

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
ORDER NO. PSC-15-0294-PHO-EI
ISSUED: July 20, 2015

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on July 6, 2015, in Tallahassee, Florida, before Commissioner Jimmy Patronis, as Prehearing Officer.

APPEARANCES:

JOHN T. BUTLER, KEVIN I.C. DONALDSON, and MARIA J. MONCADA, ESQUIRES, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Florida Power & Light Company (FPL)

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In limited appearance on behalf of Cedar Bay

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On behalf of the Citizens of the State of Florida (OPC)

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On behalf of the Florida Industrial Power Users Group (FIPUG)

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On behalf of Florida Audubon Society

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On behalf of the Florida Public Service Commission (Staff)

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PREHEARING ORDER

I. CASE BACKGROUND

On March 6, 2015, pursuant to Section 366.06, Florida Statutes (F.S.), Florida Power & Light Company (FPL) filed its Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation. Accordingly, in compliance with Section 366.06(2), F.S., an administrative hearing will be held in this matter on July 28 and 29, 2015.

II. CONDUCT OF PROCEEDINGS

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

III. JURISDICTION

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

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093(4), F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

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

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material

that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

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

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

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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

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

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

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

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Robert E. Barrett	FPL	2, 3 6, 7, 8, 9
T. L. Hartman	FPL	2, 3, 3A, 4, 5, 6
David Herr	FPL	1, 2,
K. Ousdahl	FPL	7, 9
Gary D. Brunault	OPC	1-6
Dan J. Wittliff	OPC	5-6
Terry M. Myers	OPC	3, 6-9
Christopher C. Dawson	OPC	1-6, 8-9, OPC's Contested Issue
Jeffry Pollock	FIPUG	1,2,3,5,8,9
Michael Lane	FIPUG	1,2,3,4,5
Clifford Evans	FIPUG	1,2,3,4,5
Stephen Mark Rudolph	FIPUG	1,2,3,4,5
<u>Rebuttal</u>		
David Herr	FPL	1
K. Ousdahl	FPL	7, 9
Ray Butts	FPL	5
T. L. Patterson	FPL	5
T. L. Hartman	FPL	3, 4
Robert E. Barrett	FPL	8, 9

VII. BASIC POSITIONS

FPL: FPL seeks Commission approval of a purchase and sale agreement that will allow FPL to mitigate the impact of its existing power purchase agreement (“PPA”) with Cedar Bay Generating Company, Limited Partnership (“Cedar Bay Genco”), which requires FPL to continue making above-market capacity payments through the end of 2024. In December 2014, FPL entered into a Purchase and Sale Agreement (“Agreement”) to assume ownership of the Cedar Bay generating facility (“Cedar Bay Facility” or the “Facility”) through a stock purchase and terminate its existing PPA with Cedar Bay Genco. The Cedar Bay Transaction, which is contingent on FPSC approval, is projected to produce \$70 million in savings for FPL customers on a cumulative present value revenue requirements (“CPVRR”) basis (\$156 million nominal savings).

Background. The Cedar Bay Facility is a 250 megawatt circulating fluidized bed coal-fired unit that has been selling all of its capacity and energy to FPL since 1994. Cedar Bay Genco, wholly owned by CBAS Power, Inc. (“CBAS”), owns the Cedar Bay Facility and sells the electricity produced by the Facility to FPL pursuant to a long-term PPA that expires December 31, 2024. Cedar Bay Operating Services, LLC, also owned by CBAS, operates and manages the Facility.

Payments due under the PPA. Capacity and energy payments are treated differently under the PPA. Energy payments are tied to the St. Johns River Power Park coal prices, which are lower than the Cedar Bay Facility’s actual energy costs and are based on FPL’s dispatch of the Facility. Capacity and O&M payments are fixed and were determined based on Florida’s avoided unit at the time the parties entered the PPA. In contrast to the energy pricing, the capacity and fixed O&M payments are above today’s current and projected market prices and well above FPL’s current avoided cost. Moreover, FPL must make the fixed monthly capacity and O&M payments irrespective of whether or how often FPL dispatches the Facility. To illustrate the unfavorable nature of the pricing structure, FPL’s 2014 average avoided cost was \$27 per MWh compared to Cedar Bay Genco’s “all in” price under the PPA of more than \$178 per MWh.

The Cedar Bay Transaction. In an effort to mitigate the impact of the above-market payment obligations, FPL recently entered into an Agreement with CBAS Power Holdings LLC pursuant to which FPL would purchase 100 percent of the equity ownership interest in CBAS. For a purchase price of \$520.5 million, FPL will become the sole ultimate owner of the Cedar Bay Facility and, upon closing, would consensually cancel the existing PPA, thus terminating the obligation to make any additional out-of-market payments. As sole owner, FPL would thereafter be entitled to continue to economically dispatch the Facility to meet its system needs. While in recent years FPL has dispatched the Cedar Bay Facility at an annual capacity factor of about 50 percent due to competitive energy charges

under the PPA, FPL anticipates that, based on true energy costs, it will dispatch the Facility at a substantially lower capacity factor of about 5 percent. Based on current projections, FPL anticipates that it will retire the Cedar Bay Facility at the end of 2016 due to the availability of the new interstate natural gas pipeline system to fuel its natural gas-fired units in early 2017. FPL retains the option to continue operating the Facility if economic changes dictate that further dispatch of the unit is the best option for customers.

Benefits of the Cedar Bay Transaction. At least three benefits result from the Cedar Bay Transaction. First, the purchase of the Cedar Bay Facility, together with the termination of the PPA, is projected to produce \$70 million in savings for customers on a CPVRR basis (\$156 million nominal savings). Under alternate economic scenarios in which the anticipated fuel and emissions costs were 20 percent greater than and 20 percent less than forecasted, the Cedar Bay Transaction is expected to produce customer savings, in amounts ranging from \$3 million to \$106 million (CPVRR). Indeed, the intervenor testimony acknowledges that the Cedar Bay Transaction will result in savings even if the intervenor's extreme assumptions¹ were used to evaluate the economics.

Second, by structuring the Cedar Transaction in a manner that gives FPL ownership of the Facility, FPL maintains for its customers the option of continued fuel supply reliability and diversity by keeping the Cedar Bay Facility in service. Having the ability to dispatch a coal-fired unit provides FPL an important near-term alternative to natural gas, which is particularly important in the years before Florida's third natural gas pipeline system's anticipated 2017 commercial operation date. Again, if economic conditions change, the Company can continue to operate the Facility, thereby producing even greater customer savings than currently estimated.

Third, the Cedar Bay Transaction is expected to provide environmental benefits. FPL anticipates that reducing the annual capacity factor from 50 percent to 5 percent once it assumes control of the Facility will, in turn, reduce carbon dioxide ("CO₂") emissions in Florida by over a million tons per year. Further, FPL's anticipated retirement of the Facility at the end of 2016 might be a particularly important benefit to the State depending on the scope and timing of implementing the Environmental Protection Agency's Clean Power Plan regarding CO₂ emissions.

Proposed regulatory accounting treatment. FPL proposes to record the costs associated with the Cedar Bay Transaction in the Capacity Cost Recovery Clause ("CCR Clause"), the Fuel Cost Recovery Clause ("FCR Clause") and base rates, as described below. To avoid double recovery, FPL will not include the items

¹ FPL's rebuttal testimony filed on June 17, 2015 explains why the intervenors' assumptions are erroneous.

recovered in the FCR and CCR Clauses in retail base ratemaking or FPL's earnings surveillance report.

Base rates. FPL proposes to record the operation and maintenance costs of the Facility in base O&M as they are incurred. Consistent with FPL's Settlement Agreement approved by Order No. PSC-13-0023-S-EI, FPL will not seek an increase in base rates until base rates are reset in FPL's next base rate proceeding.

Capacity Clause. FPL proposes to establish a regulatory asset in the CCR Clause for the CBAS purchase price in the amount of \$520.5 million, essentially equivalent to the fair value of the loss on the PPA. Since the loss is not deductible for income tax purposes, FPL must also recover the associated income taxes. Accordingly, FPL proposes also to establish a regulatory asset and an offsetting deferred tax liability for \$326.9 million, which represents the income tax gross up associated with the purchase price.

FPL proposes to amortize approximately \$90.3 million per year comprised of the net regulatory assets for the CBAS purchase price and associated income tax gross up. FPL requests recovery of the net regulatory assets through the CCR Clause over the remaining PPA period, which is roughly 10 years. Recovery through the CCR Clause is appropriate because that is where FPL currently is recovering the cost of the PPA whose termination results in the regulatory assets.

FPL also seeks to recover an appropriate return on the \$520.5 million regulatory asset established for the CBAS purchase price through the CCR Clause. Because the payment to CBAS Power Holdings, LLC in exchange for terminating the PPA represents a long-term investment, FPL anticipates financing it using the Commission-approved regulatory adjusted mix of debt and equity. To fairly recognize the investment made by its equity and debt investors, FPL requests a return on the unamortized balance of this regulatory asset calculated based on FPL's weighted average cost of capital ("WACC") used for clause recovery. This treatment is consistent with Order No. PSC-12-0425-PAA-EU, in which the Commission confirmed that utilities should be permitted to earn their current, approved WACC on clause-recoverable investments.

FCR Clause. FPL proposes to recover the fuel costs associated with the Cedar Bay Facility through FPL's FCR Clause, including the rail car lease payments and fuel transportation costs associated with delivering coal to the Facility. This treatment is consistent with the Commission's decision in Order No. 14546, issued July 8, 1985, in Docket No. 850001-EI-B.

OPC:

The March 6, 2015 Petition ("Petition") of Florida Power & Light Company's ("FPL" or "Company") can be summed up as an opportunistic proposal to escape an existing PPA that is (and has always been) uneconomic for ratepayers by purchasing a company, taking possession of a 20 year-old coal plant, and canceling the existing Purchase Power Agreement ("PPA"), by creating an

innovative labyrinthine accounting scheme that creates guaranteed profits for FPL's shareholders on a cost that was previously a pass-through to customers. Under FPL's proposal, FPL will purchase the equity ownership of CBAS Power, Inc. Part and parcel with FPL's proposed transaction, FPL will step in CBAS' shoes with respect to existing contracts and take possession of the Cedar Bay generating facility and associated liabilities. FPL proposes creating a regulatory asset and recovering the \$520.5 million used to purchase CBAS through the Capacity Cost Recovery Clause ("CCR") along with a return on the purchase price at FPL's weighted average cost of capital.

Citizens does not dispute that the terms of the PPA are uneconomic for FPL's customers. The record at hearing will show the costs incurred under the PPA far exceed the current avoided cost of generation; furthermore, the minimal contribution by Cedar Bay to FPL's system (in terms of MW) hardly affects reliability for FPL's customers. Citizens agree that the PPA should be cancelled; however, Citizens contend that the method of PPA elimination chosen by FPL is not the best option for FPL's ratepayers.

Currently, costs incurred under the PPA are passed through the CCR Clause to FPL's ratepayers. FPL earns no profit on these costs, and FPL's customers do not assume any of the liabilities associated with owning and operating a coal-fired generating facility. Under FPL's proposal, FPL would purchase CBAS and then cancel the PPA that FPL has with its own (newly acquired) subsidiary. The proposed method would also include assumption of the existing contracts between CBAS and other entities as well as taking possession of the Cedar Bay generating facility itself and any and all liabilities associated with the acquisition of these items. FPL would then create a regulatory asset and recover that asset and a return on that asset, along with associated taxes, through FPL's proposed accounting scheme in the CCR Clause.

Although Citizens recognize the benefits of terminating the PPA, Citizens cannot agree with the proposed method chosen by FPL for several reasons. First, FPL's analysis of potential customer savings fails to account for any other methods of PPA cancellation. For example, FPL failed to present an analysis of an option where FPL simply buys itself out of the PPA without acquiring the assets and liabilities of CBAS. Second, FPL's proposed purchase price of \$520.5 million for CBAS Power, Inc., is not a fair and reasonable valuation of the existing PPA asset. FPL's proposed purchase price overstates the Fair Value of the Cedar Bay PPA by, at least, \$150 million. Third, FPL's proposed accounting treatment for the purchase of CBAS Power, Inc., fails to minimize impacts to FPL's customers. FPL's proposed accounting method attempts to reinvent the wheel by ignoring accounting methods set forth in federal regulations and by failing to seek favorable IRS tax treatments, which have occurred in prior similar transactions. Lastly, FPL failed to account for the full impact of all liabilities associated with taking possession of a coal-fired generating unit that sits on top of contaminated

groundwater. FPL's assertions that it has sufficient mechanisms in place to avoid liability under environmental regulations are, quite simply, incorrect.

For the reasons set forth above, the Commission should deny FPL's Petition as it is currently presented. As stated above, Citizens agree that the current PPA is economically unfavorable for FPL's customers; therefore, the Commission should either: 1) deny FPL's current Petition and direct FPL to negotiate a buyout of the exiting PPA; or 2) deny FPL's current Petition and allow FPL's proposed asset purchase of CBAS conditioned upon a fair and reasonable price with a favorable IRS private letter ruling regarding the deductibility of the PPA buyout cost with a debt-based carrying cost on the asset recovery.

FIPUG:

The value sought by FPL for the Cedar Bay Generating Facility and the related purchased power agreement, \$520.5 million dollars, is an inflated, overstated sum that does not represent the fair value of the purchase power agreement that FPL seeks to acquire. Prior sales of the Cedar Bay Generating Facility, and the same attendant purchase power agreement, occurred for significantly less money than \$520 million dollars. Importantly, in these prior sales, the identical purchased power agreement in question had a longer term, and thus greater capacity payments were due, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced, given the value exchanged in that deal involving the same power plant and purchased power agreement.

Additionally, a prior valuation of the purchased power agreement in question, performed by FPL's own valuation expert for another party, pegged the value of the same purchase power agreement at a significantly lower sum than FPL is proposing to charge ratepayers. The Commission should deny FPL's Petition or reduce significantly the value of the purchased power agreement in question.

Further, with FPL becoming more and more dependent on natural gas, having ratepayers pay \$520.5 million for a coal-fired power plant that FPL does not plan to operate, but to immediately retire, does not advance the goal of diversifying the company's fuel supply or the ratepayer's fuel risks. The status quo contractually provides fuel diversity to FPL and its ratepayers, without shifting the operational and regulatory risk to FPL and its ratepayers.

Finally, should the Commission approve FPL's Petition, the \$520.5 million dollar sum should be significantly reduced. The reduced sum should be recovered in base rates, because the asset, the Cedar Bay Generating Facility, is a base-load coal facility that FPL will own outright. The capacity clause was established for the recovery of recurring, annual capacity payments made by a utility, not to recover a lump sum payment for a generating facility.

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

VIII. ISSUES AND POSITIONS

ISSUE 1: What is the fair value of the existing purchase power agreement with Cedar Bay Genco that FPL is acquiring?

POSITIONS

FPL: The Fair Value of the existing purchase power agreement ("PPA") with Cedar Bay Genco that FPL is acquiring is \$520 million, representing the value that the PPA could bring to an owner of the Facility who was entitled to continue selling power to FPL under the terms of the PPA for its remaining term. (Herr)

OPC: The Fair Value of the Cedar Bay PPA is approximately \$370 million. (Brunault, Dawson)

FIPUG: The value sought by FPL for the Cedar Bay Generating Facility and the related purchased power agreement, \$520.5 million dollars, is an inflated, overstated sum that does not represent the fair value of purchase power agreement that FPL seeks to acquire. Prior sales of the Cedar Bay Generating Facility and the attendant purchase power agreement occurred for significantly less money than \$520 million dollars, even though the purchased power agreement in question had a longer term, and thus greater capacity payments, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced.

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

ISSUE 2: Is FPL's purchase price for the equity ownership interest of CBAS Power, Inc. fair and reasonable?

POSITIONS

FPL: Yes. FPL's purchase price was determined as a result of arm's-length negotiations between independent, unrelated parties. FPL's purchase of the equity ownership interest in CBAS Power, Inc. ("CBAS") will enable FPL to terminate the out-of-market PPA payments that FPL would otherwise be obligated to pay through 2024. Using appropriate assumptions and modeling, FPL determined that the purchase of CBAS Power, Inc. at \$520.5 million will result in

customer savings of \$70 million (CPVRR) compared to continuing to make the contractually required PPA payments. (Barrett, Herr, Hartman)

OPC: No. As the Cedar Bay generating facility itself has a negligible Fair Value, the purchase price for the equity ownership interest of CBAS Power, Inc., is capped at the Fair Value of the Cedar Bay PPA, which is approximately \$370 million. (Brunault, Dawson)

FIPUG: No. The value sought by FPL for the Cedar Bay Generating Facility and the related purchased power agreement, \$520.5 million dollars, is an inflated, overstated sum that is not fair and reasonable. Prior sales of the Cedar Bay Generating Facility and the attendant purchase power agreement occurred for significantly less money than \$520 million dollars, even though the purchased power agreement in question had a longer term, and thus greater capacity payments, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced.

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

ISSUE 3: Is FPL's purchase and sale agreement between FPL and CBAS Power Holdings, LLC., and termination of the existing purchase power agreement with Cedar Bay Genco cost-effective?

POSITIONS

FPL: Yes. As stated in Issue No. 2, FPL's purchase of the equity ownership interest in CBAS will enable FPL to terminate the out-of-market PPA payments, which will result in customer savings of \$70 million (CPVRR) compared to continuing to make the contractually required PPA payments. (Barrett, Hartman)

OPC: No, FPL's Petition does not present the most cost-effective method for terminating the uneconomic Cedar Bay PPA. FPL should consider either: 1) a buy out of the existing PPA; or 2) a restructured purchase and sale agreement with a private letter ruling on tax deductibility from the IRS and a debt-based carrying cost on the asset recovery. (Brunault, Dawson, Myers)

FIPUG: No. The value sought by FPL for the Cedar Bay Generating Facility and the related purchased power agreement, \$520.5 million dollars, is an inflated, overstated sum that is not cost-effective. Prior sales of the Cedar Bay Generating Facility and the attendant purchase power agreement occurred for significantly less money than \$520 million dollars, even though the purchased power agreement in question had a longer term, and thus greater capacity payments, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced.

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

ISSUE 3A: In its economic evaluation of and selection of the proposed transaction, did FPL take into account all reasonable measures to mitigate future PPA impacts to ratepayers?

POSITIONS

FPL: Yes. FPL has reasonably and realistically modeled the payments that it would be obligated to make under the terms of the PPA. FPL seeks the lowest practical cost of coal for SJRPP, which automatically results in the lowest energy cost for Cedar Bay under the PPA. This practice is reflected in the energy price forecast that was used to calculate the \$70 million CPVRR in customer savings from the Cedar Bay Transaction. The ability to make short term sales of Cedar Bay output to which FPL would be entitled under the PPA is purely speculative, and FPL does not attempt to project such sales as part of its regular planning purposes. Any short term sales of energy and capacity would be recallable by FPL to meet its own customer requirements, and any potential sales would be expected to reflect that contingency in price that buyers would be willing to pay. (Hartman)

OPC: No. FPL failed to account for the impacts of future environmental regulations, specifically the EPA's proposed Clean Power Plan, and how that will affect future operations at Cedar Bay. Although no one can predict how the Clean Power Plan will be implemented in Florida, it is generally acknowledged that coal-fired generating units will be affected. FPL failed to address or account for the potential impacts of the Clean Power Plan on Cedar Bay's availability, which would directly affect future capacity payments under the existing PPA. FPL also failed to account for the fact that, under the terms of the current PPA, the more the Cedar Bay plant is dispatched by FPL, the less profitable the plant becomes. (Brunault, Dawson)

FIPUG: Adopt position of the Office of Public Counsel.

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

ISSUE 4: If the Commission approves FPL's proposed Cedar Bay transaction, how will existing contracts between third party providers and CBAS Power, Inc. or subsidiaries be handled, what are the projected costs of fulfilling or terminating such contracts, and how should these costs be recovered?

POSITIONS

FPL: If the Commission approves the Cedar Bay Transaction, Cedar Bay Genco will continue as the counterparty to, and will handle, contracts with third parties, including the land lease and steam sales agreement. Because FPL will have upstream ownership interest in Cedar Bay Genco, the economic evaluation FPL

performed to determine the cost-effectiveness of the Cedar Bay Transaction and the resulting customer savings accounts for the costs that Cedar Bay Genco will incur associated with these contracts. The appropriate recovery for the Cedar Bay Transaction is described in FPL's position on Issue 7. (Hartman)

OPC: If the Commission approves FPL's proposed transaction as set forth in the Petition, FPL would assume all of CBAS' current contracts. FPL's proposed transaction also provides for an operating contract whereby FPL will pay Cogentrix personnel to operate the Cedar Bay facility through 2016. The contracts in existence speak for themselves; however, several existing contracts contain 2015 reopeners, which will cause the contracts to reset to market prices. If FPL's petition is approved, the contracts, which all support Cedar Bay generating facility operations, should be recovered in the same manner as all other contracts supporting the operation of a generating facility. (Brunault, Dawson)

FIPUG: Adopt position of the Office of Public Counsel.

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

ISSUE 5: What are the operational and regulatory risks associated with the FPL's proposed Cedar Bay transaction and has FPL appropriately accounted for these risks under the transaction?

POSITIONS

FPL: FPL has appropriately accounted for operational and regulatory risks in evaluating the Cedar Bay Transaction. FPL has thoroughly assessed the environmental liability based on recent independent, comprehensive evaluations as well as years of monitoring reports submitted to environmental agencies and an on-site visit. The indemnifications included in the ground lease for the Cedar Bay Facility protect the Company from any future liability associated with the historical contamination. Additionally, FPL will maintain a \$20 million insurance policy, which based on FPL's considerable experience, appropriately protects the Company against past, present and future environmental liabilities, known or unknown. Operationally, Cedar Bay Genco has implemented significant and sustainable improvements and ongoing maintenance practices that will ensure the Facility operates with high reliability. (Hartman, Butts, Patterson)

OPC: A multitude of operational and regulatory risks exist with acquiring a 20 year-old coal-fired generating facility given the impending Clean Power Plan that is situated on top of contaminated groundwater and next to a navigable water body. In terms of operational risk, FPL's analysis of future costs under the existing PPA assumed the Cedar Bay facility will have an increasing availability factor, thereby increasing the capacity payments, which is simply illogical for an aging generating unit, especially given the EPA's proposed carbon emission regulations on the near horizon.

FPL's analysis of the liabilities it will assume should the proposed transaction be approved are cursory at best. FPL assumes that the mechanisms it has in place will protect it from liability for existing, as well as any potentially undiscovered, site contamination. Such mechanisms cannot remove environmental liability, they can only attempt to mitigate liability. (Wittliff, Brunault, Dawson)

FIPUG: There are many of operational and regulatory risks associated with FPL's proposed Cedar Bay transaction. These include, but are not limited to, equipment malfunctions or breakage at the Cedar Bay Generating Facility, market risks associated with the price of coal and natural gas, compliance with existing and proposed state and federal environmental laws and regulations, and other risks that will be identified during the hearing.

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

ISSUE 6: Should the Commission approve as prudent FPL's request to approve the purchase and sale agreement between FPL and CBAS Power HOLDINGS, LLC. and terminate the existing purchase power agreement with Cedar Bay Genco?

POSITIONS

FPL: Yes. Under the existing PPA, the capacity payments between FPL and Cedar Bay Genco are out-of-market. The purchase and sale agreement ("Agreement") between FPL and CBAS Power Holdings, LLC allows FPL to terminate the obligation to make those out-of-market payments and will result in customer savings of \$70 million (CPVRR). In addition, pursuant to the Agreement, FPL will take ownership of the Cedar Bay Facility, which will allow FPL to run the Facility for reliability and fuel diversity purposes. Finally, approval of the Agreement makes possible early retirement of the Facility, thus producing environmental benefits for the state of Florida by substantially reducing the unit's carbon dioxide emissions. (Barrett, Hartman)

OPC: No. The purchase and sale agreement proposed by FPL is not prudent, because, the proposal set forth in FPL's Petition provides earnings for FPL's shareholders, while only providing minimal economic benefits (roughly 6.7% savings) to customers under the optimistic assumptions utilized by FPL. Furthermore, FPL's proposed purchase of CBAS Power, Inc., causes FPL's customers to assume liabilities, some of which are unknowable at this time and cannot be quantified. (Brunault, Wittliff, Myers, Dawson)

FIPUG: No, the Commission should not approve as prudent the inflated sum of \$520.5 million dollars that FPL proposes to pay for the Cedar Bay Generating Facility and its attendant purchase power agreement. This sum is overstated and does not represent the value of the assets in question, particularly when one considers that prior sales of the Cedar Bay Generating Facility and the attendant purchase power agreement occurred for significantly less money than \$520 million dollars, even

though the purchased power agreement in question had a longer term, and thus greater capacity payments, when these prior transactions took place. The arms-length transaction involving Goldman Sachs is compelling evidence that the amount FPL seeks to charge ratepayers should be denied or significantly reduced.

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

ISSUE 7: If the Commission approves FPL's proposed Cedar Bay transaction, what is the proper accounting treatment for the transaction?

POSITIONS

FPL: The proper accounting treatment for the Cedar Bay Transaction is as follows:

(1) The non-fuel costs of operating the Cedar Bay Facility will be recorded in base rate accounts.

(2) FPL will not record any amount as plant in service for the Cedar Bay Facility because the Facility has no economic value.

(3) FPL will establish regulatory assets for the purchase price of \$520.5 million and associated income tax gross up of \$326.9 million. FPL will establish a regulatory liability for the tax effect of the book/tax difference on the acquired Cedar Bay Facility of approximately \$4.9 million.

(4) FPL will recover through the Capacity Cost Recovery Clause (a) amortization of the net regulatory assets over the remaining PPA period, roughly 10 years and (b) a return on the unamortized balance of regulatory asset for the purchase price.

(5) FPL will recover the fuel costs associated with the Cedar Bay Facility through the FCR Clause, including the rail car lease payments and fuel transportation costs associated with delivering coal to the Facility. (Ousdahl, Barrett)

OPC: Should the Commission allow FPL to purchase CBAS Power, Inc., as proposed in FPL's Petition, FPL should follow the FERC USOA Electric Plant Instruction 5, Electric Plant Purchased or Sold, in 18 C.F.R. Part 101 requiring entry of plant at equipment at net book value. The gross original cost for the Cedar Bay Facility and the accumulated depreciation balance should be recorded in FERC Account 102 with a negative acquisition adjustment recorded in FERC Account 114 to reflect Cedar Bay Facility's net value of \$0. And, based on prior cases, FPL should obtain a private letter ruling from the IRS regarding the deductibility of the PPA Loss Regulatory Asset. (Myers)

FIPUG: Adopt the position of the Office of Public Counsel. Additionally, because the rail cars will not be used to deliver coal to the Cedar Bay facility for the vast majority of the remaining contract term, but will be leased to third parties, the rail car lease payments should be recovered through base rates.

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

ISSUE 8: If the Commission approves FPL's proposed Cedar Bay transaction, what is the proper rate of return?

POSITIONS

FPL: The proper rate of return for the Cedar Bay Transaction is FPL's overall weighted average costs of capital ("WACC") that is used for clause investments. This is consistent with the Commission's Order No. PSC-12-0425-PAA-EU, which provides that utilities should be permitted to earn their current, approved WACC on clause-recoverable investments. (Barrett)

OPC: Should the Commission allow FPL to purchase CBAS Power, Inc., as proposed in FPL's Petition, the proper rate of return on the asset should be either the debt component of the weighted average cost of capital or the actual interest cost of any debt that FPL may issue to consummate the transaction. (Myers, Dawson)

FIPUG: Adopt the position of the Office of Public Counsel.

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

ISSUE 9: If FPL's petition is approved, how should the Cedar Bay Generating Facility acquisition costs be recovered?

POSITIONS

FPL: The appropriate recovery for the Cedar Bay Generating Facility is described in FPL's position on Issue 7.

OPC: If FPL's petition is approved, then the acquisition cost for the asset, which will consist of a generating unit, should be recovered in base rates once the base rate freeze under the existing settlement agreement ends. If FPL bought out the existing PPA, instead of purchasing CBAS, then recovery of the cost of the buyout should be recovered through the CCR with a rate of return consistent with our position in Issue 8. (Myers, Dawson)

FIPUG: Since the proposed transaction, if approved, results in FPL effectively acquiring the Cedar Bay Generating Facility, a base load coal generating facility, the costs should be recovered in base rates. The fuel and capacity clause is used to recover ongoing purchase power and capacity payments, not the acquisition of a generating facility.

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

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Thomas L. Hartman	FPL	TLH-1	Existing Contract Capacity and Operation & Maintenance ("O&M") Payment Obligations
Thomas L. Hartman	FPL	TLH-2	Purchase & Sale Agreement (CONFIDENTIAL)
Thomas L. Hartman	FPL	TLH-3	Cedar Bay Ownership Structure
Thomas L. Hartman	FPL	TLH-4	Results of FPL's Economic Evaluation
David W. Herr	FPL	DH-1	Curriculum Vitae
David W. Herr	FPL	DH-2	"Valuation of Certain Tangible and Intangible Assets of CBAS Power Inc." Report
David W. Herr	FPL	DH-3	More Detailed Form of "Valuation of Certain Tangible and Intangible Assets of CBAS Power Inc." Report (CONFIDENTIAL)
Kim Ousdahl	FPL	KO-1	Proposed Journal Entries
G. Brunault	OPC	Appendix A	Résumé of Gary D. Brunault
G. Brunault	OPC	GB-1	Proposed Bonus Capacity Revenue of PPA*
D. Wittliff	OPC	Appendix A	Résumé of Dan J. Wittliff
T. Myers	OPC	Appendix A	Résumé of Terry M. Myers
T. Myers	OPC	TMM-1	Proposed Journal Entries for Cedar Bay Transaction

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
C. Dawson	OPC	Appendix A	Résumé of Christopher C. Dawson
C. Dawson	OPC	CCD-1	Modified FPL Economic Evaluation 1
C. Dawson	OPC	CCD-2	Modified FPL Economic Evaluation 2
C. Dawson	OPC	CCD-3	Modified FPL Economic Evaluation 3
C. Dawson	OPC	CCD-4	Modified FPL Economic Evaluation 4
C. Dawson	OPC	CCD-5	Modified FPL Economic Evaluation 5 (CONFIDENTIAL)
C. Dawson	OPC	CCD-6	Modified FPL Economic Evaluation 6 (CONFIDENTIAL)
C. Dawson	OPC	CCD-7	Summary of FPL's Alternatives to PPA (CONFIDENTIAL)
Jeffry Pollock	FIPUG	Appendix A	Qualifications of Jeffry Pollock
Jeffry Pollock	FIPUG	Appendix B	Testimony Filed in Regulatory Proceedings
Michael Lane	FIPUG	MGL-1	List of Utility Appraisals
Michael Lane	FIPUG	MGL-2	Discount Rate Spreadsheet
Cliff Evans	FIPUG	Composite Exhibit CE-1	Deposition Exhibits filed with deposition Nos. 1, 5, 6, 15, 24, 25, 26, 29, 30, 31, 33, 37, 38
Stephen Mark Rudolph	FIPUG	Composite Exhibit SR-1	Deposition Exhibits filed with deposition Nos. 17, 18, 21, 22

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Rebuttal</u>			
David W. Herr	FPL	DH-4	Major Factors Impact FV of Cedar Bay PPA (CONFIDENTIAL)
Kim Ousdahl	FPL	KO-2	FERC Accounting Decisions on Qualifying Facility (“QF”) Acquisitions
Kim Ousdahl	FPL	KO-3	Cedar Bay Journal Entries Under Original Cost Accounting
Tracy L. Patterson	FPL	TLP-1	Cedar Bay: Chronology of Plant Engineering Improvements (CONFIDENTIAL)
Tracy L. Patterson	FPL	TLP-2	Performance Statistics for Cedar Bay Generating Facility (CONFIDENTIAL)
Tracy L. Patterson	FPL	TLP-3	The Ground Lease Between Cedar Bay Generating Company and RockTenn (CONFIDENTIAL)
Thomas L. Hartman	FPL	TLH-5	Historical operating performance of the Cedar Bay Facility
Thomas L. Hartman	FPL	TLH-6	Graph of Monthly Capacity Factor from January 2010 through December 2014
Thomas L. Hartman	FPL	TLH-7	Economics of operating the Cedar Bay Facility through 2024

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

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are several confidentiality requests pending. Staff is working with the parties to reduce and clarify the pending requests.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 75 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 75 words, it must be reduced to no more than 75 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

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

XIV. RULINGS

The Office of Public Counsel sought to add an additional issue: "Is continued recovery of payments under the terms of the existing PPA in the public interest?" That request is hereby denied.

Opening statements, if any, shall not exceed 10 minutes per party.

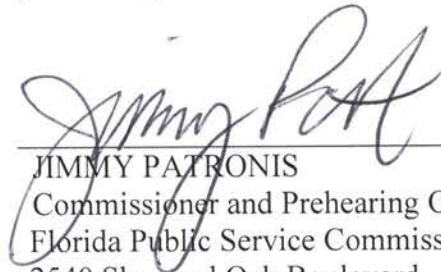
A separate order shall be issued on the Petition to Intervene filed by the Florida Audubon Society.

Florida Power & Light Company's Motion to Include Counter-Designations of the Deposition of Witness Rudolph at Hearing is granted.

It is therefore,

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

By ORDER of Commissioner Jimmy Patronis, as Prehearing Officer, this 20th day
of July, 2015.



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

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MFB/jev

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

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