

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 14, 2015
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Martha F. Barrera, Senior Attorney, Office of the General Counsel
RE: Docket No. 150075-EI - Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company.

Please place the attached declassified testimony of Terry M. Myers on behalf of the Citizens of the State of Florida in the above-referenced docket file.

MFB/as

FLORIDA PUBLIC SERVICE COMMISSION
OFFICE OF COMMISSION CLERK



DOCUMENT NUMBER ASSIGNMENT*

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7.14.15
DECLASSIFIED

CONFIDENTIAL

OPC (Rehwinkel) - (CONFIDENTIAL) Direct testimonies and exhibits of Gary D. Brunault, Terry M. Myers, Dan J. Wittliff, and Christopher C. Dawson; provided on CD only. [CLK note: OPC/Woods advises that the claim letter (DN 03492-15) is also included on the confidential CD, however, the claim letter is not confidential.] [See DN 03629-15] [x-ref DNs 04005-15 and 04011-15] [CLK note: See DN 04400-15 for declassification of the testimony and exhibits of Terry M. Myers.]

***This document number has been assigned to a confidential document.
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Arrangement To
Mitigate Impact of Unfavorable Cedar Bay
Power Purchase Obligation, by Florida Power &
Light Company

DOCKET NO. 150075-EI

FILED: June 8, 2015

MHM 7/14/15

DECLASSIFIED

CONFIDENTIAL

(PER DESIGNATION OF FPL AND/OR COGENTRIX (CEDAR BAY) PENDING FINAL DETERMINATION)

DIRECT TESTIMONY

OF

TERRY M. MYERS

ON BEHALF OF THE CITIZENS OF

THE STATE OF FLORIDA

J.R. Kelly
Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
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of the State of Florida

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DIRECT TESTIMONY

OF

TERRY M. MYERS

On Behalf of the Office of Public Counsel

Before the

Public Service Commission

Docket No. 150075-EI

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Terry M. Myers, Senior Project Manager, GDS Associates, Inc., 111 N. Orange Avenue, Suite 750, Orlando, Florida 32801.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I received the degree of Bachelor of Science in Accounting from Indiana State University in Terre Haute, Indiana, in December 1981. I passed the CPA exam in November 1991. I am a member in good standing of the Indiana CPA Society. Prior to accepting employment with GDS Associates in October 2008, I spent twenty-three (23) years in the utility industry working in multiple utility environments. During that time, I worked five (5) years with a state utility commission, three (3)-plus years with a large investor-owned utility, and approximately fifteen (15) years combined for three utility consulting firms. During that time, my positions and responsibilities changed from initially a utility rate accountant to a Senior Utility Consultant.

1 As a utility rate financial consultant over the last twenty-nine (29)-plus
2 years, I have had the primary responsibility for assignments pertaining to wholesale
3 rates, retail rates, financial planning, transmission formula rates, and Reliability Must
4 Run proceedings. My various assignments include utility projects on behalf of
5 municipal utilities, power agencies, and cooperatives, non-profits, investor-owned
6 utilities, and multiple consumer advocate offices and regulatory commissions in ten
7 states and the District of Columbia. I have attached a copy of my resume as
8 Appendix A.

9
10 **Q. WHAT IS THE NATURE OF YOUR BUSINESS?**

11 A. GDS is an engineering and consulting firm with offices in Marietta, Georgia; Austin,
12 Texas; Auburn, Alabama; Manchester, New Hampshire; Madison, Wisconsin and
13 Orlando, Florida. GDS provides technical and financial consulting services to a
14 nationwide base of clients, which primarily includes municipal and cooperative
15 electric utilities, Public Service Commissions and large consumers of electricity.
16 Areas of expertise include generation support and management consulting, power
17 supply and transmission planning, rate consulting, distribution services, least cost
18 planning and litigation support. Generation support services provided by the firm
19 include plant operational monitoring on behalf of co-owners of fossil and nuclear
20 power plants, plant ownership feasibility studies, plant management audits, plant
21 construction cost and schedule analyses, evaluations of power plant O&M costs and
22 budgeting practices, production cost modeling and plant outage and replacement
23 power cost evaluations.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN PROCEEDINGS BEFORE THIS**
2 **COMMISSION?**

3 A. This is the first time that I will be providing testimony before the Florida Public
4 Service Commission, although members of the firm have testified before the
5 Commission.

6
7 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN PROCEEDINGS BEFORE**
8 **OTHER REGULATORY COMMISSIONS?**

9 A. Yes. I have testified before the Indiana Utility Regulatory Commission (formerly the
10 Public Service Commission of Indiana) in over 100 proceedings and before the
11 Arizona Corporation Commission. I have also filed testimony and exhibits before the
12 Federal Energy Regulatory Commission ("FERC"), the Public Service Commission
13 of West Virginia, and the Virginia State Corporation Commission in proceedings that
14 were ultimately settled before the trial phase and the Michigan Public Service
15 Commission. I have testified or filed affidavits in a Federal District Court and an
16 Indiana State Court related to utility rate matters. A listing of my testimonies before
17 these Other Regulatory Commissions and Courts is included as Appendix B.

18
19 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

20 A. I am presenting testimony on behalf of the Office of Public Counsel.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. My assignment from the Office of Public Counsel is to examine the reasonableness of
3 Florida Power & Light Company's ("FPL" or "Company") proposed accounting,
4 regulatory reporting and ratemaking treatments for the acquisition of the Cedar Bay
5 Power Generation Facility ("Cedar Bay Facility") and the Power Purchase Agreement
6 ("PPA") between Cedar Bay Generating Company and FPL through a stock purchase.
7 My testimony presents my recommendations regarding appropriate adjustments, or
8 other Commission actions, related to FPL's proposed accounting, regulatory reporting
9 and ratemaking treatments for the acquisition of the Cedar Bay Facility.

10

11 **Q. WHAT ACTIONS ARE YOU RECOMMENDING IN THIS CASE?**

12 A. I am recommending that, if the Commission approves the asset purchase instead of
13 the PPA contract buyout, then FPL must follow the Federal Energy Regulatory
14 Commission Uniform System of Accounts ("USOA") Electric Plant Instruction 5,
15 *Electric Plant Purchased or Sold*, in 18 Code of Federal Regulations ("C.F.R.") Part
16 101, which requires that acquired *electric utility* property plant and equipment be
17 recorded at net book value. The gross original cost amount for the Cedar Bay Facility
18 and the accumulated depreciation balance should both be recorded on the books and
19 records in FERC Account 102 with the "negative" acquisition adjustment recorded in
20 FERC Account 114 to reflect the Cedar Bay Facility's net fair value of zero per FPL.

21 The Regulatory Asset-Loss on PPA should be deductible in the current year,
22 based on the IRS private letter ruling for Florida Power Corporation's ("FPC") 1997
23 acquisition and buyout of the purchased power contracts with Tiger Bay Limited,

1 LLC, which would result in a reduction in the annual cost proposed to be charged to
2 ratepayers by FPL of \$34.5 million, or a total reduction of \$326.9 million over the
3 remaining life of the PPA. FPL should be required to request from the IRS a
4 definitive private letter ruling specifically addressing the circumstances of their
5 acquisition of the Cedar Bay Facility, the PPA and the deductibility of the PPA Loss
6 Regulatory Asset, based on the termination of the PPA.

7 I am also recommending that FPL not be authorized to include the full
8 weighted average cost of capital (“WACC”) return on the unamortized balance of the
9 FPL proposed PPA Loss Regulatory Asset for recovery. FPL should be authorized to
10 include for recovery through rates either the commercial paper interest rate, the cost
11 of debt for the debt issued to consummate the acquisition of the Cedar Bay Facility
12 and PPA, or the debt component of the WACC, as a return on the unamortized
13 balance.

14

15 **Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF FPL WITNESSES**
16 **BARRETT, OUSDAHL, HARTMAN AND HERR?**

17 A. Yes, and I have also reviewed FPL’s responses to discovery submitted by the Office
18 of Public Counsel.

19

20 **Q. PLEASE DESCRIBE FPL’S PROPOSAL REGARDING THE ACQUISITION**
21 **OF THE CEDAR BAY FACILITY.**

22 A. The Company’s proposal for the acquisition of the Cedar Bay Facility is to purchase
23 100% of the equity interest in CBAS Power Inc. (“CBAS”) and its subsidiaries from

1 CBAS Power Holdings, LLC for \$520.5 million as discussed by FPL Witness
2 Barrett's Direct Testimony, page 2. FPL will acquire 100% of the shares of CBAS
3 through the "Purchase and Sale Agreement" with CBAS Power Holdings, LLC.
4 Cedar Bay Generating Company, Limited Partnership ("Cedar Bay Genco") is a
5 subsidiary of CBAS, which currently owns the Cedar Bay Facility. After the
6 acquisition, FPL intends to retain the existing subsidiary structure as discussed by
7 FPL Witness Ousdahl in her Direct Testimony, pages 3 and 4. Therefore, FPL is not
8 separately purchasing the Cedar Bay Facility or any other of the assets of CBAS, but
9 is purchasing 100% of the equity interest in CBAS.

10

11 **Q. PLEASE DESCRIBE HOW FPL IS PROPOSING TO RECORD THE**
12 **ACQUISITION OF THE CEDAR BAY FACILITY.**

13 A. FPL is proposing to record on its books the acquisition of the Cedar Bay Facility
14 under Accounting Standards Codification 805 – Business Combinations ("ASC 805")
15 reflecting the fair value of the facility of \$0 rather than the net book value, based on
16 the valuation performed by Duff & Phelps, LLC, according to FPL's Witness Herr in
17 his Direct Testimony, page 3. According to FPL's Witness Ousdahl in her Direct
18 Testimony, page 5, Ms. Ousdahl claims that FPL is not required to record the
19 acquisition of the Cedar Bay Facility, a qualifying facility under the definitions
20 prescribed by FPSC Rule No. 25-17.080, at the net book value. Ms. Ousdahl adds
21 that "As such, because FPL is acquiring plant from CBAS, an entity that is not
22 primarily engaged in the generation or sale of electricity, then Electric Plant
23 Instruction 5 is not applicable and the USOA does not require FPL to record the

1 assets at net book value.” Ms. Ousdahl further states: “In absence of such direction,
2 recording the assets at fair value is appropriate and consistent with both GAAP and
3 the USOA.”

4

5 **Q. DO YOU AGREE WITH FPL WITNESS OUSDAHL’S INTERPRETATION**
6 **OF THE USOA AND ELECTRIC PLANT INSTRUCTION 5**
7 **APPLICABILITY TO CBAS IN THE PROPOSED CEDAR BAY**
8 **TRANSACTION?**

9 A. Yes, I agree with Ms. Ousdahl’s interpretation of the USOA and Electric Plant
10 Instruction 5 in regards to the recordation of Cedar Bay Facility transaction by CBAS
11 as the seller. CBAS is not a public utility under the Federal Power Act and, therefore,
12 the USOA and Electric Plant Instruction 5 are not applicable to CBAS.

13

14 **Q. DO YOU AGREE WITH FPL WITNESS OUSDAHL’S INTERPRETATION**
15 **OF THE USOA AND SPECIFICALLY ELECTRIC PLANT INSTRUCTION 5**
16 **APPLICABILITY TO FPL IN THE PROPOSED CEDAR BAY**
17 **TRANSACTION?**

18 A. No, I do not agree with Ms. Ousdahl’s interpretation of the USOA and Electric Plant
19 Instruction 5 in regards to the recordation of Cedar Bay Facility acquisition by FPL.

20

21 **Q. PLEASE EXPLAIN WHY YOU DON’T AGREE WITH FPL WITNESS**
22 **OUSDAHL’S INTERPRETATION OF THE USOA AND SPECIFICALLY**

1 **ELECTRIC PLANT INSTRUCTION 5 ELECTRIC PLANT PURCHASED OR**
2 **SOLD.**

3 A. The USOA and Electric Plant Instruction 5 Electric Plant Purchased or Sold are both
4 applicable to FPL, since FPL is a public utility under the Federal Power Act. Neither
5 the USOA, nor Electric Plant Instruction 5, provides FPL an *exemption* from
6 recording the Cedar Bay Facility acquisition at the net book value. I will discuss the
7 various parts of the Electric Plant Instruction 5, specifically Parts A, B and E, and
8 how they pertain to FPL and the acquisition of the Cedar Bay Facility.

9
10 **Q. PLEASE DISCUSS THE ELECTRIC PLANT INSTRUCTION 5, PART A,**
11 **AND HOW IT PERTAINS TO FPL AND THE ACQUISITION OF THE**
12 **CEDAR BAY FACILITY.**

13 A. Electric Plant Instruction 5, Part A, states the following:

14 “When electric plant constituting an operating unit or system is acquired by
15 purchase, merger, consolidation, liquidation, or otherwise, after the
16 effective date of this system of accounts, the costs of acquisition,
17 including expenses incidental thereto properly includible in electric plant,
18 shall be charged to account 102, Electric Plant Purchased or Sold.”

19 Part A specifically addresses electric plant constituting an “operating unit” or
20 “system” being acquired. FPL is acquiring the Cedar Bay Facility under Accounting
21 Standards Codification 805 – Business Combinations (“ASC 805”). The proposed
22 Cedar Bay Transaction meets the definition of a business acquisition for accounting
23 purposes and the Cedar Bay Facility would constitute an “operating unit” or
24 “system;” therefore, Electric Plant Instruction, Part A, is applicable to the acquisition
25 of the Cedar Bay Facility.

1 Q. PLEASE DISCUSS THE ELECTRIC PLANT INSTRUCTION 5, PART B,
2 AND HOW IT PERTAINS TO FPL AND THE ACCOUNTING FOR THE
3 ACQUISITION OF THE CEDAR BAY FACILITY.

4 A. Electric Plant Instruction 5, Part B, states the following:

5 "The accounting for the acquisition shall then be completed as follows:

6 (1) The *original cost of plant* [*emphasis added*], estimated if not known,
7 shall be credited to account 102, Electric Plant Purchased or Sold, and
8 concurrently charged to the appropriate electric plant in service
9 accounts...as appropriate.

10 (2) The depreciation and amortization applicable to the *original cost*
11 [*emphasis added*] of the properties purchased shall be charged to account
12 102, Electric Plant Purchased or Sold, and concurrently credited to the
13 appropriate account for accumulated provision for depreciation or
14 amortization.

15 (4) The amount remaining in account 102, Electric Plant Purchased or
16 Sold, shall then be closed to account 114, Electric Plant Acquisition
17 Adjustments."

18 Part B, as stated above, specifically requires that the electric plant being acquired be
19 recorded as follows: (a) at the original cost of the plant as a credit to Account 102 and
20 concurrently charged (i.e., a debit) to the appropriate electric plant in service
21 accounts; (b) the accumulated depreciation related to the original cost of the plant be
22 charged (i.e., a credit) to Account 102; and (c) any amount remaining in Account 102
23 should be closed out to Account 114, Electric Plant Acquisition Adjustments (i.e., a
24 debit or credit). In FPL's proposed acquisition of the Cedar Bay Facility with the fair
25 value of the facility being \$0, the amount that would be closed out to Account 114,
26 Electric Plant Acquisition Adjustments would be negative or a credit, which would
27 bring the value of the Cedar Bay Facility to \$0. FPL would then need to amortize the
28 balance of the "Negative Acquisition Adjustment" in Account 114 to Account 403 to

1 off-set the annual depreciation expense for the Cedar Bay Facility, which would
2 essentially off-set any impact on rates. The Office of Public Counsel's proposed
3 journal entries to accomplish the implementation of Electric Plant Instruction 5 are
4 shown on page 1 of Exhibit TMM-1.

5

6 **Q. PLEASE DISCUSS THE ELECTRIC PLANT INSTRUCTION 5, PART E,**
7 **AND HOW IT PERTAINS TO FPL AND THE ACCOUNTING FOR THE**
8 **ACQUISITION OF THE CEDAR BAY FACILITY.**

9 A. Electric Plant Instruction 5, Part E, states the following:

10 "In connection with the acquisition of electric plant constituting an
11 operating unit or system, the utility shall procure, if possible, all existing
12 records relating to the property acquired, or certified copies thereof, and
13 shall preserve such records in conformity with regulations or practices
14 governing the preservation of records of its own construction."

15 Part E, as stated above, requires FPL to procure all existing records or certified copies
16 related to the Cedar Bay Facility from CBAS and preserve such records in conformity
17 with the preservation of records of its own construction. Therefore, FPL would have
18 all the plant data necessary to record the net original cost book value of the plant
19 acquired for the Cedar Bay Facility. The net original cost book value of the Cedar
20 Bay Facility on December 31, 2014 was \$269.6 million per FPL's response to OPC's
21 3rd Set of Interrogatories No. 25.

22

23 **Q. HAS FERC SUPPORTED THE PURCHASE METHOD OF ACCOUNTING**
24 **FOR BUSINESS COMBINATIONS IN SECTION 203 PROCEEDINGS AND**
25 **ELSEWHERE?**

1 A. Yes, in the FERC Order Denying Rehearing and Clarifying Accounting Requirement
2 in Docket Nos. EC07-99-001 and EL07-75-001, FERC states the following: “The
3 Commission has generally supported the purchase method of accounting for business
4 combinations in section 203 proceedings and elsewhere.”¹ The Order further states:
5 “To use this accounting method under the Commission’s Uniform System of
6 Accounts, the acquiring corporation should first allocate the cost of the acquired
7 company to all identifiable assets acquired and liabilities assumed based on their fair
8 value on the date of acquisition. The amounts allocated to utility plant in excess of
9 depreciated original cost at the date of acquisition should be recorded as an
10 acquisition adjustment in Account 114.”

11

12 **Q. THAT FERC ORDER APPEARS TO ADDRESS AN ACQUISITION**
13 **PREMIUM ABOVE THE DEPRECIATED ORIGINAL COST. WOULD**
14 **ACCOUNT 114 ALSO BE UTILIZED FOR THE TREATMENT OF AN**
15 **ACQUISITION DISCOUNT?**

16 A. Yes. Account 114 is utilized for both acquisition premiums and acquisition
17 discounts, where the purchaser paid less than depreciated original cost.

18

19 **Q. HAS FERC PROVIDED ANY ADDITIONAL GUIDANCE OR ISSUED ANY**
20 **ORDERS WHICH ADDRESS HOW THE ACQUISITION OF PLANT**
21 **SHOULD BE REFLECTED?**

¹ See, e.g., *Entergy Services Inc. and Gulf States Utilities Co.*, 65 FERC ¶ 61,332 (1993); *El Paso Electric Co. and Central and South West Services, Inc.*, 68 FERC ¶ 61,181 (1994); see also *Transwestern Pipeline Co.*, Docket No. AC03-50-000 (July 25, 2003) (unpublished letter order).

1 A. Yes. In Docket No. EC08-82-000, FERC specifically addressed its long-standing
2 accounting policy for utilizing the original cost principle for the acquisition of plant.
3 FERC addressed the proper accounting in Finding Paragraphs 27 through 31. More
4 specifically, the Order states in Finding Paragraph 27 the following: “The
5 Commission’s Uniform System of Accounts Prescribed for Public Utilities and
6 Licensees requires that the acquisition of an operating unit or system must be
7 accounted for in accordance with EPI No. 2, Electric Plant to be Recorded at Cost,
8 EPI No. 5, Electric Plant Purchased or Sold, and Account 102, Electric Plant
9 Purchased or Sold.”² In addition, the Order states that “EPI No. 2 requires amounts
10 included in the accounts for electric plant acquired as an operating unit or system to
11 be stated at the cost incurred by the person who first devoted the property to utility
12 service (original cost principle).”³

13

14 **Q. DOES THE FERC ORDER IN DOCKET EC08-82-000 MAKE A**
15 **DETERMINATION THAT MERCHANT PLANTS ARE CONSIDERED TO**
16 **BE DEVOTED TO PUBLIC SERVICE?**

17 A. Yes. The Order in Finding Paragraph 29 clearly states that “...the Commission
18 disagrees with PacifiCorp’s position that the Chehalis Facility has not been devoted to
19 public service because it has not been included in a cost-based rate, served captive
20 customers, or been subject to Part 101 of the Commission’s regulations.” In addition,
21 the Order in Finding Paragraph 30 states that “Prior to *Puget Sound*, the Commission

² 18 C.F.R. Part 101 (2008)

³ The term “original cost,” as applied to electric plant, means the cost of such property to the person first devoting it to public service. Definition No. 23, Original cost, 18 C.F.R. Part 101 (2008)

1 affirmed a delegated order of the Chief Accountant which required that the
2 acquisition of plant that had not been included in the predecessor owner's rate base,
3 and on which the predecessor owner did not earn a return or recover depreciation, be
4 recorded on the purchaser's books at depreciated original cost."⁴ "In the delegated
5 order, the Chief Accountant noted that there is no provision in the USofA for
6 excluding depreciation accumulated on properties previously devoted to public
7 service, regardless of the rate treatment afforded the facilities prior to their
8 acquisition."⁵

9 The Order in Finding Paragraph 31 states the following: "Since *Puget Sound*,
10 Commission Staff has determined that merchant generating facilities in the same
11 circumstances as the Chehalis Facility have been devoted to public service.⁶ As was
12 the case in these orders, the Chehalis facility is an operating unit or system, and
13 wholesale sales of electric energy were made from the facility pursuant to a
14 Commission approved market-based rate tariff. Consequently, the Chehalis Facility
15 was previously devoted to public service, and the accounting for the Proposed
16 Transaction should follow the Commission's original cost rules. Accordingly,
17 Chehalis must account for the acquisition pursuant to EPI No. 2, EPI No. 5, and
18 Account 102, and record the original cost, estimated if not known, in Account 101
19 and concurrently record the related accumulated depreciation in Account 108,
20 Accumulated Provision for Depreciation of Electric Utility Plant. PacifiCorp must

⁴ See *Northern Border Pipeline Company*, 77 FERC ¶ 61,006 (1996).

⁵ *Northern Border Pipeline Company*, Docket No. AC93-116-000 (February 15, 1994) (unpublished letter order).

⁶ See *Goldendale Energy Center, LLC and Puget Sound Energy, Inc.*, 118 FERC ¶62,101 (2007); *PSEG Lawrenceburg Energy Company LLC, American Electric Power Service Corporation, AEP Generating Company*, 119 FERC ¶ 62,015 (2007); *DTE Entergy Services, Inc., DTE Georgetown Holdings, Inc., DTE Georgetown, LP, and Indianapolis Power & Light Company*, 120 FERC ¶ 62,040 (2007); *Quachita Power, LLC and Entergy Arkansas, Inc.*, 122 FERC ¶ 62,071 (2008); *Entergy Corporation*, *supra* at note 11; and *AEP*, *supra* at note 11.

1 record in Account 114, Electric Plant Acquisition Adjustments, any difference
2 between the purchase price and the depreciated original cost of the Chehalis Facility.”

3 Finally, Ordering Paragraph (I) states the following: “PacifiCorp shall
4 account for the Proposed Transaction in accordance with EPI No. 2, EPI No. 5, and
5 Account 102.”

6
7 **Q. THE FERC ORDER IN DOCKET EC08-82-000 RELATES TO A MERCHANT**
8 **PLANT. WOULD THE CEDAR BAY FACILITY, AS A QUALIFYING**
9 **FACILITY (“QF”), BE DEEMED TO HAVE BEEN DEVOTED TO PUBLIC**
10 **SERVICE?**

11 **A.** Yes. The Cedar Bay Facility has provided wholesale sales of electric energy to FPL,
12 per the PPA, under the FERC Rate Schedule/Tariff Number COG-2 and, therefore,
13 would be deemed to have been devoted to public service. Consequently, the
14 acquisition by FPL of the Cedar Bay Facility should be recorded at original cost
15 under the FERC’s original cost rules.

16
17 **Q. DO YOU AGREE WITH WITNESS OUSDAHL’S ASSERTION THAT THE**
18 **COMMISSION RULES PROHIBIT THE TREATMENT THAT YOU**
19 **RECOMMEND ACCORDING TO FERC’S ORIGINAL COST RULES?**

20 **A.** No. A review of Commission Rule No. 25-17.080, Definitions and Qualifying
21 Criteria, which Witness Ousdahl cites on page 5 of her testimony, reveals that there is
22 no such prohibition and that the underlying federal rule that appears to be the basis
23 for her assertion regarding the ownership limitations requirement for qualifying

1 cogeneration and small power production facilities has been removed by FERC Order
2 No. 671.

3
4 **Q. WHAT OTHER ASSETS OR LIABILITIES HAS FPL PROPOSED BE**
5 **RECOGNIZED RELATED TO THE ACQUISITION OF THE CEDAR BAY**
6 **FACILITY?**

7 A. Per Ms. Ousdahl's testimony, FPL has proposed certain journal entries (Exhibit KO-
8 1) to recognize the following assets and liabilities: (A) Regulatory Asset – Loss on
9 PPA, (B) Regulatory Asset – Tax Gross-Up (PPA), (C) Deferred Tax Liability – Loss
10 on PPA, (D) Asset Retirement Cost, (E) Asset Retirement Obligation (F) Deferred
11 Tax Asset – Book/Tax Difference on Acquired Plant, and (G) Regulatory Liability –
12 Deferred Tax on Plant Book/Tax Difference.

13
14 **Q. PLEASE DESCRIBE FPL'S PROPOSED REGULATORY ASSET – LOSS ON**
15 **PPA.**

16 A. In March 2015, FPL Witness Herr produced a valuation of the PPA and proposes in
17 this docket that the PPA would have a fair value of approximately \$520 million to a
18 market participant in today's market. In August 2014, FPL and CBAS Power
19 Holdings, LLC had reached mutually agreeable terms in the "Purchase and Sale
20 Agreement" for FPL to purchase 100 percent of the equity ownership interest in
21 CBAS for \$520.5 million. Using the March 2015 valuation document subsequently
22 produced by Witness Herr, FPL would allocate 100 percent of the purchase price to
23 the PPA. According to FPL Witness Ousdahl's Direct Testimony (page 8), FPL plans

1 to terminate the PPA upon purchase of CBAS resulting in an equivalent loss to FPL
2 of \$520.5 million. FPL proposes to record the loss as a regulatory asset in
3 recognition of FPL's proposal to defer and recover the terminated PPA over the
4 remaining original life of the PPA. I do not offer an opinion about the validity of the
5 \$520.5 million amount for the fair value of the PPA. OPC Witness Gary Brunault
6 provides an evaluation and recommendation for this fair value amount and the
7 valuation approach utilized by FPL Witness Herr. My testimony addresses the
8 income tax valuation accounting treatment proposed by Witness Ousdahl regardless
9 of the actual dollar amount and assuming the proposed equity purchase is allowed by
10 the Commission.

11
12 **Q. HAS FPL MADE A DETERMINATION THAT THE LOSS ASSOCIATED**
13 **WITH THE TERMINATION OF THE PPA IS NOT DEDUCTIBLE FOR**
14 **INCOME TAX PURPOSES?**

15 **A.** Yes, FPL has stated in Witness Ousdahl's testimony, page 8, lines 19-21, that the
16 company believes that termination of the PPA is not deductible for income tax
17 purposes. Witness Ousdahl did not provide any supporting details or documentation
18 from the IRS for that position.

19
20 **Q. DO YOU AGREE WITH FPL WITNESS OUSDAHL'S POSITION THAT THE**
21 **TERMINATION OF THE PPA IS NOT DEDUCTIBLE FOR INCOME TAX**
22 **PURPOSES?**

1 A. No, I do not. The whole purpose for the acquisition of the Cedar Bay Facility,
2 according to FPL, is to terminate the uneconomic PPA that FPL has with CBAS. The
3 IRS in the 1997 private letter ruling, PLR-120013-97, addresses the deductibility of
4 the termination or cancellation of uneconomic power purchase agreements with QFs.
5 The IRS determined that the taxpayer may deduct under Section 162 the
6 consideration for the termination of such contracts in the taxable year that the
7 consideration is paid. Section 162 further provides that taxpayers may deduct all the
8 ordinary and necessary expenses paid or incurred during the taxable year in carrying
9 on any trade or business. The IRS also determined that the consideration paid for
10 terminating the QFs contracts was in the nature of deductible termination costs. PLR-
11 120013-97 states the following: “Specifically, these amounts were paid to terminate
12 Taxpayer’s long-term contractual obligations to purchase power from these QFs
13 under the N Contracts. As a result, these payments will reduce future costs to
14 Taxpayer by allowing it relief from burdensome and uneconomic power purchase
15 agreements. As discussed above, amounts paid to terminate burdensome contracts
16 and to reduce or eliminate future costs, without more, are generally considered
17 ordinary and necessary business expenses under §162. See Capitol Indemnity Ins.
18 Co., 237 F.2d at 901; Montana Power Co., 171 F. Supp. at 943; Stuart Co., T.C.
19 Memo at ¶ 50,171; see also Rev. Rul. 95-32, 1995-1 C.B. 8.”

20

21 **Q. HAS THE IRS PROVIDED ANY ADDITIONAL GUIDANCE OR PRIVATE**
22 **LETTER RULINGS THAT ADDRESS THE CURRENT YEAR**

1 **DEDUCTIBILITY OF PURCHASE POWER AGREEMENT/CONTRACT**
2 **BUY-OUT COSTS?**

3 A. Yes. Florida Power Corporation (“FPC”) requested a letter ruling from the IRS on
4 April 30, 1997, related to the current year’s deduction for the Tiger Bay purchase
5 power agreement buy-out costs, not related to depreciable plant, on its income tax
6 return for FPC’s purchase of the Tiger Bay cogeneration facility and the termination
7 of the related purchased power contracts. FPC received a favorable letter ruling from
8 the IRS on the deductibility of the buy-out costs not related to depreciable plant.

9

10 **Q. BASED ON THE ABOVE FAVORABLE IRS PRIVATE LETTER RULING**
11 **FOR FPC, HOW WOULD THAT IMPACT THE CEDAR BAY FACILITY**
12 **ACQUISTION COSTS TO BE RECOVERED THROUGH THE CAPACITY**
13 **CLAUSE?**

14 A. The favorable IRS private letter ruling for FPC would mean that FPL’s proposed PPA
15 Loss Regulatory Asset would be deductible for income tax purposes and that the
16 annual cost to be recovered from ratepayers would be reduced by \$34.5 million,
17 which totals \$326.9 million over the remaining life of the PPA.

18

19 **Q. IS THE IRS BOUND BY THE ABOVE MENTIONED FAVORABLE**
20 **PRIVATE LETTER RULINGS IN THE INSTANT CASE, THAT THE**
21 **TERMINATION COSTS OF THE PPA OR PPA LOSS WOULD BE**
22 **DEDUCTIBLE FOR INCOME TAX PURPOSES?**

1 A. No. Each Private Letter Ruling is based on the requested specific entity's situation
2 and circumstances related to each of the individual PPA buyouts. If FPL were to
3 request one, it is possible that the IRS could issue an unfavorable private letter ruling,
4 if they were to determine that the circumstances were not similar.

5
6 **Q. SHOULD FPL REQUEST A PRIVATE LETTER RULING FROM THE IRS**
7 **REGARDING THE DEDUCTIBILITY OF THE PPA LOSS REGULATORY**
8 **ASSET THAT IT PROPOSES TO SET UP FOR THE TERMINATION OF**
9 **THE PPA?**

10 A. Yes. FPL should request a private letter ruling from the IRS regarding the
11 deductibility of the termination of the PPA, based on the specific circumstances of
12 FPL's acquisition of the Cedar Bay Facility and the termination of the PPA.

13
14 **Q. IS FPL PROPOSING TO INCLUDE THE UNAMORTIZED BALANCE FOR**
15 **THE PROPOSED PPA LOSS REGULATORY ASSET AS A COMPONENT**
16 **OF THE CAPACITY CLAUSE FOR RECOVERY?**

17 A. Yes. FPL is proposing to include the unamortized balance of the proposed PPA Loss
18 Regulatory Asset as a component of the Capacity Clause and is requesting to earn
19 FPL's overall WACC on the unamortized balance, over the remaining contract term
20 of the PPA.

21
22 **Q. HAS THE FPSC ISSUED ANY PRIOR ORDERS WHICH ADDRESS THE**
23 **APPROPRIATE CAPITAL COSTS ON REGULATORY ASSETS**

1 **INCLUDABLE IN THE CAPACITY CLAUSE AND, SPECIFICALLY, THE**
2 **WACC?**

3 A. Yes. The FPSC has addressed the appropriate capital costs on regulatory assets
4 includable in the Capacity Clause and, specifically, the WACC in two orders which
5 reflected settlements. The two orders are: (1) Order No. PSC-97-0652-S-EQ, Docket
6 No. 970096-EQ, related to the purchase of the Tiger Bay co-generation facility and
7 termination of the purchased power contracts by Florida Power Corporation; and (2)
8 Order No. PSC-00-1913-PAA-EI, Docket No. 000-82-EI, related to the buyout and
9 termination of the Okeelanta purchased power contracts by FPL.

10

11 **Q. DID THE FPSC PRIOR ORDERS MENTIONED ABOVE PROVIDE FOR**
12 **THE FULL WACC RETURN ON THE UNAMORTIZED BALANCE OF THE**
13 **PPA BUYOUTS?**

14 A. No. Neither of the FPSC prior orders provided for the full WACC return on the
15 unamortized balance of the PPA buyouts. The Tiger Bay order based on the
16 stipulation provided recovery of only the "... (2) interest applicable to the
17 unamortized balance of the retail portion of the *Tiger Bay* Regulatory Asset, and (3)
18 amortization of the remaining principal of the retail portion of the *Tiger Bay*
19 Regulatory Asset."⁷ The Okeelanta order based on the settlement agreement provided
20 for the recovery of the settlement payment over a term of five years with 79%
21 recovered through the capacity clause and 21% recovered through the fuel adjustment

⁷ See 1997 Fla. PUC LEXIS 672.

1 clause with any unamortized balance during the five-year term earning interest at the
2 commercial paper rate rather than a higher overall rate of return.⁸

3
4 **Q. IF THE FPSC, IN THIS PROCEEDING, AUTHORIZES FPL TO INCLUDE**
5 **THE PPA LOSS REGULATORY ASSET TO BE RECOVERED THROUGH**
6 **THE CAPACITY CLAUSE, SHOULD THE FPSC ALSO AUTHORIZE THE**
7 **FULL WACC FOR THE UNAMORTIZED BALANCE OF THE PPA LOSS**
8 **REGULATORY ASSET AS REQUESTED BY FPL?**

9 **A.** No. The FPSC should not authorize FPL to recover the full WACC for the
10 unamortized balance of the regulatory asset. FPL should only recover (a) the debt
11 component of the WACC or (b) the actual interest cost of any debt that FPL issues in
12 order to consummate the Cedar Bay Facility acquisition. In a normal rate proceeding,
13 the full WACC return should only be applied to components of the rate base or
14 investments in plant in service. This PPA Loss Regulatory Asset is not related to
15 either the rate base or to investments in plant in service, but is related to purchase
16 power costs. It is specifically related to the buy-out of the purchase power
17 agreement/contract, where the economics of the PPA have become unfavorable and
18 the contract is "...above today's current and projected market prices and well above
19 FPL's current avoided costs."⁹

20
21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 **A.** Yes, it does.

⁸ See 2000 Fla. PUC LEXIS 1222.

⁹ Transmittal Letter at 3, FPSC Docket No. 150075-EI.

CERTIFICATE OF SERVICE
DOCKET NO. 150075-EI

I HEREBY CERTIFY that a true and correct copy of the Confidential (as designated by FP&L and/or Cedar Bay) Testimony of Terry M. Myers has been furnished to the following parties on this 8th day of June, 2015.

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John J. Truitt
Associate Public Counsel

*Not served at this time. One (1) copy of each confidential testimony has been filed with the PSC Commission Clerk's Office under seal, pending confidentiality determination. Staff will be served with a Public Version, when finally so designated.



TERRY M. MYERS
Senior Project Manager

EDUCATION

Indiana State University, (Terre Haute, IN) Bachelor of Science Degree, Major: Accounting, Minor: Computer Science

PROFESSIONAL MEMBERSHIP

Indiana CPA Society

PROFESSIONAL CERTIFICATION

CPA: Indiana Certificate No. CP09200364

EXPERIENCE

Mr. Myers has extensive experience with over twenty nine (29) years in electric utility ratemaking and financial analysis. This experience includes numerous preparations of revenue requirements, cost of service studies, rate design analyses, cash working capital analyses, the analysis of wholesale and retail rate filings, review of wholesale contracts, reliability must run (RMR) proceedings, the preparation of retail and wholesale rate filings, review of depreciation studies, review of electric wholesale and retail fuel clause adjustments, review of OATT Formula Rate filings, and the preparation of retail and wholesale rate filings, the presentation of expert testimony before the Federal Energy Regulatory Commission (FERC) in wholesale RMR Rate proceedings. In addition to having presented expert testimony before FERC and various state commissions, Mr. Myers has also presented testimony before several local jurisdictions and utility boards.

Since joining GDS in October 2008, Mr. Myers has consulted with utilities and government agencies in multiple states in the following areas:

- Negotiation of Open Access Transmission revenue requirements and formula rates with Investor Owned Utilities.
- Negotiation of revenue requirements and stated rates for G&T Cooperative in Arizona.
- Prepared testimony and exhibits for the establishment of an RMR Rate which resulted in a settlement.
- Establishment of annual revenue requirements for multiple Transmission Owning Entities in the California ISO.
- In addition, Mr. Myers has assisted in the preparation of expert testimony in multiple cases before the Federal Energy Regulatory Commission and has been involved in settlement negotiations in several of those cases.

Specific Prior Experience Includes:

R.W. Beck, Inc., Orlando, FL – Senior Consultant

- Participate in multiple settlement agreements related to OATT Formula Rates representing power agencies and municipal clients.

- Project Manager in multiple RMR proceedings before FERC including settlement negotiations and preparation and filing of testimony on behalf of the CT DPUC.
- Participate in utility rates and financings for water, wastewater, electric and gas divisions of municipal clients.
- Prepare Impact Fee Studies for water and wastewater divisions of municipal client.
- Project Manager for electric Cost of Service Study for a municipal client.
- Project Manager for projects related to the annual Power Coordination Agreement (PCA) True-ups and Interconnection Agreements (IA) for three large Power Agencies. Projects included an A&G Audit, Prepaid Coal Review, annual PCA and IA True-ups for 1999 through 2007, etc., which have led to over \$22,000,000 in credits to the Power Agencies.
- Project Manager for water Cost of Service Studies for a large municipal client.
- Trained and supervised R.W. Beck employees for work with financial analyses and audits for Power Agencies.
- Assist Beck employees with projects including litigation for various Power Agencies in Florida and North Carolina.
- Project Manager for training sessions and audit manuals for Power Agencies' employees who work with contracts.
- Assist Beck employees with appraisals and valuations of electric utilities.
- Project Manager working with Beck employees performing transmission and distribution analyses for various municipal electric utilities.

Cinergy / PSI Energy Plainfield, IN – Senior Analyst - Retail Cost of Service

- Responsible for preparing the monthly statistical reports for PSI Energy (PSI) and Union Light Heat & Power (ULH&P) subsidiaries of Cinergy.
- Review and assist in the preparation of the monthly transformer bank report.
- Review and check the monthly statistical reports for Cincinnati Gas & Electric (CG&E) a subsidiary of Cinergy.
- Prepare the annual FERC fee calculation report for PSI Energy, Inc., CG&E and ULH&P.
- Assist in the preparation of cost of service studies for PSI Energy, Inc., CG&E and ULH&P.

Cinergy / PSI Energy Plainfield, IN – Senior Analyst - Revenue Requirements

- Responsible for preparing accounting testimony and exhibits for the quarterly fuel clause hearings before the Indiana Utility Regulatory Commission (IURC).
- Prepare various analyses of operating expenses and expense accounts as necessary in the preparation of the quarterly fuel clause applications.
- Assist in the preparation, review and input of monthly journal entries for wholesale and retail fuel clause calculations as well as various other monthly journal entries relating to wholesale and retail rates.
- Analyze IURC Orders and modify the quarterly fuel clause application to include the necessary changes.
- Assist in the preparation of the FERC Annual Filing in preparation of Schedules AH, AI and BI.
- Respond to various questions from the FERC Auditors, Office Utility Consumer Counselor's (OUCC's) staff and Arthur Andersen the outside auditors.

London Witte Group, LLC Indianapolis, IN – Utility Manager

- Responsible for preparing accounting testimony and exhibits for utility rate proceedings before the IURC and other State Utility Commissions regarding gas, electric, water and wastewater utilities whether they are investor-owned, REMCs, municipals or not-for-profits.
- Responsible for providing oral testimony in utility rate proceedings in support of the pre-filed testimony and exhibits.

- Responsible for the training and supervising the newer accounting staff in the art of utility rate making and regulation.
- In-charge and assist in the preparation of audits of gas and electric utilities.
- Responsible for preparing proposals to utilities in response to requests for assistance in preparing rate studies, bond financing, audits, etc.
- Supervise staff in preparation of monthly and quarterly compilations.

Technical Associates, Inc. Richmond, VA – Senior Accountant

- Responsible for preparing proposals in response to RFP's from Out of State Utility Commissions and Consumer Advocate Groups.
- Responsible for preparing accounting rate study testimony and exhibits for the State Utility Commissions and Consumer Advocate Groups after the proposal was accepted regarding gas, electric and water utilities rate proceedings.
- Responsible for providing oral testimony in the utility rate proceedings in support of the pre-filed testimony and exhibits.
- Assist the other members of the Firm with their cost of equity and engineering projects.

Indiana Utility Regulatory Commission, Indianapolis, IN – Senior Accountant

- Responsible for preparing accounting rate study testimony and exhibits for gas, electric, water and wastewater utilities rate cases in over 100 proceedings.
- Responsible for providing oral testimony in utility rate proceedings in support of the pre-filed testimony and exhibits.
- Responsible for the training and supervising the newer accounting staff in the art of utility rate making and regulation.
- Responsible for providing accounting exhibits, pre-filed testimony and oral testimony at Gas Cost Adjustment and Fuel Adjustment Clause hearings.

REGULATORY EXPERIENCE

- Federal Energy Regulatory Commission
- Arizona Corporation Commission
- Indiana Utility Regulatory Commission
- Virginia State Corporation Commission
- Public Service Commission of West Virginia

EXPERT TESTIMONY IN COURT PROCEEDINGS

United States District Court for the Northern District of Mississippi, Delta Division

Recent FERC Transmission Cases in Which Mr. Myers has Participated on Behalf of Transmission Customer Clients

- Entergy Services, Inc., Docket Nos. ER08-1057
- American Electric Power (West) – Docket No. ER09-1198
- American Electric Power (East) – Docket No. ER08-1329
- Dominion Virginia Power – Docket No. ER09-545-000
- Duke Energy Carolinas – Docket No. ER11-3585-000
- Duke Energy Florida – Docket ER09-1166-000
- Duke Energy Progress (Progress Energy Carolina) – Docket No. ER09-1218
- PPL Electric Utilities - Docket No. ER08-1457

- o Pacific Gas & Electric Company – Docket No. ER13-2022
- o San Diego Gas & Electric Company – Docket No. ER15-553-000
- o Southern California Edison – Docket No. ER11-3697-000
- o Tampa Electric Company – Docket No. ER10-1782-000
- o City of Pasadena, California – Docket No. EL09-67
- o City of Riverside, California – Docket No. EL09-52

SOFTWARE EXPERIENCE

Microsoft Suite: Excel, Word, Access; Lotus 123, Symphony, Quattro Pro, and Word Perfect.

Florida Power and Light Company
Cedar Bay Transaction
Proposed Journal Entries - Office of Public Counsel (A)

| Line No. Description | FERC Account | Amount (\$000's) | |
|---|-----------------|---------------------|---------|
| | | DR | CR |
| <u>Entry #1</u> | | | |
| 1 Investment in subsidiary companies | 123.1 | 520,500 | |
| 2 Cash | 131 | | 520,500 |
| To Record the Purchase of CBAS in accordance with CFR 18, Part 101 Balance Sheet Accounts. | | | |
| <u>Entry #2</u> | | | |
| 3 Electric plant purchased or sold - Cedar Bay Facility Plant | 102 | | 517,900 |
| 4 Utility Plant In Service - Acct 101 (Sub-Accounts) | 310 - 347 | 517,900 | |
| 5 Electric plant purchased or sold - Cedar Bay Facility A/D | 102 | 248,300 | |
| 6 Accumulated Provision for Depreciation of Electric Utility Plant | 108 | | 248,300 |
| 7 Electric plant purchased or sold - Fair Value Discount | 102 | 269,600 | |
| 8 Electric plant acquisition adjustment - Fair Value Discount | 114 | | 269,600 |
| 9 Miscellaneous deferred debits - PPA | 186 | 520,500 | |
| 10 Other Deferred Credits - PPA | 253 | | 520,500 |
| 11 Utility Plant In Service - Asset Retirement Obligations | 101 | 4,200 | |
| 12 Asset Retirement Obligations | 230 | | 4,200 |
| 13 Deferred Tax Asset - Book/Tax Diff on Acquired Plant | 190 | 4,900 | |
| 14 Regulatory Liability - Def Tax on Plant Book/Tax Diff | 254 | | 4,900 |
| To record the allocation of the purchase price to assets and liabilities acquired in accordance with CFR 18, Part 101, Electric Plant. PPA recorded in Accts 186 and 253. | | | |
| <u>Entry #3</u> | | | |
| 15 Other Regulatory Assets - PPA Loss | 182.3 | 520,500 | |
| 16 Other Regulatory Assets - PPA Loss Deferred Taxes | 182.3 | 326,900 | |
| 17 Miscellaneous deferred debits - PPA | 186 | | 520,500 |
| 18 Accumulated Deferred Income Taxes - Other - PPA Loss Deferred Taxes | 283 | | 326,900 |

To record the Cancellation of the PPA.

(A) See OPC's 3rd Set of Interrogatories No. 25 balances as of 12/31/14.

Florida Power and Light Company
Cedar Bay Transaction
Proposed Journal Entries - Office of Public Counsel (A)

| Line No. Description | FERC Account | Amount (\$000's) | |
|--|-----------------|---------------------|--------|
| | | DR | CR |
| <u>Annual Journal Entries</u> | | | |
| <u>Entry #4</u> | | | |
| 19 Annual Depreciation Expense - Cedar Bay Facility | 403 | 10,900 | |
| 20 Accumulated Depreciation Expense - Cedar Bay Facility | 108 | | 10,900 |
| To Record Annual Depreciation Expense | | | |
| <u>Entry #5</u> | | | |
| 21 Cedar Bay Facility - FV Discount | 114 | 10,900 | |
| 22 Amortization of Acquisition Adjustment - Cedar Bay Facility FV Discount | 403 | | 10,900 |
| To Record Annual Amortization of Acquisition Adjustment | | | |
| <u>Entry #6</u> | | | |
| 23 Other Expenses - Amortization of PPA Loss | 557 | 90,800 | |
| 24 Other Regulatory Assets - PPA Loss | 182.3 | | 55,800 |
| 25 Other Regulatory Assets - PPA Loss Deferred Taxes | 182.3 | | 34,500 |
| 26 Deferred Tax Asset - Book/Tax Diff on Acquired Plant | 190 | | 500 |
| To record annual amortization of the PPA Loss | | | |
| <u>Entry #7</u> | | | |
| 27 Accumulated Deferred Income Taxes - Other - PPA Loss Deferred Taxes | 283 | 34,500 | |
| 28 Other Expenses - Amortization of PPA Loss | 557 | | 34,500 |
| To record annual amortization of PPA Loss deferred taxes to Other Expenses | | | |