

**BEFORE THE FLORIDA  
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 070001-EI  
FLORIDA POWER & LIGHT COMPANY**

**OCTOBER 22, 2007**

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

**REBUTTAL TESTIMONY OF:**

**K. M. DUBIN**

DOCUMENT NUMBER-DATE

09591 OCT 22 8

FPSC-COMMISSION CLERK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**FLORIDA POWER & LIGHT COMPANY**  
**REBUTTAL TESTIMONY OF KOREL M. DUBIN**  
**DOCKET NO. 070001-EI**  
**October 22, 2007**

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

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

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

A. I am employed by Florida Power & Light Company (FPL) as Manager of Cost Recovery Clauses in the Regulatory Affairs Department.

**Q. Have you previously testified in this docket?**

A. Yes, I have.

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

A. The purpose of my testimony is to rebut the testimony of the Office of Public Counsel (OPC) witness Aaron Rothschild, in opposition to FPL's proposed recovery through the Fuel Cost Recovery Clause (FCR) of replacement power costs associated with the Turkey Point Unit 3 Outage Extension due to the Pressurizer Piping incident. My rebuttal testimony, together with that of FPL witness Avera, shows that Mr. Rothschild's rationale for opposing recovery of these replacement power costs is completely inconsistent with the Commission's established practice for applying the FCR and would

1 provide no mechanism for recovery of prudently incurred fuel costs. I  
2 will also explain how Mr. Rothschild's proposal would create a major  
3 disincentive to the investment in new generation resources with low  
4 energy costs, including solar and wind as well as nuclear. Finally, I  
5 will show that Mr. Rothschild has mischaracterized and/or  
6 misunderstood the documents on which he relied in support of his  
7 testimony.

8 **Q. Mr. Rothschild argues that FPL should not be allowed to**  
9 **recover the \$6,163,000 in replacement power costs due to the**  
10 **outage at Turkey Point Unit 3 because the "outage represents**  
11 **the realization of a risk that was part of the calculations**  
12 **investors made when they decided to invest in the company**  
13 **before the accident." Is his argument consistent with**  
14 **Commission practice concerning application of the FCR?**

15 **A.** No. The purpose of the FCR was clearly enunciated almost fifty  
16 years ago: the FCR allows a utility to recover its actual fuel costs, no  
17 more or no less. As stated in Order No. 2515-A, dated April 24, 1959,  
18 "A fuel adjustment clause is intended to compensate for day-to-day  
19 fluctuations in the cost of fuel which cannot be anticipated in the base  
20 rates. It should be constructed and applied so as to reimburse the  
21 utility for the increase in the cost of fuel as related to generation. It  
22 also operates so as to pass on to the customer any savings realized  
23 by the utility from decreased cost of fuel."  
24

1 Pursuant to this stated purpose of the FCR, the Commission has  
2 consistently based replacement power cost recovery determinations  
3 on whether a utility's actions were prudent in whatever circumstances  
4 led to the need for replacement power. These prudence  
5 determinations essentially look to whether a utility acted reasonably  
6 based on the information available to it at the time, without the benefit  
7 of hindsight. So long as a utility's actions are prudent by this  
8 measure, utilities have been permitted to recover the replacement  
9 power costs. For example, in 1984 the Commission reviewed and  
10 approved the recovery of replacement power costs associated with  
11 the outage at FPL's St. Lucie Unit 1 associated with removal of the  
12 damaged Thermal Shield. In Order No. 15486 in Docket No.  
13 840001-EI-A, the Commission relied on the prudence standard in  
14 approving recovery of those replacement power costs and even  
15 references OPC's concurrence that prudence is the standard when it  
16 states:

17 "Burden of Proof and Standard of Care"

18 Public Counsel correctly pointed out that the utilities  
19 bear the burden of demonstrating that their fuel costs are  
20 reasonable and prudent. FPL has also correctly indicated  
21 that hindsight should not serve as the basis for liability in this  
22 case and that for a utility to be denied recovery of  
23 replacement power costs it must be shown that management  
24 acted unreasonably at the time the relevant decision were

1                   made...we find that FPL's decision to include a thermal shield  
2                   in the design of SL1 was prudent when we consider the  
3                   information known to the decision-makers at the time of the  
4                   relevant decisions. Likewise, we have determined that FPL's  
5                   operation of the unit prior to the extended outage was prudent  
6                   and reasonable as was the repair and return to service.  
7                   Accordingly, we have found that *the replacement fuel costs*  
8                   *incurred were reasonable and prudent and properly*  
9                   *recovered through the fuel cost recovery clause.* [emphasis  
10                  added]

11                 In 1996, the Commission reviewed several outages that had  
12                 occurred at the St. Lucie plant in 1994 and 1995. One of the outage  
13                 events is similar to the circumstances of the Pressurizer Piping  
14                 incident in that it was a bad act, outside of the company's control. It  
15                 was an act of trespassing, wherein a vehicle was driven up over the  
16                 St. Lucie discharge canal berm and ultimately ended up lodging  
17                 inside one of the discharge pipes. The Commission again relied on  
18                 the prudence standard in determining whether or not FPL could  
19                 recover replacement power costs stating that:

20                         "We approve Florida Power & Light Company's request to  
21                         recover replacement energy costs incurred as a result of  
22                         outages at Plant St. Lucie during the period September 1994  
23                         through September 1995. *FPL's actions regarding the outages*

1                    *were reasonable and prudent and, therefore, FPL should*  
2                    *recover all replacement energy costs.”*

3                    (Emphasis added). These are just two of many instances over the  
4                    years where the Commission has evaluated actions that led to  
5                    outages and allowed recovery of the resulting replacement power  
6                    costs if the utility were found to have acted prudently. In fact, I have  
7                    been personally involved in the Commission’s FCR proceedings for  
8                    over 24 years and have never seen the Commission evaluate the  
9                    recovery of replacement power costs using any standard other than  
10                    prudence.

11                    **Q. Does Mr. Rothschild’s testimony conflict with other OPC**  
12                    **testimony in fuel related dockets?**

13                    A. Yes. Mr. Rothschild’s testimony is at odds with the testimony of OPC  
14                    witnesses in other fuel related dockets where OPC has supported  
15                    prudence as the standard for determining recovery. I have already  
16                    described OPC’s support for the prudence standard in the review of  
17                    FPL’s St. Lucie thermal shield outage. More recently, OPC’s witness  
18                    Dan Lawton filed testimony in the coal cost recovery case involving  
19                    Progress Energy (Docket No. 060658-EI), which argued that:

20                    “No utility or investor can reasonably expect that imprudent  
21                    expenditures be reimbursed by customers. All parties in this  
22                    case agree that imprudent expenditures should not be passed  
23                    on to customers. Moreover, the investment community does  
24                    not expect imprudent expenditures to be passed on to the

1 customers...*First, the appropriate standard in this case is*  
2 *prudence.*"

3 (Emphasis added).

4 **Q. Does OPC's witness Rothschild assert that FPL's outage**  
5 **regarding the Pressurizer Piping incident was imprudent?**

6 A. No. His testimony does not even mention, much less attempt to  
7 refute, the detailed testimony of FPL witness Jones concerning the  
8 actions that FPL took to try to protect against an event such as the  
9 Pressurizer Piping incident or the prompt actions FPL took once that  
10 incident was discovered. In fact, he says that his position on cost  
11 recovery is the same irrespective of whether the incident involved  
12 management error.

13  
14 In contrast, FPL witness Jones explains that FPL's actions at each  
15 step in this outage process were unquestionably reasonable and  
16 prudent. FPL complied fully with NRC requirements and industry  
17 standards in order to prevent improper access and deliberate  
18 criminal acts, and took extensive actions to swiftly and effectively  
19 investigate and inspect both Turkey Unit 3 and Unit 4 after the drilled  
20 hole in the pressurizer piping was discovered, enabling FPL to  
21 expeditiously return the plant to service with minimal disruption in  
22 production.

23

24 In view of the strong evidence from FPL that it performed prudently

1 and the absence of evidence from OPC or any other party that FPL  
2 did not, what Mr. Rothschild is asking the Commission to do is as  
3 troublesome as it is extraordinary: disallow recovery of actual,  
4 legitimately incurred replacement power costs to a utility that  
5 demonstrably has done nothing wrong.

6 **Q. Underlying Mr. Rothschild testimony that FPL should not**  
7 **recover the \$6,163,000 in replacement fuel costs is the premise**  
8 **that FPL's customers paid more in 2006 fuel costs than initially**  
9 **expected, due to the impact of the Pressurizer Piping outage**  
10 **extension at Turkey Point Unit 3. Is this premise valid?**

11 A. No. Even with the outage extension due to the Pressurizer Piping  
12 incident, FPL's nuclear units performed better than projected in 2006.  
13 In its September 9, 2005 fuel adjustment projection filing, FPL  
14 projected to generate 23,524,087 MWhs with its nuclear units in  
15 2006. FPL actually generated 23,532,578 MWhs in 2006, even with  
16 the additional outage time resulting from the Pressurizer Piping  
17 incident. This additional nuclear generation saved customers  
18 approximately \$560,000 compared to the cost of natural gas that  
19 likely would have been burned instead.

20  
21 Moreover, as reported in FPL's Generating Performance Incentive  
22 Factor (GPIF) testimony, FPL's nuclear fleet performance for 2006  
23 was excellent. Even with the Pressurizer Piping outage, Turkey  
24 Point Unit 3 achieved an extremely high Adjusted Equivalent

1 Availability Factor (EAF) of 91.3%. In fact, three of FPL's four  
2 nuclear units (including Turkey Point Unit 3) had Adjusted Equivalent  
3 Availability Factors that were so high in 2006 that they achieved the  
4 maximum available GPIF reward. In view of this strong performance,  
5 Mr. Rothschild's suggestion that FPL's customers need special  
6 protection from the costs of FPL's 2006 nuclear operations simply  
7 does not ring true.

8 **Q. Mr. Rothschild states that "according to FPL's annual report,**  
9 **the purpose of the fuel clause is, "to reduce the risk of**  
10 **unexpected fuel price volatility by locking in fuel prices for a**  
11 **portion of FPL's fuel." Has Mr. Rothschild accurately**  
12 **characterizing FPL's annual report?**

13 A. No. While Mr. Rothschild has correctly quoted the words, he has  
14 entirely ignored or misunderstood their context. Page 6 of FPL's  
15 annual report clearly states that it is describing a "risk management  
16 fuel procurement plan." This is another name for FPL's hedging  
17 program, which utilizes various financial instruments and forward  
18 contracts to mitigate against the volatility in fossil fuel prices. It has  
19 nothing to do with replacement power costs.

20 **Q. Mr. Rothschild's references Item No. 10 of the Commission's**  
21 **Order No. 14546. Does Item No. 10 apply to the recovery of**  
22 **replacement power costs?**

23 A. No. It is not clear why Mr. Rothschild has cited Item No. 10 of Order  
24 No. 14546. FPL nowhere mentions that order generally, or Item No.

1           10 in particular, anywhere in its testimony or stated position  
2           concerning the Pressurizer Piping incident. In any event, Item No. 10  
3           clearly does not apply in this situation. It applies to “fossil fuel-related  
4           costs normally recovered through base rates but which were not  
5           recognized or anticipated in the cost levels used to determine current  
6           base rates and which, if expended, will result in fuel savings to  
7           customers.” The replacement power costs in question here are not  
8           ones that would be “normally recovered through base rates”; they are  
9           fuel and/or purchased power costs of a type that are routinely  
10          recovered through the FCR Clause. Item No. 10 applies to the cost  
11          of activities such as efficiency improvements that are not fuel  
12          expenditures in and of themselves but are intended to generate fuel  
13          savings. That concept clearly has no application to the replacement  
14          power costs at issue here.

15  
16          Mr. Rothschild needs to look instead to page 4 of Order No. 14546,  
17          which in enumerating the costs that are properly recovered through  
18          the FCR, lists as Item No. 1 “The invoice price of fuel”. Contrary to  
19          Mr. Rothschild’s misunderstanding, Order No. 14546 is part of the  
20          unbroken string of Commission FCR decisions confirming the  
21          regulatory objective that the FCR allows a utility to recover its actual  
22          fuel costs, no more or no less.

23          **Q. Mr. Rothschild quotes the following from FPL’s annual report:**  
24          **“The operation and maintenance of power generation facilities,**

1 including nuclear facilities, involves significant risks that could  
2 adversely affect the results of operations and financial  
3 conditions of FPL Group and FPL.” Does this quote accurately  
4 reflect what the annual report says about FPL’s cost recovery  
5 risks?

6 A. No. Mr. Rothschild cites only a portion of the annual report, leaving  
7 out the following key information that FPL provides to investors  
8 concerning the cost recovery:

9 “Fuel costs are recovered from customers through levelized  
10 charges per kwh established under the fuel clause. These  
11 charges are calculated annually based on estimated fuel  
12 costs and estimated customer usage for the following year,  
13 plus or minus a true-up adjustment to reflect the variance of  
14 actual fuel costs and usage from the estimates used in setting  
15 the fuel adjustment charges for prior periods.”

16 \*\*\*

17 “The FPSC has the authority to disallow recovery of costs  
18 that it considers excessive or imprudently incurred. Such  
19 costs may include, among others, O&M expenses, the cost of  
20 replacing power lost when fossil and nuclear units are  
21 unavailable, storm restoration costs and costs associated with  
22 the construction or acquisition of new facilities.”

23

24 In other words, investors are clearly informed that actual fuel costs

1 are recovered through the fuel clause and recovery of costs could be  
2 disallowed if the costs were imprudently incurred. Mr. Rothschild's  
3 proposal would impose a risk on investors that is completely distinct  
4 from the risk of management imprudence that FPL advises investors  
5 they must bear.

6 **Q. Mr. Rothschild likens FPL to a card player, saying that FPL**  
7 **cannot ask for its money back when it has a losing hand yet**  
8 **keep it winnings when dealt a good hand. Do you agree with**  
9 **this analogy?**

10 **A.** Absolutely not. The wager Mr. Rothschild proposes is completely  
11 one-sided. Because the FCR only allows FPL to recover its actual  
12 fuel expenses, there is no possibility of FPL ever having a "winning  
13 hand." In this regard, I should note that FPL is exploring all potential  
14 avenues for recovery of its replacement power costs for the  
15 Pressurizer Piping incident from third parties, including insurance  
16 claims. In the event that FPL is able to recover any of the  
17 replacement power costs, it will credit that recovery to customers  
18 through the FCR. This is the same approach FPL took in the two  
19 cases referenced earlier in my testimony (the 1984 thermal shield  
20 outage and the 1996 outage involving the submerged vehicle).

21 **Q. Mr. Rothschild recommends denying recovery of replacement**  
22 **power costs even if FPL's actions were prudent, stating that**  
23 **"[w]hether this accident was caused by management error or**  
24 **some other form of sabotage, my recommendation is the same."**

1           **Please comment on the impact this policy would have on FPL's**  
2           **decisions to invest in generating resources that have low energy**  
3           **costs.**

4    A.    To deny recovery of replacement power costs even where a utility  
5           has acted prudently would be completely inconsistent with the  
6           purpose of the FCR Clause and with fundamental principles of  
7           ratemaking. It would put the utility at risk of not recovering its actual  
8           fuel costs whenever a nuclear plant is unexpectedly offline, even for  
9           reasons beyond the utility's control, and it would provide the utility no  
10          corresponding reward for having to bear this large risk. Such a policy  
11          would create a major disincentive to investments in any technology  
12          that has very low energy costs, including solar and wind as well as  
13          nuclear generation. Those investments are important to helping  
14          achieve Florida's energy security, fuel diversity and environmental  
15          (including climate change) goals. FPL believes that OPC supports  
16          those goals, so we find it surprising that OPC would propose a  
17          regulatory policy for replacement power costs that is so clearly at  
18          odds with them.

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

20    A.    Yes, it does.