BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Approval of Long-Term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative.	))))	DOCKET NO. 080665-EI FILED: February 12, 2009

SUPPLEMENT TO PETITION OF FLORIDA POWER & LIGHT COMPANY FOR APPROVAL OF LONG-TERM AGREEMENT FOR FULL REQUIREMENTS ELECTRIC SERVICE WITH LEE COUNTY ELECTRIC COOPERATIVE

Florida Power & Light Company ("FPL") hereby files this supplement (the "Supplement") to its petition dated November 10, 2008 (the "Petition") for approval of FPL's Long-term Agreement for Full Requirements Electric Service with Lee County Electric Cooperative ("LCEC"), dated August 21, 2007 (the "Agreement") and states as follows:

1. On January 29, 2009, the Commission Staff issued a recommendation (the "Staff Recommendation") recommending denial of the Petition in its original form. Staff's recommendation expressed the concern that the impact on retail customers would not be positive for all years of the study period in the economic sensitivity analyses that FPL had provided to Staff. The Commission was scheduled to vote on the Staff Recommendation at the February 10, 2009, Agenda Conference, but the decision was deferred to the March 3, 2009 Agenda Conference in order to give FPL a chance to supplement its original petition in writing. This pleading is FPL's supplement.

2. FPL respectfully submits that the test implicitly reflected in the Staff Recommendation – that the Agreement must be beneficial to customers in all years of the analysis period – is unrealistic and its application would result in stifling, if not foregoing, many long-term projects (nuclear, solar) which promise both economic and environmental benefits for

FPL's customers and the State of Florida. Such projects frequently have years when there are positive impacts and other years with negative impacts. It would be unreasonable to either approve a project solely because some of the years have positive impacts or to disapprove it solely because some of the years are negative. That is why the Commission routinely looks at long-term projects on a cumulative net present value basis, so that the positive and negative yearly impacts are offset against each other and a clearer view of the overall impact emerges. By this standard Commission economic test, FPL has demonstrated convincingly that the Agreement is beneficial to retail customers.

3. There is good reason to expect the Agreement to benefit FPL's retail customers. At the same time, LCEC enthusiastically supports the Agreement as a benefit to *its* nearly 200,000 customers. *See* January 13, 2009 letter to Chairman Carter from William D. Hamilton, the Executive Vice President and Chief Executive Officer of LCEC. This is clearly a "win-win" opportunity that should not be foregone by imposing an unrealistically restrictive test on the economics of the Agreement.

4. Nonetheless, to address Staff's concern, FPL has worked with LCEC to develop an amendment that would reduce the minimum term of the Agreement, as well as the required termination notice period. As originally proposed, the minimum term of the Agreement is 20 years, until 2033, and termination notice must be given at least seven years in advance, which would be 2026. Under the proposed amendment, the minimum term would end on December 31, 2026, with termination notice required by no later than December 31, 2022.[1] Attachment 1 to

[1] Specifically, the proposed amendment would add the following sentence at the beginning of Section 2.2(b) of the Agreement: "This Agreement may be terminated effective on December 31, 2026 at HE2400 by either party giving the other Party at least four (4) years prior written notice (i.e., the written notice of termination must be given on or before December 31, 2022)."

this Supplement shows the CPVRR impact to FPL's retail customers through the 2026 minimum term. Two of four scenarios show CPVRR benefits from the inception of the long-term contract through all but two years of the minimum term. A third scenario shows a small negative impact on a CPVRR basis in only the final year of the minimum term, and a fourth scenario that reflects the effects of Florida's and emerging national renewable energy policies shows benefits throughout the minimum term. Note that the fourth scenario includes only a modest level of renewables (100 MW) being added each year and is therefore very conservative as to the expected retail customer benefits. At higher levels of penetration for renewables that are consistent with the state energy policy reflected in the Commission's recent draft rule submitted to the Legislature, the retail customer benefits of the Agreement would be even greater.

5. FPL would like to clarify that it is not asking the Commission to determine that specific terms and conditions of the Agreement are prudent. FPL agrees with Staff that, as a wholesale power contract, the Agreement's terms are more properly the subject of scrutiny by the Federal Energy Regulatory Commission. In contrast, what FPL asks the Commission to evaluate is the *impact* of the Agreement on retail customers and hence FPL's undertaking to serve LCEC's load on a long-term basis as a separated sale. FPL has demonstrated that this impact will be positive, *i.e.*, that retail customers are reasonably projected to be better off if LCEC shares in supporting the costs of FPL's electric generating system than they would be if LCEC did not share those costs. FPL believes that this question is properly within the Commission's jurisdiction, and that the data and analyses FPL has presented fully support the conclusion that entering into the Agreement and treating it as a long-term separated wholesale

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The current first sentence would then be revised to read "In addition, this Agreement may be terminated effective on the last day of any Calendar Year …."

sale for retail ratemaking purposes is consistent with the interests of retail customers. Moreover, the Commission should also consider the interests of the LCEC member customers, as well as the rate stability, power supply and fuel diversity, and environmental benefits that will arise from this Agreement and benefit FPL's customers, LCEC's member customers and the State of Florida as a whole. Therefore, FPL requests that the Commission approve as appropriate and prudent FPL's decision to enter into the Agreement and proceed with serving LCEC, including the regulatory treatment of allowing recovery of fuel costs associated with the Agreement through the fuel cost recovery clause and the flow-through of the retail rate base benefits as fully described below.

6. In Issue 2 of the Staff Recommendation, Staff recommends specific changes to FPL's original proposal (Staff Recommendation, page 10). Given the proposed amendment to the Agreement discussed above, it is not clear that Staff would now recommend those same changes. However, in the interest of clarification, FPL will address each of Staff's recommended changes below.

7. Staff Change No. 1: The fuel cost charged to retail ratepayers should be adjusted on an annual basis so the incremental fuel cost is no greater than the base rate benefit. The effect of this change would be to prohibit FPL from charging retail customers for incremental fuel costs incurred in a particular year, to the extent that the fuel costs exceed the base rate benefit credit that FPL has agreed to flow back to retail customers through the capacity cost recovery clause (*see* discussion of the base rate benefit credit in connection with Staff Change No. 2 below). This would be extremely unfair to FPL's shareholders and/or LCEC's member customers, because it would give FPL retail customers a large and unjustified subsidy. This subsidy would result from the fact that Staff's recommendation works only one way: Staff does

not suggest that FPL should *increase* its retail fuel charges in years when the incremental fuel costs are less than the base rate credit. This asymmetry would make Staff Change No. 1 an enormously expensive and unacceptable proposition for whoever would be called upon to fund the subsidy, be it LCEC's member customers or FPL's shareholders. In short, Staff Change No. 1 would be a deal-breaker, because neither FPL nor LCEC could justify proceeding with the Agreement if the Commission were to impose it.

8. As discussed above, the economics of the Agreement, like many long-term projects, shift back and forth from positive to negative retail rate impacts over time. The well-accepted test to measure the economics of a long-term project is whether the cumulative present value of *all* the positive and negative years is positive, and FPL has demonstrated that the LCEC contract is beneficial to retail customers by this measure. Staff Change No. 1 would drastically alter these economics, however, by requiring LCEC's member customers and/or FPL's shareholders to subsidize retail customers in all the individual years that have negative results. For example, in Table 2-2 of FPL's response to Staff's Second Data Request, retail customers are projected to receive a cumulative net present value net benefit of $39 million over the study period. If Staff Change No. 1 were adopted, however, FPL shareholders or LCEC's member customers would have to transfer an additional *$2.2 billion* to retail customers in the form of artificially reduced fuel adjustment charges, which would make the Agreement grossly uneconomic for LCEC's member customers and/or FPL's shareholders in the process.[2]

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[2] $2.2 billion is the total of the negative individual yearly results in nominal dollars that appear on Table 2-2 for the years 2022-2033. Of course, Table 2-2 also shows a total of more than *$6 billion* in positive individual yearly results from the other years of the study period, but there is no credit given to FPL under Staff Change No. 1 for all of those positive benefits that flow to, and stay with, the retail customers.

9. To further illustrate the asymmetry that would result from application of Staff Change No. 1, assume that the economic analysis of the Agreement shows that in years one through ten, FPL's retail customers realize a cumulative benefit of $100 million. Assume further that, in year 11 of the Agreement, there is a net negative annual impact to retail customers of $10 million. Under Staff's approach, FPL would be required to credit $10 million to FPL's retail customers in year 11 irrespective of the $100 million of net benefits realized by FPL's retail customers in years one through ten and the fact that the cumulative net benefit to retail customers is still approximately $90 million in this hypothetical example even with the one negative year. The Staff Recommendation proposes that this incremental amount ($10 million in this example) be collected from either LCEC's member customers or FPL's shareholders and then contributed to FPL's retail customers in the form of reduced fuel charges (Staff Recommendation, page 11). The Commission should not approve either option: collecting the incremental amount from LCEC could cause significant bill impacts and instability on a system as small as LCEC's; and alternatively requiring a contribution from FPL's shareholders, would effectively *kill* the Agreement between FPL and LCEC and would have a chilling effect on future deals of a similar nature. This would be an unfortunate result, because these deals could have significant statewide benefits beyond FPL's service area and allow more efficient use of existing and future generating resources.

10. Staff Change No. 2: The credit through the Capacity Cost Recovery Clause recognizing the base rate benefit should be fixed on a per kWh basis, not a dollar basis, as would be done if base rates were adjusted. As a result of the discussions with Staff and OPC, FPL agreed to establish a "base rate benefit credit" through the capacity cost recovery ("CCR") clause to help ensure that retail customers immediately get the benefit of spreading more fixed-cost

responsibility to LCEC when FPL begins serving the full LCEC load in 2014. *See* FPL's response to Question No. 3 in Staff's Second Data Request. Staff Change No. 2 seeks to confirm that this base rate benefit credit would be fixed on a per-kWh basis, so that the total dollar amount of the credit collected each year will vary up or down depending upon changes in FPL's sales of electricity from year to year. Staff believes that this is more consistent with the way that elements of base rates are recovered and is thus more appropriate for the base rate benefit credit.

11. With one minor refinement, FPL has agreed with Staff to clarify the base rate benefit proposal so that the credit is expressed on a per-kWh basis. The refinement is to recognize that CCR costs are collected from demand-metered classes using factors that apply to customers' kW billing demand rather than their kWh consumption. Accordingly, FPL agrees to modify the final paragraph of its base rate benefit credit proposal to read as follows:

> However, in the interest of clarifying the benefits associated with the proposed LCEC Agreement, if the Commission agrees to approve the regulatory treatment of the costs associated with the agreement, FPL will commit to make an adjustment in the 2013 capacity cost recovery ("CCR") clause proceeding to credit customers, effective January 1, 2014, by the amount of reduced cost responsibility resulting from the lower jurisdictional separation factors that reflect the second, higher stage of LCEC load (the "base rate benefit credit"). The base rate benefit credit will be calculated using data and projections for 2014 that are current at the time of the 2013 CCR proceeding and will be expressed as a per-kWh (or, as appropriate, a per-kW) factor that reduces the CCR factors that otherwise would apply to customer bills. The per-kWh and per-kW factors will remain constant for each year throughout the period that the base rate benefit credit is in effect. FPL will continue to apply those factors to the calculation of CCR factors for retail customers each year until new base rates are determined or stipulated in a subsequent base rate proceeding. The total amount by which CCR revenues are reduced by the base rate benefit credit may be higher or lower than the 2014 base rate benefit that was projected at the time the Commission approved the regulatory treatment for the LCEC Agreement in 2009.

12. <u>Staff Change No. 3: FPL should provide notice to the Commission if there is a change in circumstance regarding the effect the regulatory treatment has on ratepayers.</u> Based on

discussions with Staff and OPC, FPL understands that the concern underlying Staff Change No. 3 is to make it clear that the finality of any approval of the Agreement (or the regulatory treatment for the Agreement) is subject to the exceptions enumerated in the case law on administrative finality. FPL has no objection to the Commission's order in this docket incorporating by reference the case law on administrative finality, including the exceptions to finality.[3]

13. Staff Change No. 4: FPL should be required to bring this issue back to the Commission at least 12 months prior to the scheduled review by the parties to renew or terminate the Agreement. As discussed above, FPL and LCEC have agreed to revise the Agreement to provide for the possibility of early termination as soon as 2026, with a four-year minimum notice period. FPL believes that this should alleviate Staff's concerns over the possibility of the Agreement remaining in place for many years of negative retail impacts if conditions turn out differently than expected.[4] And more fundamentally, FPL is confident that the Agreement's economics for retail customers will turn out to be at least as good and perhaps much better than indicated by FPL's sensitivity analyses. Either way, the decision points in the Agreement will be well known to the Commission, and FPL certainly will cooperate with any Commission requests for updates on the projected economics of the Agreement as those decision points approach.[5]

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[3] FPL would oppose, however, placing Staff's proposed notification obligation on FPL, as the language is vague and does not put FPL on notice of what circumstances would give rise to triggering the obligation. Based on discussions with Staff and OPC, as referenced above, FPL believes we have worked out a favorable resolution to this that suits all involved.

[4] FPL also notes that, per the Agreement, either party can terminate the agreement in any year after the minimum contract term, on seven years' notice to the other party.

[5] In this regard, FPL notes that the "with LCEC" expansion plans in most of the sensitivity analyses contemplate a new generating unit coming into service in approximately 2022. In conjunction with the need determination proceeding for that unit, the Commission would have an opportunity to evaluate the economics of allowing the Agreement to remain in effect after the

WHEREFORE, for the reasons set forth in the Petition as further clarified and supported by this Supplement, FPL respectfully requests that this Commission find that FPL's entering into the Agreement and treating the Agreement as a long-term separated wholesale sale for retail ratemaking purposes is prudent and consistent with the interests of FPL's retail customers.

Respectfully submitted,

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By: *_/s/ John T. Butler_*
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initial early-termination date of 2026.

CERTIFICATE OF SERVICE
Docket No. 080665-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on February 12, 2009, to the following:

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