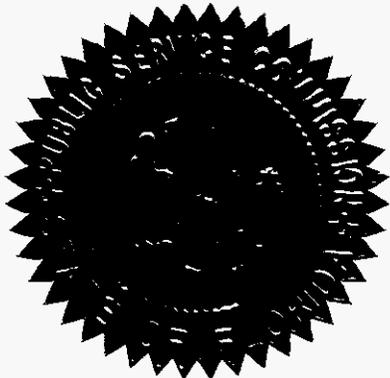


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100358-EI

In the Matter of:

INVESTIGATION INTO THE DESIGN  
OF COMMERCIAL TIME-OF-USE RATES  
BY FLORIDA POWER & LIGHT,  
PURSUANT TO ORDER NO.  
PSC-10-0153-FOF-EI.



PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 8

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, April 26, 2011

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

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## P R O C E E D I N G S

1  
2           **CHAIRMAN GRAHAM:** Now we are moving to Item  
3 Number 8.

4           **MS. DRAPER:** Commissioners, Elizabeth Draper  
5 with staff. Item 8 is an investigation into the  
6 design of the commercial time-of-use rates by Florida  
7 Power and Light Company. FPL and representatives of  
8 Affirm are here to speak and staff is here to answer  
9 your questions.

10           **CHAIRMAN GRAHAM:** Okay. Let's start.

11           **MR. WIGGINS:** Good morning, Mr. Chairman,  
12 Commissioners. I am Patrick Wiggins, local attorney  
13 appearing on behalf of AFFIRM. With me this morning  
14 down from Atlanta is Dan Moore, a principal with  
15 AFFIRM. Not with us this morning is Mr. Russell  
16 Klepper (phonetic). He wanted to be here; he is in  
17 Kentucky; he had an appointment he could not  
18 reschedule, and he asked me to convey his apologies.

19           I would like to start by thanking the staff  
20 and the Commission and also FPL for the cooperation it  
21 takes to get to this point where we are having a PAA  
22 to go out, and ultimately we will go to hearing. We  
23 started with this about two years ago with  
24 interventions of certain rate cases, and the processes  
25 sometimes seem like they go slow, but sooner or later

1 we get there with the issues laid out so that we can  
2 address them, get the data and the reasoning in front  
3 of the Commission, in front of you so you can make  
4 your decisions.

5           Given the fact that we are probably going to  
6 go -- we will be going to hearing on this, I don't  
7 want to waste anybody's time with superfluous  
8 argument and the like. I'd like to make the best use  
9 of our time as possible, and, of course, we are happy  
10 to answer any questions that you may have.

11           I would like to emphasize two things here  
12 this morning. First, I'd like to give a sense of why  
13 this is important to AFFIRM, and to us, and we think  
14 to the State. And then second, I would like to talk a  
15 little bit about assumptions and criteria and what we  
16 are going to try to do at the hearing.

17           The reason this is important is that the  
18 commercial class, as it now stands, has over 100,000  
19 folks in it. They are all treated the same. That's a  
20 heterogeneous population that is treated as though it  
21 is homogenous. It is overly broad. It virtually  
22 guarantees that there will be inappropriate  
23 cross-subsidies within that class, and I believe it  
24 has constitutional dimensions and it results in rates  
25 that are not fair, just, and reasonable.

1           Now, quick service restaurants and folks  
2 with similar profiles end up paying too much. That's  
3 our concern. One way to avoid that is with  
4 time-of-use rates. Time-of-use rates lets anybody in  
5 that class choose to take that approach, take that  
6 option, and in a sense that subclass will sort itself  
7 out.

8           Unfortunately, the time-of-use rate approach  
9 used by FPL is also overbroad. Because when it comes  
10 to measuring the demand component of the base rates,  
11 which is supposed to somehow put the cost of that  
12 classes or that person's demand more or less on that  
13 class of customers, what you do is you take system  
14 peak and then you take the subclass or that range of  
15 customers contribution to system peak, and you  
16 allocate it on that basis.

17           As I understand it, and FPL can correct me  
18 if I'm wrong, in the last 16 years, 100 percent of the  
19 peak, system peak during the summer has occurred  
20 within a three-hour period each month. That is to say  
21 between, I believe, it is 3:00 o'clock and  
22 6:00 o'clock, typically between 4:30 and 5:00; 100  
23 percent. Not 50 percent, not 40 percent; 100 percent.

24           A QSRs -- did you distribute those yet? A  
25 QSRs typical profile has its peak occurring between

1 12:00 and 1:00, maybe 1:30. Some are on the other  
2 wing at around 8:00. That wing is not the peak. That  
3 is our point very straightforwardly. The nine-hour  
4 approach, which measures the peak anywhere in that  
5 nine-hour period, has the same overbreadth as the  
6 original commercial class. Therefore, it can't cure  
7 the problem, and it continues to introduce problems of  
8 cross-subsidy and I believe unlawful rates.

9 I don't think the staff recommendation  
10 rejects our contention that we're being -- the demand  
11 is being measured outside the peak. My understanding  
12 is that to the staff it's irrelevant, because the  
13 system curve of FPL is, quote, relatively flat, end  
14 quote. Now, I don't know what the absolute  
15 differences of the peak and the wing, but sometimes it  
16 can almost be a gigawatt. Sometimes 500 megawatts;  
17 sometimes 800. That is pretty big. That is a plant,  
18 but relatively flat.

19 To us that is irrelevant. A peak is a peak,  
20 and a wing is not the peak. If, in fact, you want to  
21 do the demand component on something that's not the  
22 peak, fair enough, explain why. Give me your data.  
23 But when you say it is relatively flat, I don't know  
24 what that means, seriously, because those three hours  
25 are incredibly important to the utility for system

1 planning, for all other reasons, but apparently not  
2 here. The net result would be that the nine-hour is  
3 overly broad just the same way the commercial class is  
4 overly broad. It is treating everybody the same.

5 Now, if you look at this very crude -- I'm  
6 sorry, I didn't give you -- if you look at this very  
7 crude drawing I did, what that shows, it tends to  
8 demonstrate is that if you look at the system peak of  
9 FPL during the summer, and you look at RFP for a  
10 typical QSR class you'll see that that peak doesn't  
11 coincide with the system peak.

12 The only way that approach makes sense, if  
13 you are attempting to allocate coincident peak and the  
14 demand is if you assume that our curve is similar to  
15 everybody else's curve. That is the way -- you assume  
16 that 100,000 customers have homogeneity.

17 That's our point. I know that staff  
18 disagrees to some extent, and I know FPL does, and  
19 that's fair enough. We will go to hearing, and we  
20 will attempt to get the data in front of you, and the  
21 logic, and the reasoning to show why we believe that  
22 this is very important to get it right. It's  
23 important for us and it is important for the future of  
24 the state.

25 One of the things that happens in these

1 debates is that we all have our reasons for our  
2 positions. A lot of them are financially driven, of  
3 course, and there is nothing wrong with that. You ask  
4 why we want something and we say because, and then  
5 there is a string of reasons. In those reasons are  
6 often assumptions, but those assumptions are not  
7 necessarily made explicit, and they are not  
8 necessarily tested and shown with data.

9           The point I would like to make today is that  
10 a number of the assumptions and approaches that we are  
11 using today to control our future for the next  
12 30 years were designed 30 years ago. Some of them  
13 were put in place in 1969, particularly prohibitions  
14 against conjunctive billing. I think it's safe to say  
15 technology has advanced. Our ability to do things  
16 differently has advanced, and if we are going to be  
17 looking forward and are going to avoid the kind of  
18 problems that we need to avoid, we need to bring the  
19 very best policies, the very best thinking, and the  
20 very best data to making our decisions. And when we  
21 go to hearing, that's what we intend to do. So I  
22 thank you for your time.

23           **CHAIRMAN GRAHAM:** Thank you. Mr. Moore, did  
24 you have anything to add?

25           **MR. MOORE:** No, sir. We just appreciate the

1 opportunity to come before the Commission. And out of  
2 respect for time, I think I'll stay silent for now.

3 **CHAIRMAN GRAHAM:** Okay. Thank you. Florida  
4 Power and Light.

5 **MR. GOORLAND:** Thank you. Good morning,  
6 Commissioners. I'm Scott Goorland; I represent  
7 Florida Power and Light. With me today is Renae  
8 Deaton, FPL's Manager of Rate Development.

9 FPL fully supports staff recommendation in  
10 this docket, and I think we would agree with AFFIRM,  
11 this is important. AFFIRM has come before you seeking  
12 a new time-of-use rate that would specifically benefit  
13 its members. FPL has a history of working with  
14 customers to implement rates that reward behavior that  
15 benefit the system and, therefore, all customers.  
16 However, the data simply does not support another  
17 time-of-use rate option as AFFIRM has requested.

18 All the research done in this docket, every  
19 data point provided, every calculation shows that  
20 FPL's time-of-use optional rates are appropriately  
21 designed. From the very outset when the Commission  
22 ordered FPL to work with AFFIRM and other parties on  
23 exploring a new time-of-use rate for AFFIRM's members,  
24 FPL has fully complied with the Commission's order,  
25 has met with AFFIRM and all the parties to assess the

1 data and address AFFIRM's requests.

2 FPL provided all data requested by AFFIRM,  
3 and researched any data it reasonably could in  
4 reviewing the matter, including its own as well as  
5 data provided by AFFIRM, and throughout the data has  
6 showed that FPL's time-of-use rates are appropriately  
7 designed. Initially in the 2009 testimony in FPL's  
8 rate case, AFFIRM suggested that the load  
9 characteristics of their members, quick serve  
10 restaurants, did not match the load characteristics of  
11 the general service demand rate, and that FPL's  
12 general service demand time-of-use rate was  
13 ineffective.

14 FPL analyzed data from quick serve  
15 restaurants in FPL's customer base as well as data  
16 from AFFIRM. The data clearly shows that quick serve  
17 restaurant load curves closely track those of the  
18 general service demand class. After FPL presented the  
19 data, AFFIRM refocused their position to the general  
20 service demand time-of-use rate, suggesting a  
21 time-of-use rate that restricted summer peak hours to  
22 three hours, elimination of winter morning peaks, and  
23 to create shoulder periods.

24 There simply is no data, no analysis, and no  
25 justification to support the development of a new

1 time-of-use rate as requested by AFFIRM. On the  
2 contrary, FPL has shown that its current time-of-use  
3 offerings are appropriately designed. AFFIRM  
4 indicated it could not take advantage of FPL's  
5 time-of-use rates, yet FPL provided AFFIRM with data  
6 showing that at least three of five quick serve  
7 restaurants analyzed by FPL could benefit from  
8 switching to one of FPL's time-of-use rates.

9 Just to address a couple of comments that  
10 AFFIRM has raised, the first is that in mentioning the  
11 peak and the peak that has occurred in the number of  
12 years within a specific time frame, peak is not set  
13 based on specifically when the peak occurs, or the  
14 peak period is not set on when the peak occurs, but  
15 rather it is set based on a period around, and so it  
16 is a peak period, so it's not just the moment of peak.  
17 And so that is important to remember there.

18 The other is, and I said it before here,  
19 AFFIRM members peak at the same time as the GSD class  
20 does. The curve is the same. And so, therefore, they  
21 are being allocated the correct amount contrary to the  
22 representations made. Rates and rate classes are  
23 designed to represent the cost of providing service to  
24 that rate class. When a new rate case is created and  
25 a subset of one class migrates into that different

1 rate class and there are no resulting benefits or  
2 system benefits, the migration occurs at the cost of  
3 those remaining in the original rate class. AFFIRM  
4 would have a new rate class created simply to lower  
5 its members' rates with no accompanying system  
6 benefits and other customers making up the difference.

7           Regarding seasonally differentiated costs  
8 and marginal fuel pricing for fuel factors, FPL  
9 supports staff's recommendation that FPL investigate  
10 the potential to implement those concepts for fuel  
11 factors and report to the Commission in testimony to  
12 be filed in FPL's 2011 fuel filing. In conclusion,  
13 FPL asks that the Commission approve staff's  
14 recommendation.

15           Thank you.

16           **CHAIRMAN GRAHAM:** Okay. Back to the board.  
17 Commissioner Edgar.

18           **COMMISSIONER EDGAR:** Thank you, Mr.  
19 Chairman.

20           It appears to me that the issue that is  
21 ultimately before us is highly data intensive, highly  
22 technical, and contains questions of both fact and  
23 law. And I think what I have pretty much heard from  
24 both of the parties before us is that if we approve  
25 the staff recommendation that AFFIRM will petition to

1 go to hearing, and I think what I have heard, maybe  
2 not as explicitly, but implicitly from FPL is that if  
3 we were to approve what is basically the AFFIRM  
4 position, that FPL would probably petition to go to  
5 hearing.

6 And so with that, if I have read that right,  
7 I'm wondering if it makes more sense to just direct  
8 this issue to go directly to hearing rather than go  
9 through the next procedural steps through the PAA  
10 process. And I guess I would pose that to staff, and  
11 would certainly be interested, Mr. Chairman, in  
12 hearing from each of the parties on that point, as  
13 well.

14 So if I may -- Ms. Crawford.

15 **MS. CRAWFORD:** Certainly. Jennifer Crawford  
16 for staff.

17 I do think there is some advantage, really,  
18 to both positions, but to me the advantage of going  
19 forward and voting on this item is that if we set it  
20 directly for hearing, then everything is pretty much  
21 up for grabs.

22 The advantage to having a PAA decision is  
23 only those matters which are specifically protested  
24 are the ones we go to hearing. I don't know how much  
25 refinement we would get exactly through going ahead

1 and having a PAA and a protest, but my experience has  
2 been that there is some value in going ahead and  
3 having that process go through, and that there does  
4 tend to be a winnowing of issues in that regard.

5 **COMMISSIONER EDGAR:** With all due respect,  
6 I'm not sure that I see the benefit in this particular  
7 instance --

8 **MS. CRAWFORD:** I understand.

9 **COMMISSIONER EDGAR:** -- but I do understand  
10 what you are saying. I would think that that same  
11 kind of winnowing and focusing on issues could also  
12 take place through the discovery and prehearing  
13 process and through the issuance of the prehearing  
14 order, but it's a friendly and perhaps minor point.

15 **MS. CRAWFORD:** If I could, I would also  
16 point out that part of staff's recommendation is that  
17 FPL investigate whether fuel time-of-use factors based  
18 on marginal costs would benefit customers, and to file  
19 that information in its testimony for the 2011 fuel  
20 proceeding. So it might be useful to have some  
21 direction whether the Commission would prefer that  
22 that go forward or whether the entire staff rec be  
23 made available for hearing.

24 **COMMISSIONER EDGAR:** And I would be  
25 interested in hearing from the parties. I don't feel

1 strongly either way. I think we're probably going to  
2 get to the same point of hearing, and it would just be  
3 a matter of procedurally what is the most efficient  
4 and effective way to focus everybody's time and  
5 resources.

6 Mr. Wiggins.

7 **MR. WIGGINS:** I appreciate the suggestion we  
8 go directly to hearing, but in this particular case,  
9 although it may seem like an extra step, I think  
10 issuing the PAA, as recommended by the staff, is a  
11 good idea. And if I may say why, is that we haven't  
12 actually petitioned the Commission for relief yet  
13 since intervening in some rate cases, so this gives us  
14 a point of entry to petition. It allows us to  
15 establish our standing, identify material issues of  
16 fact in dispute and the policies, and get that kind of  
17 greater definition that would naturally occur.

18 I am concerned about two things, always,  
19 with PAAs. One is that, I guess it could be crafted  
20 so it's a severable PAA, that is to say, we protested  
21 the demand side, the demand part, but like the idea of  
22 FPL taking up the fuel charge in the 01 docket, that  
23 would be great. Of course, they could just do that on  
24 their own anyway, if they'd like, and I don't mean  
25 that sarcastically. They have been very professional

1 and cooperative with us.

2           The second is that -- and if this is too  
3 self-referential, I apologize, but I actually designed  
4 this process back in 1980, and I'm very pleased with  
5 it, of course. But once we protest the PAA, it's  
6 gone. The staff rec is gone. It's a blank slate. We  
7 are not fighting staff's recommendation, we are not --  
8 you know, it's kind of impossible on one level, but we  
9 are not running uphill. And so, with that in mind, I  
10 like the PAA process, and I like, really, to focus our  
11 arguments, and I think that it will be useful in this  
12 particular case.

13           **COMMISSIONER EDGAR:** Mr. Goorland.

14           **MR. GOORLAND:** I think this is actually one  
15 area we can agree with AFFIRM. I think the PAA would  
16 help in focusing the issue and the areas. There's a  
17 lot of data that has already come out in this process  
18 that is probably useful, and I do think it would help  
19 to focus the issue. And if the Commission votes to  
20 approve staff's recommendation, of course, you know,  
21 if we're ordered to file in the fuel filing a request,  
22 we are going to do that. So I think that there's  
23 value in a PAA.

24           **COMMISSIONER EDGAR:** All right. Just a  
25 thought. Thank you.

1           **CHAIRMAN GRAHAM:** Looks like we are one step  
2 closer to the compromise.

3           Commissioner Balbis.

4           **COMMISSIONER BALBIS:** Thank you, Mr. Chair.

5           And I do agree with Commissioner Edgar, you  
6 know, if this goes to hearing, procedurally, I mean,  
7 what is the best way to go there? Do we skip some  
8 steps and just get right to it? And it sounds like  
9 all the parties agree that maybe the process is to  
10 move forward with voting on this item, but I just  
11 wanted to point out that there is a lot of data that  
12 is included in this docket, and I personally believe  
13 that there was enough data to make an informed  
14 decision on both of these issues to move forward.

15           And I think -- I just find it interesting in  
16 that the concept of time-of-use rates is to shift  
17 behavior, to have a system benefit to shifting and  
18 lowering the demand, lowering the overall system costs  
19 of producing the power. And, you know, I just felt  
20 that the charts that were included in the item that  
21 clearly showed a much larger peak, and intuitively,  
22 you know, you would think that, okay, how do we  
23 encourage customers to shift that peak to overall  
24 lower the demand.

25           So, I kind of, I guess, disagree with

1 AFFIRM's assertion that a shorter peak would be more  
2 representative of the actual peak, when clearly in all  
3 the documents that are here and even, in fact, in your  
4 chart itself clearly shows a much larger peak, which I  
5 think everyone agrees is indicative of the actual  
6 peak. So I feel that, you know, I can support staff's  
7 recommendation on this item. There's enough  
8 information on this item, and that if we do go to  
9 hearing, then that's great, we will move forward with  
10 that process. And I am also glad to see that FPL has  
11 agreed to look at the fuel -- you know, the different  
12 rates for the fuel time-of-use rates. And I think  
13 that's important, and I think if, again, that is  
14 warranted and it's something that will benefit all  
15 customers system-wide, including AFFIRM, that that is  
16 something that would be beneficial.

17 So with that, I would move to approve  
18 staff's recommendation on Issues 1 and 2.

19 **CHAIRMAN GRAHAM:** It has been moved and  
20 seconded to approve staff recommendations on Issue 1  
21 and 2.

22 Any further discussion? Seeing none, all in  
23 favor say aye.

24 (Vote taken.)

25 **CHAIRMAN GRAHAM:** Those opposed?

1                   By your action you have approved Item Number  
2 8, Issues 1 and 2, staff recommendation.

3                   **MR. WIGGINS:** Thank you.

4                   **CHAIRMAN GRAHAM:** Thank you very much. If  
5 there is nothing else to come before us, then we are  
6 adjourned.

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STATE OF FLORIDA )  
  
: CERTIFICATE OF REPORTER  
  
COUNTY OF LEON )

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

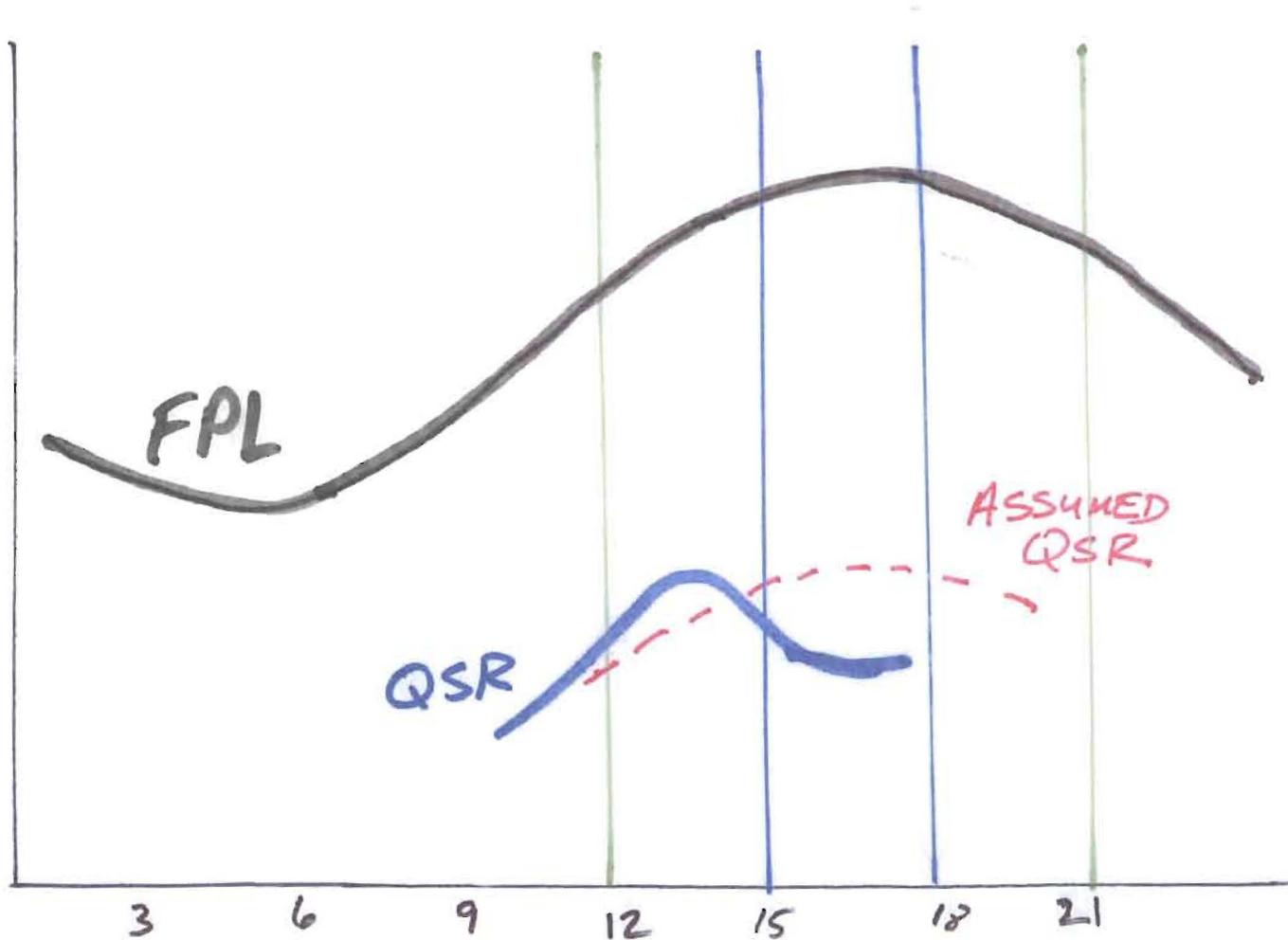
I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 29th day of April, 2011.



\_\_\_\_\_  
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# FPL PEAK VS QSR PEAK



Parties/Staff Handout  
Internal Affairs/Agenda  
on 4/26/11  
Item No. 8  
100358-E1