

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110009-EI  
FLORIDA POWER & LIGHT COMPANY

IN RE: NUCLEAR POWER PLANT COST RECOVERY AMOUNT  
TO BE RECOVERED DURING THE PERIOD  
JANUARY - DECEMBER 2012

REBUTTAL TESTIMONY & EXHIBIT OF:

TERRY DEASON

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2                                   **FLORIDA POWER & LIGHT COMPANY**

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5                                   **JULY 25, 2011**

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

7   A.    My name is Terry Deason. My business address is 301 S. Bronough Street,  
8           Suite 200, Tallahassee, Florida 32301.

9   **Q.    By whom are you employed and in what capacity?**

10   A.    I am employed by the law firm Radey Thomas Yon and Clark as a Special  
11           Consultant specializing in the fields of energy, telecommunications, water and  
12           wastewater, and public utilities generally.

13   **Q.    Please describe your educational background and professional**  
14           **experience.**

15   A.    I have over thirty-four years of experience in the field of public utility  
16           regulation spanning a wide range of responsibilities and roles. I served a total  
17           of seven years as a consumer advocate in the Florida Office of Public Counsel  
18           (OPC) on two separate occasions. In that role, I testified as an expert witness  
19           in numerous rate proceedings before the Florida Public Service Commission  
20           (Commission). My tenure of service at the Florida Office of Public Counsel  
21           was interrupted by six years as Chief Advisor to Florida Public Service  
22           Commissioner Gerald L. Gunter. I left OPC as its Chief Regulatory Analyst  
23           when I was first appointed to the Commission in 1991. I served as

1 Commissioner on the Commission for sixteen years, serving as its chairman  
2 on two separate occasions. Since retiring from the Commission at the end of  
3 2006, I have been providing consulting services and expert testimony on  
4 behalf of various clients, including public service commission advocacy staff  
5 and regulated utility companies, before commissions in Arkansas, Florida,  
6 Montana, New York and North Dakota. My testimony has addressed various  
7 regulatory policy matters, including: regulated income tax policy; storm cost  
8 recovery procedures; austerity adjustments; depreciation policy; subsequent  
9 year rate adjustments; appropriate capital structure ratios; and prudence  
10 determinations for proposed new generating plants and associated  
11 transmission facilities. I have also testified before various legislative  
12 committees on regulatory policy matters. I hold a Bachelor of Science Degree  
13 in Accounting, summa cum laude, and a Master of Accounting, both from  
14 Florida State University.

15 **Q. Are you sponsoring an exhibit?**

16 A. Yes. I am sponsoring the following rebuttal exhibit:

- 17       ▪ TD-1, Biographical Information for Terry Deason

18 **Q: What is the purpose of your rebuttal testimony?**

19 A: The purpose of my rebuttal testimony is to respond to certain assertions and  
20 recommendations made by OPC Witnesses Jacobs and Smith concerning  
21 Florida Power & Light Company's (FPL's) extended power uprate (EPU)  
22 project. Specifically, I respond to their assertion that the use of a cumulative  
23 present value of revenue requirements (CPVRR) analysis should be rejected

1 and substituted with a break-even analysis to determine recoverable costs. I  
2 also respond to Witness Jacobs' assertion that FPL was imprudent in selecting  
3 an expedited schedule for the EPU project.

4

5

#### BREAK-EVEN ANALYSIS

6

7 **Q: Do you agree with Witness Jacobs' assertion that the CPVRR analysis is**  
8 **not valid for the EPU project?**

9 A: No, I do not.

10 **Q: Why do you disagree with the recommendation of Witnesses Jacobs and**  
11 **Smith?**

12 A: Essentially, their recommendation is a mid-stream attempt to fundamentally  
13 and inappropriately change the standard for determining cost recovery through  
14 the nuclear cost recovery clause. Their recommendation is inconsistent with  
15 Rule 25-6.0423, F.A.C., contrary to previous decisions of the Commission,  
16 constitutes bad regulatory policy and is counter to the stated goals of the State  
17 of Florida. Distilled to its essence these Witnesses are advocating the use of  
18 hindsight to determine the prudence of costs incurred for the EPU project.

19 **Q: What is a CPVRR analysis?**

20 A: It is an analytical tool used to compare different approaches to determine the  
21 one that is the most cost-effective. It is a generally accepted method and was  
22 used by the Commission to determine that FPL's proposed EPU project for  
23 the Turkey Point and St. Lucie nuclear power plants was the most cost-  
24 effective alternative to meet its need for capacity and energy. It has been used

1 in many other Commission need determination cases as well as accepted in  
2 prior nuclear cost recovery proceedings. It remains a valid tool to measure the  
3 ongoing cost effectiveness and continued viability of the EPU project and  
4 does so by appropriately using forward-looking costs.

5 **Q: Witnesses Jacobs and Smith state that their break-even alternative is**  
6 **needed to protect customers from unreasonable costs. Do you agree?**

7 A: No, I do not. First, there is already a two-step mechanism in place to protect  
8 customers from unreasonable costs. The first step is the need determination  
9 process. The second step is the annual ongoing prudence and reasonableness  
10 reviews of actual and projected costs. OPC's proposed break-even alternative  
11 is merely a one-sided way to put a cap on otherwise prudent costs. In essence,  
12 Witnesses Jacobs and Smith want to preserve all of the upside benefits of the  
13 uprates with no risk that costs could reasonably fall beyond a break-even  
14 point.

15 **Q: Is such an approach consistent with good regulatory policy?**

16 A: No, it is not. Consistent with good regulatory policy, the Commission has the  
17 responsibility to balance the needs of investors and customers. Customers  
18 have the reasonable expectation to receive safe, reliable and efficient services  
19 and the responsibility to pay the cost of providing those services. Investors  
20 have the reasonable expectation that capital deployed to provide services to  
21 customers will earn a reasonable return and will be eventually repaid in the  
22 form of depreciation allowances. In balancing these interests, the

1 Commission should protect customers from imprudent costs and yet ensure  
2 that all prudent costs are recovered.

3 **Q: How does use of OPC's break-even alternative impose a limitation on**  
4 **costs?**

5 A: It imposes a cap on costs regardless of whether they were prudently incurred.  
6 This is contrary to standards of ratemaking and cost recovery which call for  
7 all prudently incurred costs to be recovered. This standard has been and  
8 should continue to be applied to the EPU project.

9 **Q: If costs were to be higher than a break-even point, would the costs be**  
10 **unreasonable or imprudent?**

11 A: No, not necessarily. There is nothing magical about the break-even point that  
12 makes cost become unreasonable or imprudent, as Witnesses Jacobs and  
13 Smith imply. The break-even point is only a point on a continuum of possible  
14 cost ranges. It is the nature of the costs themselves and whether the costs have  
15 been prudently incurred and well managed that determines their  
16 recoverability.

17 **Q: Would there be other consequences of accepting the OPC's break-even**  
18 **alternative?**

19 A: Yes. It could result in two different economic regulatory standards being  
20 applied within the nuclear cost recovery rule to the same EPU project, one for  
21 considering cost effectiveness and project viability (CPVRR) and a different  
22 one to establish a cap on cost recovery (break-even). Having two different  
23 standards being applied to the same costs would be inappropriate regulatory

1 policy and place utility management in an untenable position. It also would  
2 have negative consequences on a utility's ability to acquire capital to support  
3 cost-effective nuclear projects.

4  
5 Second, applying the break-even alternative as suggested by Witnesses Jacobs  
6 and Smith would result in a significant shift in the balance of risk  
7 contemplated in Rule 25-6.0423, F.A.C. It would introduce a new "moving  
8 target" standard based on continual backward-looking determinations of costs  
9 eligible for recovery. This is counter to the fundamental purpose of the rule to  
10 encourage nuclear generation in Florida and basic principles of utility  
11 ratemaking.

12 **Q: Why does Florida have a regulatory policy to promote nuclear**  
13 **generation?**

14 A: Rule 25-6.0423, F.A.C., was proposed and adopted in response to Section  
15 366.93, Florida Statutes, which became law on June 19, 2006. This law sets  
16 forth the State of Florida's policy to promote fuel diversity and electric supply  
17 reliability by encouraging utility investment in nuclear power plants. The  
18 FPSC was directed by law to adopt a rule that would implement this  
19 legislative directive.

20 **Q: What was the purpose of this directive?**

21 A: The Legislature determined that the risks of planning, constructing, and  
22 operating new nuclear generation were great and that the traditional regulatory  
23 model was insufficient to address those risks. The traditional regulatory

1 model, which was used in the last round of new nuclear plants constructed in  
2 the United States, resulted in the disallowance of substantial investments  
3 based on reviews being undertaken only after plants were completed and  
4 requests were made to have them included in rate base. Often these reviews  
5 entailed upwards to a decade of costs that had been incurred. This caused  
6 several problems, not the least of which was the complexity and the span of  
7 time of the reviews. Another factor was the accumulated carrying costs of the  
8 investments and their resulting impact on rates. For investors to be willing to  
9 devote their capital to the planning, construction, and operation of new  
10 nuclear plants and for the benefits of new nuclear generation to be achieved,  
11 the Legislature determined that a different regulatory approach was needed. A  
12 key component of this new approach was to provide greater certainty to the  
13 amount and timing of recovery of all prudently incurred costs. Providing  
14 regulatory certainty for the recovery of all prudently incurred costs avoided  
15 the unacceptable risk of a prudence determination being made only after many  
16 years of construction expenditures had been incurred. Pursuant to this  
17 directive, Rule 25-6.0423, F.A.C., established annual prudence determinations  
18 with much needed finality.

19 **Q: Why is this finality needed?**

20 **A:** It is needed to avoid the same concerns I expressed earlier with prudence  
21 reviews spanning unacceptable time frames and addressing costs that have  
22 accumulated over multiple years. Without the finality of the annual prudence  
23 determinations, it is possible and perhaps likely that investments in new



1 nuclear generation would be subject to the same risks that plagued earlier  
2 investments in nuclear generation.

3 **Q: What is Florida's policy on the finality of prudence determinations of**  
4 **nuclear costs?**

5 A: Florida's policy is to review the prudence of incurred costs annually and to  
6 disallow those costs found to be imprudent. Costs determined to be prudent  
7 are no longer subject to disallowance or further prudence review.

8 **Q: What is the standard used by the Commission in making its prudence**  
9 **determinations?**

10 A: After a new nuclear project has received a determination of need, the  
11 associated costs are not subject to challenge unless and only to the extent the  
12 Commission finds, based on a preponderance of the evidence adduced at a  
13 hearing, that certain costs were imprudently incurred. In addition, imprudence  
14 shall not include any cost increases due to events beyond the utility's control.  
15 Further, a decision to proceed with construction after a determination of need  
16 is granted "shall not constitute or be evidence of imprudence". This standard  
17 is contained in Section 403.519(4)(e), Florida Statutes and is specifically  
18 referenced by Rule 25-6.0423, F.A.C.

19 **Q: Is OPC's suggested use of a break-even analysis consistent with this**  
20 **standard?**

21 A: No, it is not.

22 **Q: How else would use of OPC's break-even alternative be inconsistent with**  
23 **Florida regulatory policy?**

1 A: Rule 25-6.0423(f)(c)2. requires a determination of “the prudence of actual  
2 construction expenditures expended by the utility, and the associated carrying  
3 costs.” The use of a break-even alternative as proposed by Witnesses Jacobs  
4 and Smith does not address the prudence (or imprudence) of any actual  
5 expenditures as required by Florida regulatory policy for nuclear projects.  
6 Rather, the break-even alternative would establish an arbitrary cap on costs  
7 that otherwise would be recovered, if found to be prudent.

8 **Q: In response to an earlier question, you stated that the break-even**  
9 **approach recommended by Witnesses Jacobs and Smith would shift the**  
10 **balance of risk contemplated in Rule 26-6.0423, F.A.C. Would you please**  
11 **explain?**

12 A: Yes, I will. As I previously discussed, Florida regulatory policy as  
13 represented by Rule 25-6.0423, F.A.C., recognizes that new nuclear  
14 generation provides many benefits to customers, but is an inherently risky  
15 undertaking for a utility because of the long lead times to plan, construct, and  
16 operate such generation. This inherent risk acts as a disincentive to undertake  
17 such projects. To better enable the benefits of new nuclear generation to be  
18 realized, the rule provides greater regulatory certainty of cost recovery of  
19 prudently incurred costs by providing for annual prudence reviews that  
20 provide a high degree of finality. This is the balance to which I refer.

21  
22 The approach advocated by Witnesses Jacobs and Smith materially alters this  
23 balance by purporting to disallow costs which fall beyond some break-even

1 point on the cost continuum, but are nonetheless prudent. It essentially  
2 provides all of the benefits of new nuclear generation to customers but  
3 requires customers to potentially pay only part of the cost. Essentially, these  
4 Witnesses are proposing a risk sharing mechanism not contemplated or  
5 allowed by the rule.

6 **Q: Has the Commission previously addressed the concept of a risk sharing**  
7 **mechanism within the context of the nuclear cost recovery clause?**

8 A: Yes, the Commission has considered and rejected such a concept. In Order  
9 No. 11-0095-FOF-EI in Docket No. 100009-EI, intervenors argued that the  
10 Commission had the statutory authority to implement a sharing mechanism to  
11 prevent customers from bearing all of the risk when projects face significant  
12 uncertainty. In response, the Commission found that a risk sharing  
13 mechanism would not be consistent with the clear statutory requirement that  
14 all prudently incurred costs are recoverable. The Commission stated:

15 In conclusion, based upon the analysis above, we find that we  
16 do not have the authority under the existing statutory  
17 framework to require a utility to implement a risk sharing  
18 mechanism that would preclude a utility from recovering all  
19 prudently incurred costs resulting from the siting, design,  
20 licensing, and construction of a nuclear power plant. To do so  
21 would limit the scope and effect of a specific statute, and an  
22 agency may not modify, limit, or enlarge the authority it  
23 derives from the statute.

1 **Q: Do you have any other concerns with the recommendation to institute a**  
2 **risk sharing mechanism through a backward looking break-even**  
3 **analysis?**

4 A: Yes, I do. Aside from the fact that the Commission has found it to be  
5 statutorily impermissible, I believe it is bad regulatory policy and I am  
6 concerned that adopting such an approach would have severe negative  
7 implications for future generation expansion plans in Florida.

8 **Q: How so?**

9 A: I believe good regulatory policy should encourage utilities to consider all cost-  
10 effective options for new generation. Having a full array of viable options can  
11 only serve to provide benefits to customers in terms of reliability, cost and  
12 fuel diversity. I fear that a risk sharing mechanism as contemplated by the  
13 break-even approach will lead to only the lower-risk options being considered.  
14 In today's environment, this means an even greater reliance upon gas-fired  
15 generation. Of course, reliance on natural gas is one of the things the  
16 Legislature and Commission are attempting to mitigate by encouraging  
17 additional nuclear generation.

18

19 **DECISION TO EXPEDITE THE EPU PROJECT**

20

21 **Q: Do you agree with Witness Jacobs' conclusion that FPL's decision to**  
22 **expedite the EPU project was imprudent?**

1 A: I disagree with his conclusion. My lack of agreement is not based on an  
2 engineering analysis of the risks of undertaking the "fast track" approach.  
3 Rather, I find fault with his conclusion from a regulatory policy perspective.

4 **Q: Please explain.**

5 A: Good regulatory policy calls for issues to be raised at the appropriate time and  
6 for findings of prudence or imprudence of management decisions to be made  
7 based on facts known to management at the time decisions are made. The use  
8 of 20-20 hindsight to conclude a decision was imprudent is improper.

9  
10 FPL's decision to pursue the EPU project on an expedited basis was clearly  
11 disclosed in the need determination proceeding. The anticipated in-service  
12 dates of the uprates were part of FPL's filing and the cost-effectiveness  
13 calculations were consistent with the aggressive time frames. FPL's petition  
14 referred to the aggressive schedule of the uprates and FPL's Witness used  
15 terms such as "earliest feasible point in time" and "expedited basis" in  
16 referring to the EPU project's construction time frame and the ensuing  
17 benefits being achieved for customers. If there were concerns that the  
18 decision to expedite the process was an imprudent one, the issue should have  
19 been raised at that time and it was not. FPL has relied upon a regulatory  
20 decision to accept the expedited schedule and has pursued the EPU project  
21 accordingly and was encouraged to do so by the applicability of Rule 25-  
22 6.0423, F.A.C. Witness Jacobs now wants to use 20-20 hindsight to declare  
23 this previously-approved decision imprudent. Also, as I earlier described, the

1 decision to proceed with a nuclear project that has been granted a  
2 determination of need cannot be used as evidence of imprudence.

3 **Q: Do you have any other concerns with Witness Jacobs' conclusion of**  
4 **management imprudence?**

5 A: Yes, I do. I believe Witness Jacobs' conclusion lacks an appreciation of the  
6 electric supply circumstances confronting FPL prior to and at the time of the  
7 need determination.

8 **Q: What were the electric supply circumstances confronting FPL prior to and**  
9 **at the time of the need determination?**

10 A: FPL was faced with the need for reliable and cost effective base-load  
11 generation that also provided greater fuel diversity. The need for greater fuel  
12 diversity was clearly expressed to FPL by the Commission and other policy  
13 makers during this time. As early as 2004, the Commission raised concerns  
14 with a lack of fuel diversity and FPL committed to file a feasibility study of  
15 coal-fired alternatives, which was filed in 2005. In 2006, in emphasizing its  
16 concern of a lack of fuel diversity, the Commission stated that utilities should  
17 not assume the automatic approval of gas-fired plants in future need  
18 determination proceedings. In response to the Commission's direction, FPL  
19 proposed building two ultra-supercritical pulverized coal units in Glades  
20 County to come on line in 2012 and 2013. These units were referred to as the  
21 Florida Glades Power Park and were the subject of a need determination  
22 before the Commission in 2007. While the project had attractive economics  
23 and significant reliability benefits, it was not approved by the Commission.

1 The Commission cited concerns with the risks associated with new coal  
2 generation in light of anticipated greenhouse gas emissions regulations. FPL  
3 then found itself in a situation of meeting its need reliably and cost effectively  
4 and providing greater fuel diversity while minimizing greenhouse gas  
5 emissions. As a result, FPL proposed to expedite the EPU project in order to  
6 meet these needs. The Commission approved FPL's need determination  
7 request in late 2007 and the order was issued in early 2008. There were no  
8 intervenors in opposition to the EPU project.

9 **Q: Why was there a need to expedite the EPU project?**

10 A: First was the need to have the uprates on line in time to meet FPL's need for  
11 capacity. Second was the desire to maximize benefits to customers through  
12 greater fuel savings as quickly as possible.

13 **Q: How does this relate to the issue of management prudence?**

14 A: It goes right to the heart of the issue. The decision to expedite the EPU  
15 project needs to be reviewed in the context of the circumstances leading to  
16 and the reasons supporting it. FPL Management took action to meet its  
17 obligation to serve reliably and cost effectively and to address policy concerns  
18 over fuel diversity and greenhouse gas emissions. And they did this in a way  
19 that would maximize fuel savings to customers. Such action should be  
20 encouraged. It definitely should not be penalized by a finding of imprudence  
21 based on hindsight of a decision that was unchallenged at the time it was  
22 originally made. Given the facts and circumstances, a finding of management  
23 imprudence by the Commission would only tend to nullify its previous

1 decisions to encourage maximizing nuclear benefits to customers and would  
2 send a message to FPL's management and other utility managers that they  
3 should not aggressively pursue solutions to challenging problems. Customers  
4 will only be harmed in the long term by such a message.

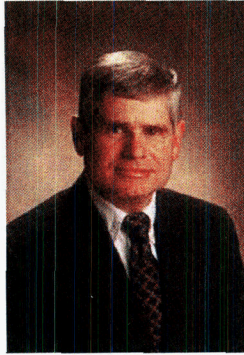
5 **Q: Does this conclude your testimony?**

6 **A:** Yes, it does.



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- National Association of Regulatory Utility Commissioners (NARUC) 2002 *Member,*  
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- Nuclear Waste Strategy Coalition, 2000 - 2006, *Board Member*
- Federal Energy Regulatory Commission (FERC) South Joint Board on Security  
*Constrained Economic Dispatch, 2005 - 2006, Member*
- Southeastern Association of Regulatory Utility Commissioners, 1991 - 2006, *Member*
- Florida Energy 20/20 Study Commission, 2000 - 2001, *Member*
- FCC Federal/State Joint Conference on Accounting, 2003 - 2005, *Member*
- Joint NARUC/Department of Energy Study Commission on Tax and Rate  
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- Bonbright Utilities Center at the University of Georgia, 2001, *Bonbright Distinguished  
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