  | Terry O. Jones                     | FPL | EPU Project Electrical Output Status                        |
| TOJ-6  | Terry O. Jones                     | FPL | EPU Project Schedule Overview                               |
| TOJ-7  | Terry O. Jones                     | FPL | 2012 EPU Cost Variance Drivers                              |
| TOJ-8  | Terry O. Jones                     | FPL | EPU Work Activities List as of December 31, 2012            |
| TOJ-9  | Terry O. Jones                     | FPL | EPU Equipment Placed In Service In 2012                     |
| TOJ-10 | Terry O. Jones                     | FPL | EPU EPPI Index as of December 31, 2012                      |
| TOJ-11 | Terry O. Jones                     | FPL | EPU Project Reports 2012                                    |
| TOJ-12 | Terry O. Jones                     | FPL | Summary of 2012 EPU Construction Costs                      |
| TOJ-13 | Terry O. Jones                     | FPL | EPU NFR Schedules   |
| TOJ-14 | Terry O. Jones<br>Winnie Powers    | FPL | EPU MWe   |
| TOJ-15 | Terry O. Jones                     | FPL | Top Industry Practice Award                                 |
| TOJ-16 | Terry O. Jones                     | FPL | 2013 EPU Project Benefits                                   |
| TOJ-17 | Terry O. Jones                     | FPL | Southeast Florida Reliability Impact                        |

|        |                |     |   |
|--------|----------------|-----|---|
| TOJ-18 | Terry O. Jones | FPL | Workforce Summary   |
| TOJ-19 | Terry O. Jones | FPL | EPU Timeline  |
| TOJ-20 | Terry O. Jones | FPL | EPU Project Safety Performance  |
| TOJ-21 | Terry O. Jones | FPL | Turkey Point Unit 4 EPU Scope   |
| TOJ-22 | Terry O. Jones | FPL | EPU Equipment Placed in Service in 2013   |
| TOJ-23 | Terry O. Jones | FPL | EPU Project Work Activities List  |
| TOJ-24 | Terry O. Jones | FPL | FPL Investment Versus Clause Recovery   |
| TOJ-25 | Terry O. Jones | FPL | Nuclear Cost Recovery Bill Impact   |
| TOJ-26 | Terry O. Jones | FPL | Summary of 2013 Extended Power Uprate Construction Costs  |
| JJR-1  | John J. Reed   | FPL | Resume of John J. Reed  |
| JJR-2  | John J. Reed   | FPL | Testimony of John J. Reed<br>Regulatory Agencies  |
| JJR-3  | John J. Reed   | FPL | Total Production Cost of Electricity,<br>1995 – 2011  |
| JJR-4  | John J. Reed   | FPL | Index of the EPU Projects' Periodic<br>Meetings   |
| JJR-5  | John J. Reed   | FPL | PTN 6 & 7 Organization Charts   |
| WP-1   | Winnie Powers  | FPL | Final True-Up of 2012 Revenue<br>Requirements   |
| WP-2   | Winnie Powers  | FPL | Turkey Point 6 & 7 2012 Site Selection<br>and Pre-construction Costs and Uprate<br>Project 2012 Construction Costs                      |
| WP-3   | Winnie Powers  | FPL | 2012 Base Rate Revenue Requirements   |
| WP-4   | Winnie Powers  | FPL | 2012 Incremental Labor Guidelines   |
| WP-5   | Winnie Powers  | FPL | 2013 Revenue Requirements (To be<br>Collected in 2014)  |
| WP-6   | Winnie Powers  | FPL | 2013 Base Rate Revenue Requirements   |
| WP-7   | Winnie Powers  | FPL | St. Lucie & Turkey Point Uprate<br>Project Revenue Requirements on 13<br>Month Average of Incremental 2012<br>Plant Placed into Service |

|       |               |     |  |
|-------|---------------|-----|--|
| WP-8  | Winnie Powers | FPL | St. Lucie and Turkey Point Uprate Project Actual/Estimated Net Book Value of Retirements, Removal Cost & Salvage for Plant Placed into Service in 2012   |
| SRS-1 | Steven R. Sim | FPL | Summary of Results from FPL's 2013 Feasibility Analyses of the Turkey Point 6 & 7 Project (Plus Results from Additional Analyses)  |
| SRS-2 | Steven R. Sim | FPL | Comparison of Key Assumptions Utilized in the 2012 and 2013 Feasibility Analyses of the Turkey Point 6 & 7 Project: Projected Fuel Costs (Medium Fuel Cost Forecast)   |
| SRS-3 | Steven R. Sim | FPL | Comparison of Key Assumptions Utilized in the 2012 and 2013 Feasibility Analyses of the Turkey Point 6 & 7 Project: Projected Environmental Compliance Costs (Env II Forecast)   |
| SRS-4 | Steven R. Sim | FPL | Comparison of Key Assumptions Utilized in the 2012 and 2013 Feasibility Analyses of the Turkey Point 6 & 7 Project: Summer Peak Demand Load Forecast   |
| SRS-5 | Steven R. Sim | FPL | Projection of FPL's Resource Needs Through 2025  |
| SRS-6 | Steven R. Sim | FPL | Comparison of Key Assumptions Utilized in the 2012 and 2013 Feasibility Analyses of the Turkey Point 6 & 7 Project: Other Assumptions  |
| SRS-7 | Steven R. Sim | FPL | The Two Resource Plans Utilized in FPL's 2013 Feasibility Analyses of Turkey Point 6 & 7   |
| SRS-8 | Steven R. Sim | FPL | 2013 Feasibility Analyses Results for the Turkey Point 6 & 7 Project: Total Costs, Total Cost Differentials, and Breakeven Costs for All Fuel and Environmental Compliance Cost Scenarios in 2013\$ (millions, CPVRR, 2013 - 2063) |
| SRS-9 | Steven R. Sim | FPL | EPU Project Benefits to FPL's Customers  |

## B. Rebuttal Exhibits

| Exhibits | Witness        | Sponsor | Description  |
|----------|----------------|---------|--|
| TOJ-27   | Terry O. Jones | FPL     | OPC Witness Jacobs's \$163 Million of Errors in \$215 Million False Accusation                             |
| SRS-10   | Steven R. Sim  | FPL     | An Example of How Present Value Results From Projects With Different In-Service Dates Are Not Transferable |
| TD-1     | Terry Deason   | FPL     | Biographical Information for Terry Deason  |
| TD-2     | Terry Deason   | FPL     | Jacobs's Non-symmetrical Analysis for Turkey Point Applied to St. Lucie                                    |

In addition to the above pre-filed exhibits, FPL reserves the right to utilize any exhibit introduced by any other party. FPL additionally reserves the right to introduce any additional exhibit necessary for rebuttal, cross-examination, or impeachment at the final hearing.

## II. STATEMENT OF BASIC POSITION

### A. Legal and Regulatory Framework

Section 403.519(4), Florida Statutes, Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code ("the Rule") establish the legal and regulatory framework for the recovery of costs in the development of nuclear generation in Florida.<sup>1</sup> Section 403.519(4), Florida Statutes, applies to the determination of need for a nuclear-fueled power plant. This section emphasizes the Florida Legislature's desire to improve fuel diversity, reduce dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid in Florida; establishes the prudence standard that shall be applied in nuclear cost recovery proceedings; and makes clear that a utility is entitled to recover all prudently incurred costs. Specifically, the statute states that after a

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<sup>1</sup> Section 366.93, Florida Statutes, was amended by Senate Bill 1472. These amendments became effective July 1, 2013, while the instant case was pending. Accordingly, the amendments will apply to future Nuclear Cost Recovery proceedings initiated after July 1, 2013.



determination of need is granted, “the right of a utility to recover any costs incurred prior to commercial operation, including but not limited to costs associated with the siting, design, licensing, or construction of the plant...shall not be subject to challenge” unless a preponderance of the evidence supports a finding that “certain costs” were imprudently incurred. The statute further makes clear that (i) proceeding with the construction of the nuclear power plant following an order by the Commission approving the need for it “shall not constitute or be evidence of imprudence” and (ii) “imprudence shall not include any cost increases due to events beyond the utility’s control.” *See* § 403.519(4)(e), Fla. Stat.

Section 366.93, Florida Statutes, requires the Commission to establish by rule a cost recovery framework that promotes utility investment in nuclear power plants and allows for the recovery of all prudently incurred preconstruction costs and the carrying costs on construction cost balances. It also entitles utilities to increase their base rates upon commercial operation of the nuclear power plant, requires annual reporting of budgeted and actual costs, and provides for cost recovery should the project be cancelled. *See* §366.93(4), (5), and (6), Fla. Stat., respectively. In response to this legislative direction, the Commission promulgated Rule 25-6.0423, Florida Administrative Code (“the Rule”). The stated purpose of the Rule is to establish an alternative cost recovery mechanism that promotes utility investment in nuclear power plants and allow for recovery of all prudently incurred costs. It also provides for the recovery of reasonable actual/estimated costs for the current year and reasonable projected costs for the following year.

FPL has two nuclear projects that qualify for cost recovery under the Nuclear Cost Recovery (“NCR”) process described above – the Extended Power Uprate project (“EPU” or “Uprate Project”) at its St. Lucie and Turkey Point plants, the implementation of which was completed in 2013, and the development of two new nuclear units, Turkey Point 6 & 7. Each

project was granted an affirmative determination of need by the Commission pursuant to Section 403.519(4), Florida Statutes, and FPL is therefore entitled to recover all its prudent and reasonable costs. *See* Order No. PSC-08-0021-FOF-EI, issued January 7, 2008 (making an affirmative determination of need for FPL's expedited EPU project) and Order No. PSC-08-0237-FOF-EI, issued April 11, 2008 (making an affirmative determination of need for Turkey Point 6 & 7). As required by the Rule, and as demonstrated in the testimony, exhibits, and Nuclear Filing Requirements ("NFRs") filed in this docket, FPL's expenditures in 2012 on each of these projects were prudently incurred, and FPL's actual/estimated 2013 expenditures and projected 2014 expenditures are reasonable. FPL has also demonstrated that its feasibility analysis for Turkey Point 6 & 7 should be approved. The FPSC Office of Auditing Performance and Analysis report on FPL's project management internal controls concludes that FPL's Turkey Point 6 & 7 controls adequately address project schedule, budget, costs, vendor performance and risks, and that FPL employs an adequate system of EPU project controls, risk evaluation, and management oversight. No intervenor has demonstrated that a single dollar was imprudently incurred.

#### **B. EPU Project**

Implementation of the EPU project was successfully completed in 2013, and all that remains is project close-out activities. The project met its goal of providing about 400 megawatts electric ("MWe") of additional nuclear power for FPL's customers in 2012, and is exceeding that goal by providing a total of 522 MWe of nuclear power in 2013. In fact, the Nuclear Fleet EPU Project Team received a 2013 Top Industry Practice Award from the Nuclear Energy Institute for its outstanding EPU performance. More importantly, the EPU project substantially improves FPL's electric system fuel diversity, electric system reliability, and environmental footprint, while saving its customers billions of dollars in fossil fuel costs.

In 2012, FPL prudently managed the most intensive year of EPU implementation, which included the completion of the uprate work at three of the four nuclear units that comprise the EPU project and the beginning of the uprate work at the fourth unit. At least one unit was in a major EPU implementation outage during every day of 2012. All this work required substantial and iterative engineering design and construction planning, as well as continuous forward-looking project management that resulted in revisions to implementation plans, intensive contractor oversight and management, and the employment of thousands of workers. Challenges were encountered, but ultimately, all the planned EPU work was successfully completed. Additionally, FPL received all required Nuclear Regulatory Commission (“NRC”) approvals in 2012. FPL’s 2012 costs were prudently incurred and its 2013 costs are reasonable. FPL is projecting no EPU project costs in 2014. All of FPL’s EPU costs are supported by overlapping project, budget, cost and schedule controls.

**C. Turkey Point 6 & 7 Project**

For Turkey Point 6 & 7, 2012 pre-construction costs were necessarily and prudently incurred to continue with the licensing and permitting of the project. In 2013 and 2014, FPL has incurred and expects to incur licensing and permitting pre-construction costs to continue with the work necessary to obtain the licenses and permits that will allow for future construction. Throughout the development of Turkey Point 6 & 7, FPL has adhered to a deliberate, step-wise approach focused on maintaining the ability to move forward with the project, while fully recognizing and responding to industry and regulatory uncertainty. As a result, FPL has been able to make prudent and cost-effective decisions each step of the way. FPL’s 2012 costs were prudently incurred, and its 2013 actual/estimated costs and 2014 projected costs are reasonable. All of FPL’s Turkey Point 6 & 7 costs are supported by overlapping project, budget, cost and schedule controls.

Completing the Turkey Point 6 & 7 project continues to be projected as solidly cost-effective for FPL's customers. FPL has updated the inputs to its long-term feasibility analysis. Assuming a wide range of potential fuel costs, a wide range of potential environmental compliance costs, and updated assumptions for the load forecast and capital costs among others, Turkey Point 6 & 7 is cost-effective in five out of seven different fuel cost and environmental compliance cost scenarios, and is within the range of the non-binding cost estimate in the remaining two scenarios.

Turkey Point 6 & 7 is projected to provide substantial customer benefits. For example, assuming a Medium Fuel Cost and the "Environmental II" compliance cost scenario, Turkey Point 6 & 7 is projected to provide estimated fuel cost savings for FPL's customers of approximately \$804 million (nominal \$) in the first full year of operation; provide estimated fuel cost savings for FPL's customers over the life of the plant of approximately \$78 billion (nominal \$); diversify FPL's fuel sources by decreasing reliance on natural gas by approximately 18% beginning in the first full year of operation; reduce annual fossil fuel usage by the equivalent of over 27 million barrels of oil or 177 million mMBTU of natural gas; and reduce CO<sub>2</sub> emissions by an estimated 265 million tons over the life of the plant, which is the equivalent of operating FPL's entire generating system with zero CO<sub>2</sub> emissions for more than 6 years.

#### **D. Intervenor and Staff Testimony**

No intervenor filed testimony disputing the prudence of any particular cost that FPL has incurred for its nuclear projects. Only the Office of Public Counsel ("OPC") filed testimony, and that testimony proposes a \$200 million disallowance for the EPU project that is unrelated to the prudence of FPL's EPU project management in 2012, which is the only year under review for prudence in this NCR proceeding. OPC and its witness Jacobs have recommended this disallowance based on serious false accusations about FPL's testimony in 2012. This is

particularly disappointing when they had ample opportunity to review documents provided to them and ask questions in the deposition of FPL witness Jones to clarify any question or confusion on their part. The basis for OPC's requested \$200 million disallowance contains \$163 million in errors and ignores relevant information about the EPU project at the time of FPL's testimony in 2012. Additionally, OPC's witness Jacobs incorrectly attempts to use the breakeven costs developed for another project – Turkey Point 6 & 7 – to draw a conclusion about the cost-effectiveness of a portion of the EPU project. Accordingly, OPC's witness's assertions are without merit.

In contrast with OPC's at best careless review and broad and sweeping false accusations, the FPSC's Office of Auditing and Performance Analysis ("Audit Staff") performed a detailed and professional review of FPL's project management internal controls in 2012 and early 2013 for both the EPU and Turkey Point 6 & 7 projects. Audit Staff requested thousands of pages of documentation and interviewed dozens of FPL employees. Audit Staff's report includes no adverse findings, and makes no disallowance recommendations related to either project. In fact, Audit Staff concluded that FPL's Turkey Point 6 & 7 controls adequately address project schedule, budget, costs, vendor performance and risks, and that FPL employs an adequate system of EPU project controls, risk evaluation, and management oversight.

#### **E. Conclusion**

For all the reasons discussed above, and as explained in more detail in the direct and rebuttal testimony provided by its witnesses, FPL's total requested NCR amount of \$45,084,695 should be approved. For a typical residential customer consuming 1,000 kWh per month, this amount equates to an approximate monthly bill impact of 48 cents. FPL's request complies with the requirements of Section 366.93, Florida Statutes, complies with the Rule, and will enable the

proper recovery of prudent costs incurred in the pursuit of additional nuclear generation for the benefit of FPL's customers.

#### IV. ISSUES AND POSITIONS

##### A. Legal Issues

**Issue 1:** Does recently enacted Senate Bill 1472, effective July 1, 2013, change the AFUDC rate that should be used for nuclear cost recovery clause computations in this year's pending case?

**FPL:** No. Senate Bill 1472 included an effective date of July 1, 2013. Accordingly, it applies to all NCR proceedings initiated after July 1, 2013. It does not apply to the pending NCR case. Application to any part of the filed, pending NCR case would constitute "retroactive" application of a substantive change in law, which is prohibited by Florida law. This is demonstrated by the fact that FPL would have to revise filings supporting FPL's pending requested recovery amount for 2014, originally filed before the amendments were passed and became effective, in order to reflect a new AFUDC rate for any part of the current year.

*Smiley v. State of Florida*, 966 So. 2d 330 (Fla. 2007) and *Florida Insurance Guarantee Ass'n v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187 (Fla. 2011) both support FPL's position. The Florida Supreme Court stated in *Smiley* at page 334 that there is a "presumption against retroactive application for substantive changes" and explained in *Fla. Ins. Guarantee Ass'n* at page 196 that "the presumption against retroactive application is a well-established rule of statutory construction that is appropriate in the absence of an express statement of legislative intent[.]" The Florida Supreme Court also makes clear in *Smiley* that application of substantive changes to a pending case constitutes retroactive application by contrasting the application of remedial/procedural amendments to pending cases. *See Smiley* at 334.

The amendments to Section 366.93 are clearly substantive in nature, in that they "create new or take away vested rights" (*see Smiley* at 334) by, for example, altering the amount of AFUDC that FPL would otherwise be entitled to recover. This is in contrast to remedial or procedural statutory changes which relate to remedies or modes of procedure and only operate in furtherance of the remedy or confirmation of rights already existing. *Id.* Even a statute that achieves a remedial purpose by creating a substantive new right or imposing new legal burdens is treated as a substantive change in the law. *Id.* (citing *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 424 (Fla. 1994)).

Like the statute at issue in *Fla. Ins. Guarantee Ass'n*, the text of the amendment to Section 366.93 is silent as to its forward or backward reach; however, it specifically includes an effective date. *See Fla. Ins. Guarantee Ass'n* at 196. The Florida

Supreme Court has noted that “the Legislature’s inclusion of an effective date for an amendment is considered to be evidence rebutting intent for retroactive application of a law.” *Id.* (citing *State Dep’t of Rev. v. Zuckerman-Vernon Corp.*, 354 So. 2d 353, 358 (Fla. 1977)). Because the amendments contain no express legislative intent that they be applied retroactively, one need not examine whether it is constitutionally permissible to apply the amendments retroactively to the pending NCR case. *See Fla. Ins. Guarantee Ass’n* at 194.

**Issue 2:** Does recently enacted Senate Bill 1472, effective July 1, 2013, preclude a utility from continuing preconstruction work not related to obtaining a combined operating license from the Nuclear Regulatory Commission or certification, that was under contract or commenced prior to July 1, 2013?

**FPL:** Not in this proceeding. Senate Bill 1472 included an effective date of July 1, 2013. Accordingly, it applies to all NCR proceedings initiated after July 1, 2013. It does not apply to the pending NCR case. Application to any part of the filed, pending NCR case would constitute “retroactive” application of a substantive change in law, which is prohibited by Florida law.

**Issue 3:** Does recently enacted Senate Bill 1472, effective July 1, 2013, preclude a utility from recovering costs associated with preconstruction work not related to obtaining a combined operating license from the Nuclear Regulatory Commission or certification, that was under contract or commenced prior to July 1, 2013?

**FPL:** Not in this proceeding. Senate Bill 1472 included an effective date of July 1, 2013. Accordingly, it applies to all NCR proceedings initiated after July 1, 2013. It does not apply to the pending NCR case. Application to any part of the filed, pending NCR case would constitute “retroactive” application of a substantive change in law, which is prohibited by Florida law.

**B. FPL Issues – Turkey Point 6 & 7 Project**

**Issue 4:** Do FPL’s activities since January 2012 related to the proposed Turkey Point Units 6 & 7 qualify as “siting, design, licensing and construction” of a nuclear power plant as contemplated by Section 366.93, F.S.?

**FPL:** Yes. FPL is conducting activities and incurring necessary expenses in the course of actively pursuing the license, permits and approvals necessary to create the opportunity for new nuclear generation consistent with the intent of Section 366.93, F.S., which is to promote electric utility investment in nuclear power plants. Because FPL has received a determination of need for Turkey Point 6 & 7 pursuant to Section 403.519(4), F.S., FPL is entitled to recover all prudently incurred costs including, but not limited to, those associated with siting, design, licensing, and construction. The fact that FPL is not simultaneously involved in each category of activity (i.e., FPL is not currently in the construction phase of the project) does not affect the applicability of Section 366.93, F.S., and the Commission’s Nuclear Cost Recovery Rule to FPL’s Turkey Point 6 & 7 costs. (Scroggs)

**Issue 5:** Should the Commission approve what FPL has submitted as its 2013 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

**FPL:** Yes. FPL used three different fuel cost forecasts and three environmental compliance cost forecasts for several types of emissions (SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub>) in its analysis. This allows a number of combinations of fuel and environmental compliance costs to serve as possible future scenarios with which to view the economics of Turkey Point 6 & 7. FPL annually updates these fuel and environmental compliance cost projections, and updates a number of other assumptions such as the project cost and system load forecast, for its economic analysis. Based on this analysis, completion of Turkey Point 6 & 7 is projected to be solidly cost-effective for FPL's customers in five out of seven scenarios and within the break even range in the remaining two scenarios. The results of the analysis fully support the feasibility of continuing the Turkey Point 6 & 7 project. (Sim, Scroggs)

**Issue 5A:** What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

**FPL:** FPL's current non-binding cost estimate range for Turkey Point 6 & 7 is \$3,659/kW to \$5,320/kW in overnight costs, or \$12.7 billion to \$18.5 billion including AFUDC, as stated in the May 1, 2013 direct testimony of Steven Scroggs. (Scroggs)

**Issue 5B:** What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

**FPL:** For planning purposes, FPL's current estimated commercial operations dates for Turkey Point Units 6 & 7 are 2022 and 2023, respectively, as stated in the May 1, 2013 direct testimony of Steven Scroggs. (Scroggs)

**Issue 6:** What are the jurisdictional amounts for Turkey Point 6 & 7 project activities that are related to obtaining a combined license from the Nuclear Regulatory Commission or certification during 2013 and 2014?

**FPL:** FPL is only seeking recovery of Turkey Point 6 & 7 costs related to obtaining a COL from the NRC and certification in this NCR proceeding. Accordingly, FPL's jurisdictional 2012 amount is \$31,954,959, 2013 amount is \$33,838,181, and 2014 amount is \$24,151,118, including carrying costs. (Scroggs, Powers)

**Issue 7:** Should the Commission find that, for the year 2012, FPL's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project? If not, what action, if any, should the Commission take?



**FPL:** Yes. FPL relies on its comprehensive corporate and overlapping business unit controls. These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures; financial systems and related controls; FPL's annual budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. The project internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to the Turkey Point 6 & 7 project are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls. (Scroggs, Reed, Powers)

**Issue 8:** What jurisdictional amounts should the Commission approve as FPL's final 2012 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

**FPL:** The Commission should approve FPL's final 2012 prudently incurred Turkey Point 6 & 7 Preconstruction expenditures of \$29,034,114 (jurisdictional), and the final 2012 true-up amount of (\$5,245,763). The Commission should also approve Turkey Point 6 & 7 Preconstruction carrying charges of \$2,739,962 and Site Selection carrying charges of \$180,883, as well as the final 2012 carrying charge true-up amount of (\$357,038). FPL's 2012 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were prudent. The net 2012 true up amount of (\$5,602,800) should be included in FPL's 2014 NCR amount. (Scroggs, Powers, Reed, Diaz)

**Issue 9:** What jurisdictional amounts should the Commission approve as reasonably estimated 2013 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

**FPL:** The Commission should approve as reasonable FPL's 2013 actual/estimated Preconstruction expenditures of \$28,748,963 (jurisdictional), and the 2013 estimated true-up amount of \$62,726. The Commission should also approve as reasonable FPL's 2013 actual/estimated Preconstruction carrying charges of \$4,908,335 and Site Selection carrying charges of \$180,883, as well as the 2013 carrying charge estimated true-up amount of (\$1,218,700).

FPL's 2013 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. The net 2013 true up amount of (\$1,155,974) should be included in FPL's 2014 NCR amount. (Scroggs, Powers)

**Issue 10:** What jurisdictional amounts should the Commission approve as reasonably projected 2014 costs for FPL's Turkey Point Units 6 & 7 project?

**FPL:** The Commission should approve as reasonable FPL's 2014 projected Preconstruction expenditures of \$16,826,626 (jurisdictional). The Commission should also approve as reasonable FPL's 2014 projected Preconstruction carrying charges of \$7,143,609 and Site Selection carrying charges of \$180,883.

FPL's 2014 projected expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. The total amount of \$24,151,118 should be included in FPL's 2014 NCR amount. (Scroggs, Powers)

**C. FPL Issues – EPU Project**

**Issue 11:** During the September 2012 hearing in Docket No. 120009-EI, did FPL provide the Commission with all the relevant cost information regarding the actual and estimated Turkey Point EPU expenditures for calendar year 2012 and projected total costs at completion in 2013? If not, what action, if any, should the Commission take?

**FPL:** Yes. During the September 2012 hearing, FPL presented its actual/estimated 2012 EPU project costs and 2013 projected EPU costs, along with its total EPU project non-binding cost estimate range, filed on April 27, 2012. At the time of the hearing, the total EPU project cost forecast had been increasing and remained within the filed EPU project non-binding cost estimate range. For that reason, FPL witness Jones testified that the non-binding cost estimate was subject to change. Witness Jones also testified that he expected the total installed cost per kilowatt, upon completion of the EPU project, to be about the same as that reflected in the Company's 2012 filing. Now that implementation work is complete, FPL can report that the total installed cost per kilowatt is in fact about the same as it was estimated to be last year.

Only information related to the cost of the entire EPU project, which was proposed, approved, and pursued as one comprehensive project, is relevant in the annual NCR proceedings. The Commission on two prior occasions has determined that it is inappropriate to split the EPU project into two hypothetical pieces – one at St. Lucie, and one at Turkey Point, and has rejected prior OPC attempts to examine the Turkey Point portion of the EPU project in isolation. Despite the Commission's prior rulings, OPC's witness Jacobs again focuses on the Turkey Point portion of the project to the exclusion of the remainder of the project and all relevant project information. Witness Jacobs also incorrectly attempts to use the breakeven costs developed for another project – Turkey Point 6 & 7 – to draw a conclusion about the cost-effectiveness of the Turkey Point portion of the EPU project, a meaningless exercise.

OPC's assertion through its witness Jacobs that FPL's internal forecast for the Turkey Point portion of the EPU project had increased by \$214.9 million at the time of the hearing is wrong, and contains at least \$163 million in errors in witness

Jacobs's analysis. Additionally, OPC's assertion that FPL's filed April 27, 2012 estimated costs were understated is baseless. Based on OPC's false assertions and incorrect use of the Turkey Point 6 & 7 breakeven cost, OPC claims that the Commission should penalize FPL in the amount of \$200 million.

Not only is OPC's disallowance claim unfounded as a factual matter, its penalty computation methodology is also both deeply flawed and applied in a demonstrably one-sided way. Even if OPC's method were to be applied, which it should not, FPL would be entitled to a \$470 million bonus for the final cost of the St. Lucie portion of the EPU project.

Had OPC or witness Jacobs reviewed documents in their possession or asked FPL witness Jones about the status of the cost forecast during his deposition, their errors and oversights would have been obvious and the speculative accusations contained in witness Jacobs's testimony could have been avoided. Such unsupported and demonstrably wrong accusations cannot provide the basis for the disallowance OPC requests. (Jones, Sim, Reed, Deason)

**Issue 11A:** What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the completed EPU Project? **(Disputed Issue)**

**FPL:** This is a disputed issue.

**Issue 11B:** What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the completed St. Lucie EPU Project? **(Disputed Issue)**

**FPL:** This is a disputed issue.

**Issue 11C:** What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the completed Turkey Point EPU Project? **(Disputed Issue)**

**FPL:** This is a disputed issue.

**Issue 12:** Are the costs of the Turkey Point EPU, as affected by actual 2012 and estimated 2013 costs, economic and cost-effective for FPL's ratepayers? If not, what action, if any, should the Commission take? **(Disputed Issue)**

**FPL:** This is a disputed issue.

**Issue 13:** Should the Commission find that, for the year 2012, FPL's project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL's Extended Power Uprate project? If not, what action, if any, should the Commission take?

**FPL:** Yes. FPL relies on its comprehensive corporate and overlapping business unit controls. These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures; financial systems and related controls; FPL's annual

budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. The project internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to the EPU project are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls. (Jones, Reed, Ferrer, Powers)

**Issue 14:** What jurisdictional amounts should the Commission approve as FPL's final 2012 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?

**FPL:** The Commission should approve as prudent FPL's final 2012 EPU expenditures of \$1,369,209,305 (jurisdictional, net of participants). The Commission should also approve as prudent FPL's final 2012 EPU O&M costs, including interest, of \$7,198,815 (jurisdictional, net of participants); carrying charges of \$110,615,132; the final true-up of O&M costs including interest of (\$7,347,934); and final true-up of carrying charges of \$5,705,405. In addition, the Commission should approve as prudent FPL's final 2012 EPU base rate revenue requirements, including carrying charges, of \$84,594,473; and the final true-up of revenue requirements, including carrying charges, of \$5,519,255.

FPL's 2012 EPU expenditures are supported by comprehensive procedures, processes and controls that help ensure those expenditures were the result of prudent decision making. The net 2012 true up amount of \$3,876,726 should be approved and included in FPL's 2014 NCRC recovery amount. (Jones, Reed, Ferrer, Powers)

**Issue 15:** What jurisdictional amounts should the Commission approve as reasonably estimated 2013 costs and estimated true-up amounts for FPL's Extended Power Uprate project?

**FPL:** The Commission should approve as reasonable FPL's 2013 actual/estimated EPU expenditures of \$226,636,946 (jurisdictional, net of participants). The Commission should also approve as reasonable FPL's 2013 actual/estimated EPU O&M costs, including interest, of \$9,611,895 (jurisdictional, net of participants); carrying charges of \$20,346,709; the 2013 estimated true-up of O&M costs including interest of \$4,534,025; and the true up of carrying charges of \$4,912,831. In addition, the Commission should approve as reasonable FPL's 2013 actual/estimated EPU base rate revenue requirements including carrying charges; Incremental 2012 EPU plant placed into service base rate revenue requirements including carrying charges; and carrying charges on the Actual/Estimated Net Book Value of Retirements, Removal, and Salvage of \$77,583,826; and the 2013 estimated true-up of these items of \$12,845,624.

FPL's 2013 actual/estimated EPU costs are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. The net 2013 true up amount of \$22,292,480 should be included in setting FPL's 2014 NCR amount. (Jones, Powers)

**Issue 16:** What jurisdictional amounts should the Commission approve as reasonably projected 2014 costs for FPL's Extended Power Uprate project?

**FPL:** FPL is projecting no 2014 EPU project costs; however, there will be carrying charges on the under or over recovery of 2013 costs. The Commission should approve as reasonable FPL's 2014 projected EPU carrying charges of \$1,523,146 and include this amount in setting FPL's 2014 NCR amount. (Jones, Powers)

**D. FPL Fall-Out Issue**

**Issue 17:** What is the total jurisdictional amount to be included in establishing FPL's 2014 Capacity Cost Recovery Clause factor?

**FPL:** The total jurisdictional amount of \$45,084,695 should be included in establishing FPL's 2014 Capacity Cost Recovery Clause factor. This amount consists of costs associated with the Turkey Point 6 & 7 project and the EPU project as provided for in Section 366.93 and Rule 25-6.0423, Fla. Admin. Code. (Powers)

**E. Duke Energy Florida Issues**

**Issues 18-31:** FPL takes no position on the issues identified for Duke Energy Florida, Inc.

**V. STIPULATED ISSUES**

There are no stipulated issues at this time.

**VI. PENDING MOTIONS**

| <b>Motion Document No.</b> | <b>Date</b> | <b>Description</b>  |
|----------------------------|-------------|---|
| 03665-13                   | 6/28/2013   | Motion for temporary protective order [for information included in response to staff's 2 <sup>nd</sup> set of PODs (Nos. 2, 6, 7 and 9)]                                      |
| 03115-13                   | 6/6/2013    | Motion for temporary protective order [to exempt from Section 119.07(1), FS, information included in supplemental response to OPC's 1 <sup>st</sup> request for PODs (No. 1)] |

|          |           |  |
|----------|-----------|--|
| 02809-13 | 5/21/2013 | Motion for temporary protective order [to exempt from Section 119.07(1), FS, confidential information included in responses to OPC's 1 <sup>st</sup> request for PODs (No. 1)]                                   |
| 02599-13 | 5/10/2013 | Motion for temporary protective order [of DN 02394-13]   |
| 01391-13 | 3/20/2013 | Motion for temporary protective order [to exempt from Section 119.07, FS, confidential information included in Exh TOJ-1 to testimony of Terry Jones and Exh SDS-1 to testimony of Steven Scroggs (DN 01103-13)] |

#### VII. PENDING REQUESTS FOR CONFIDENTIAL CLASSIFICATION

| <b>Request Document No.</b> | <b>Date</b> | <b>Description</b>   |
|-----------------------------|-------------|--|
| 03677-13                    | 6/28/2013   | Request for confidential classification of Audit 13-10-4-1 work papers [DN 03678-13]   |
| 03579-13                    | 6/26/2013   | Request for confidential classification of Audit 13-10-4-2 work papers [DN 03580-13]   |
| 03377-13                    | 6/17/2013   | Request for confidential classification of [DN 03378-13] Audit Report PA-13-01-001   |
| 03177-13                    | 6/10/2013   | Revised request for confidential classification of [DN 03178-13] Exhs TOJ-13 and SDS-7 [to testimonies of Terry Jones and Steven D. Scroggs] |
| 02393-13                    | 5/1/2013    | Request for confidential classification of [DN 02394-13] Jones testimony and Exhs TOJ-13 and SDS-7   |
| 01102-13                    | 3/1/2013    | Request for confidential classification of Exhs TOJ-1 and SDS-1 [DN 01103-13]  |

#### VIII. OBJECTIONS TO WITNESSES' QUALIFICATIONS

At this time, FPL has no objections to any witness's qualifications.

**IX. REQUIREMENTS OF THE PREHEARING ORDER THAT CANNOT BE MET**

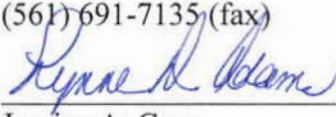
At this time, FPL is not aware of any requirements in the Order Establishing Procedure with which it cannot comply.

Respectfully submitted this 5<sup>th</sup> day of July, 2013.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 130009-EI**

I HEREBY CERTIFY that a true and correct copy of FPL's Prehearing Statement was served via electronic mail and U.S. mail this 5th day of July, 2013 to the following:

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